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Select Committee on Supermarket Prices
PO Box 6100
Parliament House
Canberra ACT 2600
*Via email: supermarketprices.sen@aph.gov.au*

# Woolworths Group Submission
# Competition and Consumer Amendment (Divestiture Powers) Bill 2024

## Introduction

Woolworths Group (Woolworths) welcomes the opportunity to lodge a submission to the Select Committee on Supermarket Prices in relation to the *Competition and Consumer Amendment (Divestiture Powers) Bill 2024* (the Bill).

In addition to this document, we also refer you to our original February 2024 submission (Appendix A) to the Committee, which provides an empirical analysis of the competitive nature of the Australian grocery industry, the benefits customers experience as a result of price transparency, key drivers of food and grocery inflation, our supplier relationships and how we work hard to deliver value for customers.

## About Woolworths Group

Woolworths was founded in 1924 and has a history of serving Australian communities for almost 100 years. We are Australian-owned and listed on the Australian Stock Exchange (ASX). We are Australia's largest private employer, with 200,000 hard working Australian and New Zealand team members who serve more than 20 million customers a week across more than 1,250 Woolworths Supermarkets, Metro Food Stores and BIG W Discount Department Stores.

We operate one of the largest integrated supply chain and logistics networks in Australia with 32 distribution centres (DCs) across the country which help to support food security for some of Australia's most remote and natural disaster-prone regions.

## Cost of living and policy responses

We are acutely aware of the pressure inflation is placing on our customers, our teams and our suppliers. We are mindful of our responsibility to balance providing value for our customers, regardless of where they call home right across Australia, maintaining strong supplier relationships and continuing to provide meaningful employment for thousands of people.

We appreciate the Bill has been introduced in the context of concerns regarding cost of living and discussions regarding the competitiveness of the grocery sector.

While we are open to working with the Parliament on any practical, fit-for-purpose policy measures, we do not support this Bill, or divestiture powers more broadly. Our concerns are with respect to the inappropriateness of this remedy to address the nature of the issues outlined and with unintended consequences if divestment was made reality, including for supply chain resilience, food security, employment, investment in infrastructure and, ultimately, costs to consumers.

By way of an example, in relation to the forced divestiture of an existing Woolworths store:

- It is not clear who would acquire the store, and whether the acquirer would be capable of running the store efficiently and cost-effectively.
- The store would no longer have the support of the national Woolworths supply chain and technology platform - delivering products to the store efficiently, cost-effectively and reliably, notwithstanding inevitable supply chain disruptions.
- The store would no longer price its products according to Woolworths national (and for fresh products, state-based) pricing policy - which would impact significantly any regional or remote store, including increased prices for the local community.
- If the store were not as successful under its new ownership, it may reduce its range, operations and employment and would be a less reliable source of food and everyday needs for its local community.

### Current and previous reviews, international examples

There are a range of reviews of the grocery sector underway and these reviews should inform policy changes proposed by the Parliament.

We note this week's release of the Interim Report into the Food & Grocery Code of Conduct. We support its recommendation to make the Code mandatory and be bound by arbitration outcomes. This interim report opposed the introduction of divestiture powers, outlining that it could result in greater market concentration if one large chain was forced to sell to another, or where there was no buyer interest, store closures:

> *"If forced divestiture resulted in a supermarket selling some of its stores to another large incumbent supermarket chain, the result could easily be greater market concentration. If large incumbent supermarket chains were prohibited from buying the divested stores, that would leave only smaller supermarket chains and foreign supermarkets as potential buyers. Further, if these smaller chains were not interested, or were not in a position to buy, these stores would be forced to close. This would be at the cost of the jobs of the workers in those stores and of inconvenience to local shoppers who would need to go elsewhere to buy their groceries.[1]"*

The ACCC's review of prices and competition in the supermarket sector is also underway, with significant powers to investigate and recommend action to the Government on any issues in these areas.

Multiple formal reviews of Australian competition law have looked carefully at divestiture powers as a potential sanction for misuse of market power. The Productivity Commission also reviewed this. In every case, these reviews have advised against introducing such a measure.

One example of the unintended consequences of forced divestiture took place in the United States during the split up of the AT&T phone company in the 1980s. In this instance, unintended outcomes were created, resulting in years of litigation and subsequently, many of the smaller companies which had been divested have re-merged to recapture lost economies of scale.

