

Public Submission

**Inquiry into the Trade Practices Amendment**

***Guaranteed Lowest Prices***

***Blacktown Amendment***

**Bill 2009**

**CASE STUDY**

**Using  
Geographic Price Discrimination  
to  
Destroy Competition,  
Raise Barriers to Entry  
and  
Exploit Consumers  
in the  
Electorate of Prospect**

By

**Southern Sydney Retailers Association**

Contact : Craig Kelly 0413 433 288

17<sup>th</sup> September 2009

*We found that the practice of varying prices in different geographical locations in the light of local competitive conditions ..... contributed to a situation in which products were not fully exposed to competitive pressures.....which distorted competition and gave rise to a complex monopoly situation and....operated against the public interest.<sup>1</sup>*

**UK Competition Commission, 2000**

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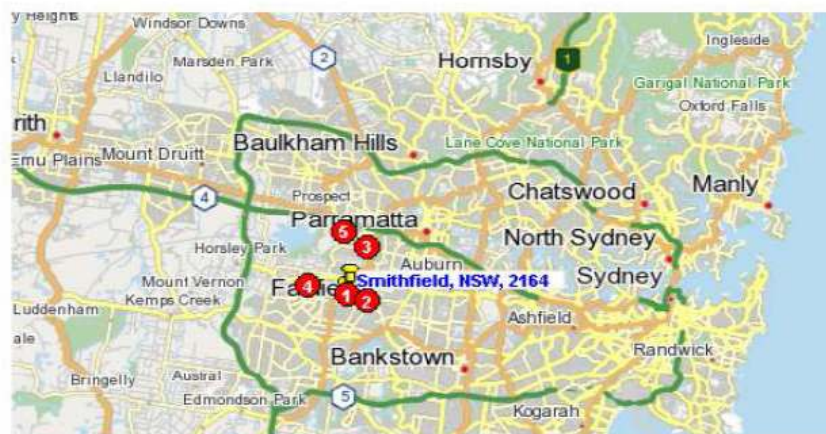
<sup>1</sup> "Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom" UK Competition Commission.

[http://www.competition-commission.org.uk/rep\\_pub/reports/2000/446super.htm](http://www.competition-commission.org.uk/rep_pub/reports/2000/446super.htm)

# Using Geographic Price Discrimination to destroy competition, raise barriers to entry and exploit consumers.

## Case Study – The electorate of Prospect

Fairfield and Greystanes are two suburbs in Sydney's west, less than 5 km apart, in the electorate of Prospect, currently held by the former Competition Minister Christopher Bowen.



The nearest Woolworths stores to Smithfield NSW 2164

	Store Name	Address	Phone	Distance
1	FOOD FOR LESS - Fairfield Heights	186 The Boulevard	(02) 9754-1129	1.17 km
2	WOOLWORTHS - Fairfield	Neeta S/Centre Nelson & Smart Sts	(02) 9728-4099	2.17 km
3	WOOLWORTHS - Greystanes	Cnr Merrylands & Braeside Roads	(02) 9636-2288	2.90 km
4	WOOLWORTHS - Wetherill Park	Cnr Polding & Restwell Streets	(02) 9729-4330	3.37 km
5	WOOLWORTHS - Penrith	Cnr Butu Wargun Dr & Greystanes Rd	(02) 9896-4678	4.04 km

### The Greystanes Shopping Centre

In 2008, the Greystanes Shopping Centre had a one supermarket (Woolworths), two major banks and 32 specialty stores, but no independent greengrocer, leaving the Woolworths supermarket with a monopoly in the shopping centre for the sale of fruit and vegetables.

### The Fairfield Shopping Centre

In 2008, the Fairfield Shopping Centre (Neeta City) had one supermarket (Woolworths) three major banks, one discount department store (Big W) and over 50 speciality stores. However unlike Greystanes, the Fairfield Shopping Centre had one independent greengrocer operating in the shopping centre.

## Fairfield Shopping Centre



The independent greengrocer operating from the premises “G1” was providing the residents of Fairfield with choice by offering them an alternate to purchasing their fruit and vegetables from the Woolworths supermarket.

