Inquiry into the Effectiveness of the *Trade Practices Act 1974* in Protecting Small Business

Undertaken by

The Australian Senate Economics References Committee

Submission prepared by

tasmanian independent retailers

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Contents

EXECUTIVE SUMMARY

Tasmanian Independent Retailers (TIR) welcomes and fully supports this Inquiry. In view of recent High Court decisions that have placed highly limiting interpretations on specific provisions of the *Trade Practices Act 1974*, TIR considers it to be timely for a high degree of parliamentary scrutiny to be focussed on this Act.

The *Trade Practices Act 1974* exists to meet the objectives of ensuring that business in Australia is conducted in a fair and equitable manner and to provide a framework in which competitive markets can not only survive, but can flourish.

Our extensive experience as a cooperative directly representing 134 of Tasmania's largest independent grocery retailers and indirectly representing a further 400 or so Tasmanian retailers, has highlighted the inadequacies in the Act and that it is not meeting its objectives.

We are also in the unique position of being an independent retailer organisation that is in a wholesaling partnership in Tasmania with one of the major supermarket chains, Woolworths. We own 40% of Statewide Independent Wholesalers (SIW) and Woolworths owns 60%.

Our direct knowledge and experiences gained through our partnership in SIW have served only to reinforce our strong belief that the objectives the *Trade Practices Act 1974* is intended to achieve are not being met.

In particular, we consider that the dominant market position of Woolworths (56%) and Coles (29%) in Tasmania's grocery retail market (total 85%) represents a significant impediment to the future prospects of independent retailers because of the very small market we trade in.

Increasing market domination must be met with increased scrutiny by competition law and regulators. A failure to do so puts at risk the role of small business in providing a vigorous competitive force and, in turn, acts to the detriment of consumers.

TIR seeks the promotion of vigorous competition. Such competition is promoted where no competitor receives an unfair advantage because of its substantial degree of market power. We consider there to be a strong distinction between pro-competitive conduct and anti-competitive conduct and that effective regulatory control over the latter will increase business certainty, promoting a stronger and more healthy environment for business and consumers alike.

In this submission we will relate to the Inquiry, examples of activities and practices of the major chains in Tasmania which we consider amount to an abuse of market power with the result that healthy competition is unable to be sustained, and certainly cannot survive in Tasmania.

Our understanding is that, although, if they could be proved, some of these practices might fall foul of the *Trade Practices Act 1974*, the challenges in proving such allegations are daunting. This is particularly so in light of recent relevant High Court decisions.

As such, it is our contention that if the Inquiry considers these practices likely to lead to undesirable outcomes for consumers and the public at large, consideration needs to be given to amending the *Trade Practices Act 1974* to better equip the Australian Competition and Consumer Commission to address them.

We are aware that the National Association of Retail Grocers of Australia (NARGA) is making a submission to this Inquiry. Their submission will address in some detail the technical arguments relating to particular provisions of the *Trade Practices Act 1974* that require amendment to improve the ability to control practices that effectively deter participants in the grocery markets from engaging in competitive conduct.

TIR wholly supports the NARGA submission to this Inquiry and does not intend to repeat the technical arguments it contains, nor set out again, its recommendations. Rather, TIR considers that we can best assist the Inquiry by placing before it, details of our experiences as a participant in both the retail and wholesale markets in Tasmania.

To better understand the climate in which we and the major supermarket chains operate in Tasmania, we include in this submission, in some detail, information on who we are and on the Tasmanian retail and wholesale grocery markets.

We also discuss what we consider to be the undesirable aspects of the major chains having such a dominant hold on the retail grocery market in our state and what the consequences of this position are for consumers. **In this regard, we examine issues related to manufacturer support for retailers, trading terms issues and provide a brief case study.**

Faced with an increasingly uneven playing field, TIR looks to this Inquiry to examine and identify new and old types of anti-competitive behaviour, the inadequacies of the current regulatory regime to address those behaviours and to develop proposals for legislative and administrative change to ensure they are addressed in future.

INTRODUCTION/BACKGROUND

TIR – All About Us

Background

Tasmanian Independent Retailers (TIR), under its original name of Northern Wholesalers Co-op Society Ltd, was formed 56 years ago by a group of independent retailers to improve their buying power and, in turn, provide a more competitive offer to Tasmanian consumers.

TIR Management is answerable to a Board of six Directors elected from the retailer membership on a rotational basis for four-year periods.

There are 134 retailers in the Co-operative, trading under Festival IGA, Value Plus IGA and Friendly Grocer IGA banners throughout Tasmania. In addition, an approximate further 400 independent Tasmanian retail stores are served by TIR and through its relationship with Statewide Independent Wholesalers.