In recent reviews of the process, the US Government found little evidence of consumer benefit from divestiture remedies and it estimated the remedy cost US$5 billion in lost productivity[2].

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[1] 'Independent Review of the Grocery Code of Conduct: Interim Report', April 2024, p. 74.
[2] 'The AT&T Divestiture: Was It Necessary? Was It a Success?', Robert W. Crandall, The Brookings Institution, U.S Department of Justice Archives, 28 March 2007: https://www.justice.gov/archives/atr/att-divestiture-was-it-necessary-was-it-success

More recently, in New Zealand, the Commerce Commission advised against divestiture powers following an extensive market inquiry - concluding the costs would clearly exceed the benefits, likely increasing food prices because of lost economies of scale, and increases in ongoing and one-off costs[3].

## Divestiture powers and impact

**The Australian grocery industry is already highly competitive and divestiture powers will not positively influence this**

Woolworths is already part of a highly competitive and innovative grocery sector. In 2008, the Australian Competition and Consumer Commission (ACCC) determined that the industry was 'workably competitive' and now it is much more so.

With the arrival of three of the world's biggest and most competitive retailers (Aldi, Costco and Amazon) in Australia, consumers have even more choice. Australian consumers are savvy and have high expectations. The vast majority of consumers shop across multiple retailers. The growth of online shopping and new digital tools are making it even easier for consumers to compare prices and cross-shop retailers.

We do not consider there is any case for significant regulatory intervention such as divestiture, which is at odds with a modern and open economy. There is also a real question of which companies would have the scale or the inclination to buy some of these assets, and whether that would be the best outcome for Australia and the community.

**Divestiture - even as a regulatory 'back stop' - would not reduce the price of groceries and would have unintended consequences**

There are considerable costs in supplying regional, rural and remote communities with groceries and the majority of these are absorbed due to our business scale - keeping the on-shelf prices lower than they would otherwise be. In this way, our scale is used to absorb the additional costs, which would not be possible in the event divestiture powers were used.

Woolworths Supermarkets operates a national pricing strategy, by which we sell the vast majority of products at the same price across all of our supermarket stores nationally. There are some exceptions, notably fruit and vegetables where pricing is set at a state level (subject to limited exceptions), due to differences in sources of supply and at a small number of regional stores.

This approach to pricing is one of the key ways we achieve value for all Australian customers, including those who live in regional and remote areas. With our current scale and scope, Woolworths largely absorbs the cost of distributing groceries to stores in regional Australia with customers of the vast majority of regional stores paying the same price for groceries as customers in metropolitan areas.

Recently in New Zealand, the Commerce Commission advised against divestiture powers following an extensive market inquiry - concluding the costs would clearly exceed the benefits, likely increasing food prices because of lost economies of scale, and increases in ongoing and one-off costs.

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[3] 'Market study into the retail grocery sector: Final Report', Commerce Commission New Zealand, March 2022, p. 438.

Analysis commissioned by Woolworths New Zealand indicates that across conceivable scenarios, forced divestment would likely directly increase grocery sector costs by $440 to $980 million (NZD) per year, with direct flow-on impacts to customers in the form of higher supermarket grocery prices (up to 6% higher).

In addition, the analysis found reduced scale would also further reduce supermarkets bargaining power with multinational FMCG suppliers, which is where the majority of requests for cost increases on products originate. These large global suppliers typically have global scale, strong brand recognition, sophisticated systems and processes and significant financial resources. It is worth noting that cost price increases by our largest 100 suppliers (ranked by sales) accounted for approximately 80% of all cost price increases we received in the 2022/2023 reporting period.

Large suppliers are often robust cost price negotiators and may, in some cases, withhold the supply of products as part of the negotiation. In many cases, we accept cost price increases so we can continue to offer products expected by our customers.

We are focused on delivering value to customers and the introduction of divestiture powers would not change this focus.

**Divestment would affect the ability to respond to communities in times of need**
Woolworths plays a broad role in the Australian business landscape. We are Australia's largest private employer and a vital participant in regional and rural communities. We have a proud history of working in partnership with suppliers to develop their businesses and play a critical role in building resilience in the Australian food supply chain.