### Testing the Market

On 10<sup>th</sup> May 2008, in the middle of the ACCC’s Grocery Inquiry, I decided to test if Woolworths were engaging in the practice of Geographic Price Discrimination right under the nose of the then competition Minister Christopher Bowen.

At 3.01pm, I purchased a basket of everyday fruit and vegetable items from Woolworths Fairfield.

Soon after, I proceeded to the closest nearby Woolworths (at Greystanes) to purchase the same items to see if there was any difference in price.

Upon entering the Greystanes store I was greeted with a large sign informing me of low prices I could count, everyday, as per the picture to the right.



At 4.17 pm at Woolworths Greystanes I purchased 26 of exactly the same items, I had purchased at Fairfield one hour ago.

## The Results

In making the comparison of prices at Woolworths Fairfield to those at Woolworths Greystanes, I using prices either per kilogram, or per unit (depending upon how the item was sold). The total at Fairfield came to **\$45.72**.

At Greystanes, the total for same items came to **\$105.54**, and incredible **131%** higher than at Fairfield. (dockets annexed to this submission)

Geographical Price Discrimination in the Electorate of Prospect					
10th May 2008					
			Woolworths Fairfield	Woolworths Greystanes	Higher Price paid by Greystanes residents
		Tax Invoice No.	114500603350093	12830071446	
No.		Time of Purchase	3.01pm	4.17pm	
1	Mandarin, Imperial	kg	\$0.99	\$3.97	301%
2	Lemon	kg	\$1.98	\$4.44	124%
3	Apple, Pink Lady Md.	kg	\$0.99	\$4.97	402%
4	Apple, Fuji Md.	kg	\$1.48	\$4.97	236%
5	Lettuce	kg	\$0.69	\$1.98	187%
6	Apple Granny Smith md	kg	\$1.48	\$4.97	236%
7	Apple, Golden Delicious Md	kg	\$1.48	\$4.97	236%
8	Pear, Nasi green	kg	\$3.98	\$5.97	50%
9	Tomato, Gourmet Md	kg	\$0.99	\$1.75	77%
10	Coz Lettuce	each	\$0.69	\$1.98	187%
11	Red Onion (1kg pack)	kg	\$1.88	\$3.98	112%
12	Potato Golden Delight	kg	\$0.79	\$2.98	277%
13	Pear, William	kg	\$1.93	\$1.93	0%
14	Carrots	kg	\$1.48	\$2.44	65%
15	Snow Peas	kg	\$4.95	\$9.98	102%
16	Kiwifruit, Lge	kg	\$2.98	\$4.95	66%
17	Potatoes, Coliban	kg	\$1.32	\$2.84	115%
18	Orange Navel, USA	kg	\$1.98	\$3.97	101%
19	Sweet Potato Gold	kg	\$0.99	\$2.86	189%
20	Eggplant	kg	\$2.98	\$5.98	101%
21	Cucumber, Lebanese	kg	\$1.28	\$5.98	367%
22	Avocado Hass	each	\$0.79	\$1.77	124%
23	Capsicum Green	kg	\$1.98	\$3.98	101%
24	Zucchini Green	kg	\$1.98	\$2.98	51%
25	Celery Whl Bunch	each	\$1.68	\$2.98	77%
26	Honeydew	each	\$1.98	\$5.97	202%
<b>TOTALS</b>			<b>\$45.72</b>	<b>\$105.54</b>	<b>131%</b>

## The same quality items

The quality of the items in Fairfield and Greystanes were identical.

For example, the Woolworths' 1kg bag of red unions had the same packaging, same labelling, same barcode, same use by date, yet Woolworths were charging shoppers at Greystanes a 112% higher price than they were charging shoppers at Fairfield.