The primary role of TIR management is to develop the banner groups through various marketing strategies and to negotiate terms and conditions with manufacturers and suppliers on behalf of its members, to enable the retailers to successfully compete in the Tasmanian retail grocery marketplace.

TIR relationship with its warehouse

TIR, in partnership with Woolworths, co-owns Statewide Independent Wholesalers (SIW). TIR owns 40% and Woolworths 60% and this partnership has existed since 1981. SIW is controlled by a Board of Directors made up of two Directors from TIR and three Directors from Woolworths. All major issues require a 75% majority to be approved, giving TIR and its retailers some level of protection at board level. SIW is Tasmania's largest distributor of dry grocery product through its Prospect Distribution Centre and frozen and chilled product through its Breadalbane Distribution Centre.

SIW supplies goods to Woolworths and 95% of Tasmanian independent grocery retailers. SIW also runs three wholesale Cash & Carry Warehouses in Launceston, Devonport and Hobart to service the needs of corner stores and milk bars as well as a Wholesale Food Services Business providing goods for restaurants, hotels, take-a-ways, schools etc.

Of the total volume passing through the SIW grocery distribution centre, independents account for 43% of the volume withdrawn and Woolworths, 57%.

TIR relationship with its retailers

The banner retailers, who trade under Festival IGA, Value Plus IGA and Friendly Grocer IGA banners, are the owners of TIR.

TIR employs 17 staff in two locations - Launceston Head Office and Hobart – Southern Regional Office.

TIR supplies the following services to its members:

(a) Cost and retail pricing support.

(b) Promotional advertising support through newspaper, radio and television.

(c) Local marketing through store distributed brochures on request.

(d) Point of sale – weekly shelf-talkers window posters.

(e) Weekly mail out – providing information on TIR marketing & promotional initiatives.

(f) Host maintenance support. Weekly downloads of weekly, fortnightly and monthly specials, price changes, pack changes, as well as new and deleted lines information.

(g) Fully functional website for member access.

(h) Charge Through facility: We provide retailers with a direct charge through service for vendors who deal direct with our members. We guarantee payment to 'direct to store' vendors for all retailers who use the charge through facility. This effectively extends the retailer's payment on these vendors by an additional week, improving their cash flow and enabling TIR to manage the cost and retail prices through its host maintenance system.

(i) Dedicated Business Managers: TIR provides its banner retailers with in-store support in the following areas:

- Advice and assistance with in-store relays
- Store ranging
- Shelving & plant & equipment costing and procurement
- General business management advice
- Assist or support in-store training, and
- Advice, training and support with the introduction of new scanning systems and other IT infrastructure.

TIR has a team of six full-time business managers to provide this assistance to our retailers.

Island Fresh Produce

TIR members also wholly own Island Fresh Produce - one of Tasmania's largest wholesale produce distribution companies. Island Fresh Produce supplies at competitive prices, the independent grocery trade, as well as food service, hotels, clubs and restaurants.

Tasmanian Independent Retailers provides its members with a centralised Head Office Management structure to enable suppliers to effectively deal with the independent grocery sector in Tasmania from one centralised location.

This structure replicates the Head Office structures of Woolworths and Coles, Metcash and FAL.

Membership of Australian Asia/Pacific Wholesalers (AAW)

Tasmanian Independent Retailers, along with Metcash and FAL, are members of AAW.

AAW was formed to give a national voice to the major independent wholesaling groups in Australia when dealing with national suppliers.

The Tasmanian Retail Grocery Industry – An Overview

Background

Since December 2002, Tasmania has been operating under a fully deregulated retail environment - 24 hours a day – seven days a week.

In the nine months since deregulation, on the basis of turnover through Statewide Independent Wholesalers' warehouse, we understand that Woolworths' and Coles Myer's market share (56.9% and 28.8% respectively as at November 2002[1]) in Tasmania has increased substantially. This market share increase has come entirely from Tasmania's independent grocery retailers and highlights the challenge faced by the Tasmanian independent sector in competing against majors chain operators who have significant terms of trade advantages.

On 21 August, one of Tasmania's largest independent grocery retailers, Festival IGA Glenorchy closed its doors. This store, until deregulation, contributed an annual turnover of $7 million to our group. Their entire turnover will now be transferred to Coles and Woolworths, which trade within 500 metres either side of where Festival IGA Glenorchy previously traded.