If divestiture was implemented, end-to-end supply chain, transport and distribution networks would be threatened. Today, we handle around 1.4 billion cartons per year[4] through a 'just in time' supply chain designed specifically to service our national store network. Disruptions to information flows, integrated systems and processes, logistics scale and current supply chain investment would add inefficiencies. A reduced scale and greater reliance on third party supply arrangements would also impact future supply.

Our response to the challenges presented by COVID-19 demonstrates the importance of an integrated supply chain to respond to shocks. We were able to rapidly adapt, in an integrated "all of system" way, to improve outcomes and grocery access for Australians in an incredibly challenging environment, including through:

- Adjusting the allocation of product to different stores (for example, priority, vulnerable communities);
- Optimising stock levels and deliveries across our network, to smooth demand to reduce shortfalls (for example, imposing product limits in stores);
- Changing our store opening hours (to allow more time for replenishment);
- Imposing customer purchase limits (to best enable availability for all our customers);
- Managing distribution and retail channels to optimise supply (for example, quickly scaling up online customer fulfilment centres and temporarily partially converting stores into online delivery hubs).

More recently, natural disasters have highlighted the resilience of our national retail supply chain and capacity of a business of our scale to ensure food security and absorb additional contingency costs.

[4] Includes national volumes of supply for all Woolworths Supermarkets, Metro stores and BIG W Discount Department stores.

Significant rail outages due to flooding on the Trans Australian railway (ARTC) - both WA and SA routes, including as recently as April 2024 in the case of WA - as well as parts of Far North Queensland rail (Queensland Rail). These are critical routes in our supply chain and have been identified as highly vulnerable to outages[5].

In 2022, the Trans Australian railway outage into WA and NT was particularly significant due to a number of factors, including:

- the scale of flood damage lengthened the duration of the outage to more than three weeks;
- surge buying triggered by the anticipated reopening of the WA border (later delayed);
- significant pressure on transport networks due to absenteeism on the eastern seaboard; and
- floods in South Australia which saw a lengthy outage of the main train line and major road connection to Darwin concurrently (requiring a re-routing of deliveries through NSW and Queensland - a round trip totalling some 9,000km).

The ability to work in close partnership with key logistics and transport partners to find practical ways to increase the flow of goods was imperative and was enabled by our scale. To mitigate the impact of outages, in Far North Queensland we have invested $12 million to expand our Townsville DC to hold more product lines. We are seeking to significantly expand inventory capacity at our Perth Distribution Centre (DC). We also continue to make use of sea and road freight where possible, contingencies that create additional expense.

**Divestiture powers would dampen investment, innovation and productivity**
Strong Australian supermarkets are critical infrastructure for communities as they grow. Interventions such as divestment would undermine efficiencies and undermine incentives to invest - both in the Australian grocery sector, and the broader economy - even if they were never used.

This impact on future investment - which would create new jobs and meet the demands of population growth - should also be a consideration in policy development.

Increasingly, new technologies and innovations are emerging to respond to customer expectations of the grocery sector. These technologies are also driving improved environmental and safety outcomes, including via solar energy, electric vehicle technology, and transport and refrigeration optimisation to reduce emissions.

In the current regulatory environment, we have been investing approximately $2 billion in capital expenditure annually into Australia, to allow us to keep pace and meet our customers' needs. Policy settings that encourage innovation so that capital investments occur are critical to us delivering better outcomes for consumers. Divestiture discourages investment in the food supply chain and puts Australia at risk of supply chain breakdowns, particularly in the event of external shocks such as natural disasters and pandemics.

Divestiture will likely depress investment in competing supply chains and alternatives by the independent retailers and new entrants that the Bill is seeking to encourage. With no advantage to gain from moving early, independent retailers and new entrants will likely follow a "wait-and-see" strategy. Uncertainty around regulation of this type may, in fact, lessen the likelihood of more competition, investment, and capacity emerging. It would be in no one's interest if regulation prevented investment, new entry, and the ongoing development of effective competition.

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[5] The Bureau of Infrastructure and Transport Research Economics' (BITRE) Road and Rail Supply Chain Resilience Review – Phase 1 report released in February 2023.

Thank you for providing the opportunity to make this submission and we look forward to assisting the Committee in its Inquiry. We are committed to playing our part to improve the affordability of groceries for all Australians.