## ***The Opinion of the ACCC***

The evidence of the above example was forwarded to the ACCC's Grocery Inquiry, however, the ACCC in their wisdom concluded that such Geographic Price Discrimination was not only lawful under the current legislation settings of the Trade Practices Act, but was actually to the benefit of consumers.<sup>2</sup>

## ***The Opinion of the UK Competition Commission***

In direct contrast the theories and speculations of the ACCC, their UK equivalent, the Competition Commission, in the commission's inquiry, "*Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom*" concluded that;

*" the practice of varying prices in different geographical locations in the light of local competitive conditions..... contributed to a situation in which the majority products were not fully exposed to competitive pressures..... and which distorted competition, and..... gave rise to a complex monopoly situation and....operated against the public interest."*<sup>3</sup>

## ***12 months later***

Do consumers "benefit" from such Geographic Price Discrimination as theorised by the ACCC, or does such Geographic Price Discrimination operate against the public interest as asserted by the UK Competition Commission ?

To answer the question, exactly 12 months later, on the 9<sup>th</sup> May 2009, I returned Fairfield shopping centre. I discovered that the Greengrocer that was previously located in shop G1, had been driven from the market, and the shop was abandoned, as per the attached photos. Three lonely checkout counters lay empty.



<sup>2</sup> Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries. p.438 to 440

<sup>3</sup> "Supermarkets: A report on the supply of groceries from multiple stores in the United Kingdom" UK Competition Commission. [http://www.competition-commission.org.uk/rep\\_pub/reports/2000/446super.htm](http://www.competition-commission.org.uk/rep_pub/reports/2000/446super.htm)



***The effect on prices after the Independent Grocer was driven from the market by Geographic Price Discrimination***

I then decided to purchase the identical items from Woolworths Fairfield as I had exactly 12 months earlier. (docket annexed to this submission)

Had prices remained competitive, or had Woolworths destroyed competition by driving their independent competitor to ruin and bankruptcy, with Geographic Price Discrimination enabling Woolworths to increase prices by excessive amounts at their Fairfield store ?



The comparison showed that over just 12 months Woolworths had increased prices on average 80% after the independent was driven from the market by the practice of Geographic Price Discrimination. It was obvious that once the independent competitor disappeared, so did the low prices.

<b>Geographical Price Discrimination in the Electorate of Prospect</b>					
<b>Woolworths Fairfield</b>					
			<b>10th May 2008</b>	<b>9th May 2009</b>	<b>Price increase over 12 months</b>
	Tax Invoice No.		114500603350093	11450091563	
No.	Time of Purchase		3.01pm	5.47pm	
1	Mandarin, Imperial	kg	\$0.99	\$1.68	<b>70%</b>
2	Lemon	kg	\$1.98	\$2.98	<b>51%</b>
3	Apple, Pink Lady Md.	kg	\$0.99	\$2.48	<b>151%</b>
4	Apple, Fuji Md.	kg	\$1.48	\$2.48	<b>68%</b>
5	Lettuce	kg	\$0.69	\$1.15	<b>67%</b>
6	Apple Granny Smith md	kg	\$1.48	\$1.98	<b>34%</b>
7	Pear, Nasi green	kg	\$3.98	\$2.98	<b>-25%</b>
8	Tomato, Gourmet Md	kg	\$0.99	\$1.98	<b>100%</b>
9	Coz Lettuce	each	\$0.69	\$1.25	<b>81%</b>
10	Red Onion (1kg pack)	kg	\$1.88	\$1.97	<b>5%</b>
11	Potato Golden Delight	kg	\$0.79	\$1.67	<b>111%</b>
12	Carrots	kg	\$1.48	\$1.48	<b>0%</b>
13	Snow Peas	kg	\$4.95	\$3.98	<b>-20%</b>
14	Kiwifruit, Lge	kg	\$2.98	\$2.96	<b>-1%</b>
15	Orange Navel, USA	kg	\$1.98	\$4.97	<b>151%</b>
16	Sweet Potato Gold	kg	\$0.99	\$1.48	<b>49%</b>
17	Eggplant	kg	\$2.98	\$2.98	<b>0%</b>
18	Cucumber, Lebanese	kg	\$1.28	\$2.98	<b>133%</b>
19	Avocado Hass	each	\$0.79	\$0.98	<b>24%</b>
20	Capsicum Green	kg	\$1.98	\$3.98	<b>101%</b>
21	Zucchini Green	kg	\$1.98	\$4.78	<b>141%</b>
22	Celery Whl Bunch	each	\$1.68	\$1.48	<b>-12%</b>
23	Honeydew	each	\$1.98	\$1.98	<b>0%</b>
24	Banana	kg	\$1.34	\$1.98	<b>48%</b>
25	Coconut	each	\$1.48	\$2.98	<b>101%</b>
26	Garlic	kg	\$2.98	\$15.98	<b>436%</b>
27	Longan	kg	\$4.95	\$14.97	<b>202%</b>
28	Cabbage, whole	kg	\$1.98	\$3.98	<b>101%</b>
<b>TOTALS</b>			<b>\$53.72</b>	<b>\$96.52</b>	<b>80%</b>