The bottom line was that, because TIR was unable to secure trading terms sufficient to enable this store to compete vigorously on price, once the competitive advantage provided by shop trading hours restrictions was removed, it no longer had the ability to compete. This was despite many measures being implemented, including his own specials that he advertised himself (in addition to IGA specials), promotions, variations in product lines and other steps taken to differentiate the store on service and quality.

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[1] AC Nielsen total defined grocery, 2000-2002 (Source: ScanTrack)

As a result, the major independent grocery store in the Glenorchy area has closed. Consumers in the area now have no choice other than smaller retail outlets, or the major chains. Diversity of choice has been lost and, more importantly, convenience. The Glenorchy Festival IGA has always traded longer hours than the majors and this continued after trading hours deregulation. In an area characterised by its high level of shift workers, this loss of convenience will be felt in the local community.

With a state population of around 475,000 people, Tasmania is a very small market. As such, when two major retailers, Coles and Woolworths, control around 85% of the state's grocery market, the quantum of the remaining share is not significant – particularly when the need for negotiating power when dealing with suppliers is considered. Given that, at least in the case of Woolworths, it receives most of its products through the same warehouse, delivered on the same trucks, as do our members, the inequality in trading terms represents the greatest inability we have to compete on fair terms.

The irony of the closure of Festival IGA Glenorchy is that Woolworths has secured the site for a Big W development.

Definition of 'market share'

Woolworths attempts to minimise the 'perception of seriousness' of their unprecedented high level of market penetration by focussing on their share of the "total stomach" market. They have a strong motive for doing so. The larger the grocery market share, the greater the grocery market power. And the greater the market power, the greater the potential for misuse of that power and the greater the likelihood of scrutiny by the Parliament and the Australian Competition and Consumer Commission. Alternatively, if they define the market widely, it appears they have less market power and are less likely to attract scrutiny.

Woolworths chooses to quote their share using the broad Food, Liquor and Groceries data (FLG) compiled from Australian Bureau of Statistics (ABS) figures.

As such, the majors' share of the FLG is not an accurate representation of their share of the market in which they actually compete. But even if you apply the FLG market figures, Woolworths and Coles still have a substantial share approaching 50% of a much broader market.

We maintain that a more accurate picture of the influence available to the major chains in the retail grocery industry is apparent from an examination of their market share of the *retail grocery* market, as represented by products sold in the fast moving consumer goods (FMCG) categories published by AC Nielsen.

The other advantage of using the AC Nielsen retail grocery figures is that they have been assessed regularly for decades and published on a six-monthly basis. This provides an accurate picture over time of changes in this particular market.

Competition in Tasmanian market and dominance of Woolworths and Coles

In many ways the Tasmanian market place should be viewed as a litmus test for what may occur over the next five to ten years in the rest of Australia.

Woolworths and Coles control 85% (56% and 29% respectively) of the Tasmanian FMCG market and retail prices in this State are the highest of any State in Australia.

- When Woolworths exits the wholesaling partnership with TIR, the critical mass available to us to run a cost-effective warehouse and distribution service for the independent sector may not be available to us, particularly if we are unable to secure like terms for like customers.
- With such a small population and very low turnover, independent grocery retailers who are disadvantaged by discriminatory prices/trading terms, work on lower retail margins to compete, do not have the ability to significantly re-invest in their businesses and therefore, make a more competitive offer to consumers.
- Tasmania is a highly decentralised market. As such, if the independent sector is unable to remain competitive, Tasmanian consumers, especially in rural and regional areas will be forced to pay more, will be presented with less product choice and will have severely reduced levels of convenience, having to travel further for supplies and so on.
- Consumers who may be enjoying some short-term benefits in price at present will ultimately pay the price if legislators are unable or unwilling to ensure the competitiveness of the market by providing a framework in which more than two oligopolistic players can survive - and thrive.

The Tasmanian marketplace is not a level playing field. This will be clearly demonstrated in this submission.

Impact of seven day trading on long-term viability of TIR and Statewide Independent Wholesalers

Since deregulation, Tasmanian Independent Retailers (TIR) has been surveying its banner store members to establish actual trading figures experienced, with a view to ascertaining the effect of deregulation on market shares (and hence, market power) in Tasmania.

Of our 134 bannered stores, responses to surveys were received from 102 of the larger stores. As such, the survey results represent only the summation of figures for those 102 stores. They do not include an assessment of the impact on the remaining 32 bannered stores, the additional 400 or so non-bannered stores TIR services, nor non-grocery retail outlets such as clothing stores, butchers, pharmacists, florists, newsagents, service stations etc.

Survey Results

The results of the survey (conducted in May 2003) demonstrate that the impact on the survey recipients is proving to be far worse than predicted by small business prior to deregulation.

