



Select Committee on Supermarket Prices
PO Box 6100
Parliament House
Canberra ACT 2600

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Healthy Food Systems Australia (HFSA) is an advocacy group dedicated to promoting a food system that is healthy and sustainable for all people and the planet, through holistic and systemic policy actions. Our vision is for a food system that promotes public and planetary health, and is healthy, sustainable and equitable for all Australians. We believe that this transformation can only occur with a coordinated shift at all levels of the supply chain, including the broader, interconnected elements of the food system. Addressing excessive corporate power is a critical element needed for this transition. Therefore, HFSA welcomes the opportunity to provide input to the Senate Inquiry on the Competition and Consumer Amendment (Divestiture Powers) Bill 2024. HFSA supports the submission drafted by the Global Centre for Preventive Health and Nutrition (GLOBE), reiterated below.

In summary, HFSA supports the proposed Competition and Consumer Amendment (Divestiture Powers) Bill 2024, which would align Australia with many other OECD countries that have similar divestiture powers to those proposed in the Bill. The proposed Bill will be essential for keeping highly concentrated Australian sectors, such as the supermarket sector, accountable and honest to the Australian public.

The need to address misuses of market power: a food systems perspective

The misuse of market power can generate a range of adverse population and planetary health outcomes. Unfair pricing practices (that place basic necessities and goods out of reach for many households) are common in a range of highly concentrated Australian sectors such as the supermarket, energy, aviation, and banking sectors [1], can influence health and well-being in various ways. As a pertinent example, research on food pricing and availability shows that the pricing practices of Australia's dominant supermarkets can jeopardise access to affordable, healthy food and drinks for many segments of the Australian population [2]. In major Australian cities, the cost of basic healthy foods and drinks can cost a family of four more than \$600 per fortnight, which is equivalent to approximately one-fifth of the median Australian family income, and one-third of the income of Australian families on low-incomes [3]. In remote areas, such costs can exceed \$800 [4]. In regional Aboriginal communities, healthy food and drinks can cost up to 50% of family incomes [5]. Meanwhile, unhealthy diets, which many Australian consumers perceive to be cheaper than healthy diets [2], account for the greatest number of preventable deaths in the country [6]. Irrespective of the sector in question, unfair pricing practices can also



negatively influence health and well-being indirectly by reducing the budgets of Australian families for other essential costs, such as rent, fuel, electricity, insurance, healthcare, and education.

The misuse of market power is of concern to social and health equity in Australia, often impacting people who are already experiencing social and/or economic marginalisation the most. It can also negatively influence the health and well-being of farmers and workers across food supply chains (as well as in other sectors). Again, Australia's supermarket sector provides a case in point. Given their considerable buying power, Australia's dominant supermarkets are often able to dictate unfair terms and prices to farmers and other suppliers, who then have very little choice but to comply given the lack of other buyers in the market [1]. In some cases, farmers and other suppliers may be required to accept prices that do not cover their costs of production, let alone sufficient earnings for long-term investment [1]. In turn, and in light of the current climate challenges, these farmers and other suppliers face an increased risk of job insecurity and income losses, which are important risk factors for a range of adverse acute and chronic health outcomes [7].

Fit for purpose

HFSA notes that the Competition and Consumer Amendment (Divestiture Powers) Bill 2024 is a feasible and appropriate measure to address serious misuses of market power under Section 46 of the Act. As recently noted by Senator Ross Cadell during a speech in the Senate [8], competition authorities and courts in many OECD Member States already have divestiture powers similar to those which would be provided by the Bill. As such, it could be argued that the Bill would increase Australia's compliance with international 'best practice' in regulating misuses of market power.

In addition, the Bill adheres to the principles of 'responsive regulation', which is an OECD-endorsed regulatory framework for differentiated enforcement according to the seriousness of the violation in question [9]. Indeed, the Court would be able to reserve its divestiture powers for only the most serious cases, and following the exhaustion of other existing measures to address violations of section 46 of the Act. The Bill would also very likely produce a deterrent or compliance effect even if the Court opted to only use its divestiture powers very rarely, if at all. Take, for example, a recent case involving a telecommunications company in the European Union, which misused its market power by refusing to provide rival companies with access to its infrastructure [10]. Despite various sanctions imposed by regulators and the launch of EU competition enforcement proceedings, it was reportedly the threat of mandatory divestiture that compelled the telecommunications company to comply with its regulatory obligations [10].

Conclusion

HFSA fully supports the Competition and Consumer Amendment (Divestiture Powers) Bill 2024. By addressing serious misuses of market power, the Bill represents a powerful, appropriate, and



feasible measure to promote a healthy Australia – a prerequisite for a prosperous and competitive Australian economy.

Yours sincerely,

Dr Katherine Sievert, A/Professor Julie Woods, Dr Cherie Russell, Dr Kate Wingrove and Ms Kim Anastasiou
Executive Committee of Healthy Food Systems Australia.

W: <https://www.hfsaustralia.org/>

E: admin@hfsaustralia.org.au



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