How the ACCC could considered that such Geographic Price Discrimination which skewed competition, and not only robbed consumers of choice, but resulted in prices increasing 80% over just 12 months, is to the “benefit of consumers” is a mystery that perhaps is only known to the ACCC.



## ***Raising Barriers to Entry***

The learned Justice McHugh of the High Court speculated in the infamous *Boral* case at para. 289

*“Even the removal of competitors is unlikely to have long-term effects on the competitive process if barriers to entry are low. Supra-competitive prices will bring in other suppliers resulting in competition which is force prices down to competitive levels”*

Such speculation may sound nice in theory (unless you are the small business competitor that has been driven to ruin and bankruptcy), but in the realities of the real world, the removal of competitors from the market by Geographic Price Discrimination simply raises barriers to entry.

When a multi-store firm successfully uses Geographic Price Discrimination to destroy an independent competitor, it sends out a warning to other potential competitors, whom would normally be attracted by the supra-competitive prices to enter the market.

Any potential new market entrant is simply discouraged, as they know where a multi-store firm uses Geographic Price Discrimination, that the minute they enter the market and offer competitive prices to consumers, that their larger competitive will then immediately use Geographic Price Discrimination and leverage profits from non-competitive territory to make the new entrants business unprofitable.

Such practices contribute to raising barriers to entry, resulting in not only Australia's retail sector degenerating into the developed world's most concentrated, but also has eroded competition to such an extent, that Australia suffers from the developed world's fastest accelerating supermarket prices.



## **Conclusion**

This case study exposes Geographic Price Discrimination for the evil that it is, a practice that destroys competition, raises barriers to entry, creates localised monopolies, exploits consumers, and is partly responsible for Australian “working families” being punished with the fasted accelerating supermarket in the developed world.

As the learned, McHugh J also noted in the *Boral* case;

*‘Competition policy suggests that it only when consumers will suffer as a result of the practices of a business firm that s46 is likely to require the courts to intervene and deal with conduct.’<sup>4</sup>*

Australian consumers are suffering, the residents of Fairfield and Greystanes are suffering, but the current legislative settings of the *Trade Practices Act* are impotent to deal with the anti-competitive evil of Geographic Price Discrimination.

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<sup>4</sup> McHugh J, *Boral* case (2003) 195 ALR 609 at 663

**Annexure – Dockets**

Greystanes 10<sup>th</sup> May 2008, Fairfield 10<sup>th</sup> May 2008, Fairfield 9<sup>th</sup> May 2009

**'The Fresh Food People'**  
WOOLWORTHS

TAX INVOICE - ABN 88 000 014 675  
GREYSTANES PH: 9636-2288  
Store Manager Is: Ian Ferreira

1. MANDARIN IMPERIAL	0.118kg NET @ \$3.97/kg	0.47
2. LEMON LOOSE	0.148kg NET @ \$4.44/kg	0.66
3. APL PINK LDY MED	0.143kg NET @ \$4.97/kg	0.71
4. APPLE FUJI MED	0.158kg NET @ \$4.97/kg	0.79
5. LETTUCE WRAPPED		1.98
6. APPLE GSMITH MED	0.128kg NET @ \$4.97/kg	0.64
7. APL GLDN DEL MED	0.143kg NET @ \$4.97/kg	0.71
8. PEAR NASHI GREEN	0.253kg NET @ \$5.97/kg	1.51
9. TOMATO GRMT MED	0.143kg NET @ \$1.75/kg	0.25
10. LETTUCE COS		1.98
11. ONION RED 1KG		3.98
2. POTATO GDELIGHT	0.108kg NET @ \$2.98/kg	0.32
3. PEAR WILLIAM	0.193kg NET @ \$1.93/kg	0.37
4. CARROT	0.193kg NET @ \$2.44/kg	0.47
5. PEAS SNOW	0.058kg NET @ \$9.98/kg	0.58
6. KIWIFRUIT LARGE	0.113kg NET @ \$4.95/kg	0.56
7. POT COLIBAN 2KG		5.68
8. ORANGE NAVEL LSE	0.253kg NET @ \$3.97/kg	1.00
9. POTATO SWT GOLD		2.86
10. EGGPLANT KG	0.338kg NET @ \$5.98/kg	2.02
11. CUCUMBER LEBANSE	0.108kg NET @ \$5.98/kg	0.65
12. AVOCADO HASS		1.77
13. CUCUMBER LEBANSE	0.228kg NET @ \$5.98/kg	1.36
ITEM CANCELLED		
CUCUMBER LEBANSE	0.228kg NET @ \$5.98/kg	-1.36
14. CAPSICUM GREEN	0.228kg NET @ \$3.98/kg	0.91
15. ZUCCHINI GREEN	0.108kg NET @ \$2.98/kg	0.32
16. CELERY WHL BUNCH		2.98
17. HONEYDEW LARGE		5.97
26. SUBTOTAL		\$40.14

WOOLWORTHS GREYSTANE  
GREYSTANES  
MERCH ID: 611000602001283  
TERM ID: W1283007  
CARD: 376011 006  
AMEX CARD CREDIT A/C  
PURCHASE \$40.14  
TOTAL \$40.14  
APPROVED 08  
10/05/08 16:17 1446

TOTAL \$40.14  
EFT \$40.14  
CHANGE \$0.00  
1283 007 1446 16:17 10/05/08

**'The Fresh Food People'**  
WOOLWORTHS

ABN 88 000 014 675  
THE FRESH FOOD PEOPLE  
FAIRFIELD PH: 9728 4099  
Your Store Manager Is J. Von Drasek

HELP US CREATE A BETTER ENVIRONMENT  
BRING BACK YOUR RE-USABLE BAGS  
TAX INVOICE

18. ORANGE NAVEL LSE	0.528kg NET @ \$1.98/kg	1.05
2. LEMON LOOSE	0.508kg NET @ \$1.98/kg	1.01
COCONUT DRNK GRN		1.48
3. APL PINK LDY MED	0.278kg NET @ \$0.99/kg	0.28
5. LETTUCE ICEBERG		0.69
BANANA	0.413kg NET @ \$1.34/kg	0.55
4. APPLE FUJI MED	0.213kg NET @ \$1.48/kg	0.32
APL PINK LDY MED	0.143kg NET @ \$0.99/kg	0.14
6. APPLE GSMITH MED	0.148kg NET @ \$1.48/kg	0.22
APL GLDN DEL MED	0.128kg NET @ \$1.48/kg	0.19
10. LETTUCE COS		0.69
TOMATO GRPE 200G		1.97
9. TOMATO GRMT MED	0.208kg NET @ \$0.99/kg	0.21
8. PEAR NASHI GREEN	0.238kg NET @ \$3.98/kg	0.95
21. CUCUMBER LEBANSE	0.198kg NET @ \$2.98/kg	0.59
22. AVOCADO HASS		0.79
GARLIC	0.058kg NET @ \$2.98/kg	0.17
APL RED DEL MED	0.128kg NET @ \$0.78/kg	0.10
11. ONION RED 1KG		1.88
12. POTATO GDELIGHT	0.158kg NET @ \$0.79/kg	0.12
PEAR BEURRE BOSQ	0.218kg NET @ \$3.97/kg	0.55
14. CARROT	0.198kg NET @ \$1.48/kg	0.29
LONGAN	0.068kg NET @ \$4.95/kg	0.34
15. PEAS SNOW	0.048kg NET @ \$4.95/kg	0.24
16. KIWIFRUIT LARGE	0.178kg NET @ \$2.98/kg	0.53
GRAPE OHANEZ	0.288kg NET @ \$2.98/kg	0.86
17. POT COLIBABY 1.5		1.98
19. POT SWEET GOLD	0.828kg NET @ \$0.99/kg	0.82
26. HONEYDEW YELLOW		1.98
13. PEAR WILLIAM	0.208kg NET @ \$1.93/kg	0.40
1. MANDARIN IMPERIAL	0.218kg NET @ \$0.99/kg	0.22
23. CAPSICUM GREEN	0.218kg NET @ \$1.28/kg	0.28
24. ZUCCHINI GREEN	0.103kg NET @ \$1.98/kg	0.20
20. EGGPLANT KG	0.273kg NET @ \$2.98/kg	0.81
27. CABBAGE GRN WHL		1.98
25. CELERY WHL BUNCH		1.68
36. SUBTOTAL		\$26.56
ROUNDING		-\$0.01
TOTAL		\$26.55
CASH		\$30.00
CHANGE		\$3.45

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the fresh food people

ABN 88 000 014 675  
THE FRESH FOOD PEOPLE  
FAIRFIELD PH: 9728 4099  
Your Store Manager Is Ian Purshu

HELP US CREATE A BETTER ENVIRONMENT  
BRING BACK YOUR RE-USABLE BAGS  
TAX INVOICE

ORANGE NAVEL LSE	0.328kg NET @ \$4.97/kg	1.61
COCONUT		2.98
LEMON LOOSE	0.133kg NET @ \$2.98/kg	0.40
APL PINK LDY MED	0.148kg NET @ \$2.48/kg	0.37
LETTUCE ICEBERG		1.15
BANANA	0.238kg NET @ \$1.98/kg	0.47
APPLE FUJI MED	0.128kg NET @ \$2.48/kg	0.31
APL GOWNY SMITH	0.138kg NET @ \$1.98/kg	0.27
APPLE RED DEL	0.173kg NET @ \$1.48/kg	0.26
LETTUCE COS		1.25
TOM CHRY RED250G		1.98
PEAR NASHI GREEN	0.183kg NET @ \$2.98/kg	0.55
CUCUMBER LEBANSE	0.143kg NET @ \$2.98/kg	0.43
AVOCADO HASS		0.98
GARLIC LARGE LSE	0.033kg NET @ \$15.98/kg	0.53
ONION RED 1KG		1.97
GOLD DELIGHT LSE	0.143kg NET @ \$1.67/kg	0.24
PEAR BEURRE BOSQ	0.218kg NET @ \$1.48/kg	0.32
CARROT	0.158kg NET @ \$1.48/kg	0.23
LONGAN	0.023kg NET @ \$14.97/kg	0.34
PEAS SNOW	0.068kg NET @ \$3.98/kg	0.23
KIWIFRUIT GREEN	0.103kg NET @ \$2.96/kg	0.30
POT SWEET GOLD	0.293kg NET @ \$1.48/kg	0.43
HONEYDEW LARGE		1.98
PEAR PRODUH	0.138kg NET @ \$1.48/kg	0.20
MANDARIN IMPERIAL	0.188kg NET @ \$1.68/kg	0.32
ZUCCHINI GREEN	0.113kg NET @ \$4.78/kg	0.54
CAPSICUM GREEN	0.198kg NET @ \$3.98/kg	0.79
EGGPLANT KG	0.348kg NET @ \$2.98/kg	1.04
CABBAGE GRN HALF		1.99
CELERY WHL BUNCH		1.48
TOMATO GRMT MED	0.113kg NET @ \$1.98/kg	0.22
LEMON LOOSE	0.383kg NET @ \$2.98/kg	1.14
PEAS MED/GRSSOML		2.79
34. SUBTOTAL		\$30.09
ROUNDING		\$0.01
TOTAL		\$30.10
CASH		\$100.10
CHANGE		\$70.00

With the Woolworths Credit Card you can earn valuable rewards every time you shop. To find out more or to apply click up a brochure in store or visit [www.everydaymoney.com.au](http://www.everydaymoney.com.au)

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