Stores experiencing no change in sales compared with previous year	25%
Stores experiencing improvement in sales compared with previous year	10%
Stores experiencing decrease in sales compared with previous year	65%
Range of weekly loss of turnover suffered by stores with decrease in sales	10-55%
Average weekly loss of sales	18%
Sunday and public holiday sales losses	10-85%
Average Sunday and public holiday loss of sales	32%
Stores experiencing loss of staff	45%
Stores anticipating loss of staff (other than stores that have already shed staff)	15%
Number of employees who have either lost their jobs or had hours cut	110
Number of hours per week that have been cut from surveyed businesses	2888
Weekly value of wages lost through staff reductions	$50,000.00
Annual value of wages lost through staff reductions	$2.6 million
Annual likely value of transfer of sales from independents to majors	$35-40 million

All of the stores showing no change or an improvement in sales are located in country areas and many were trading up 5-10% over the previous year - prior to deregulation.

If the 18% average loss of sales is extrapolated across the current estimate of total sales for the group, TIR estimates that the annual likely transfer of sales from small business to Coles and Woolworths in the grocery sector alone, as a direct result of deregulation, is in the vicinity of $35-$40 million. This estimate represents a shift of 5-7% of market share from the independent sector to the major chains.

The loss of market share has come despite strong efforts by the independent retail sector in Tasmania to meet the challenge through innovative approaches to its offer and marketing. The consequences of deregulation in Tasmania and the steps being taken to 'fight back' were discussed in an article in *Foodweek*[2], a copy of which is annexed as Attachment 1.

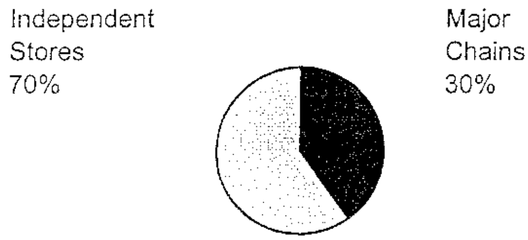
A reduction in turnover of this magnitude has the capacity to cripple the *critical mass* available to the independent sector in Tasmania. More importantly, the shift of market share from the independent sector to the major chains will serve to increase the already dominant bargaining position that the major chains have with their suppliers and further weaken the corresponding power of the Tasmanian independent sector.

Given that the independent sector in Tasmania has been unable to secure **like terms for like customers** despite the fact that most manufacturers and suppliers deliver their products into the same distribution centres for both independents and Woolworths, this change can only further weaken the trading terms position of the Tasmanian independent sector.

This shift in market power again underlines the pressing need to ensure that the *Trade Practices Act 1974* is appropriately amended to adequately equip regulators to address abuse of market power practices.

[2] *Foodweek*, 28 April 2003, pages 1-2

TASMANIAN GROCERY MARKET SHARES 1975-2003



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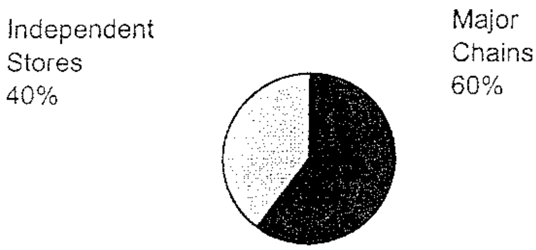

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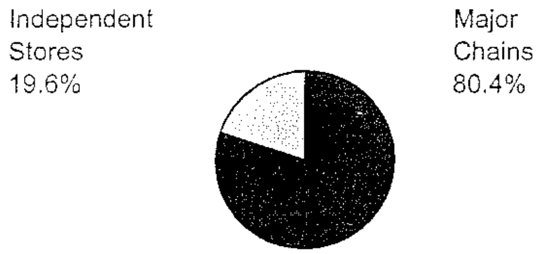

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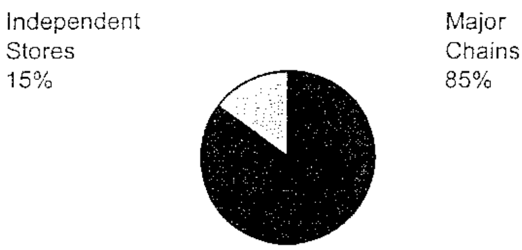

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General Disadvantages Suffered by Independents Compared with the Major Chains

The high degree of market domination now enjoyed by the major supermarket chains is so strong that they are able to exert considerable influence over supply, pricing, product choice and all other aspects of their trading relationship when dealing with producers and manufacturers. Our experience, both from the perspective of a cooperative of retailers and, also, through our joint wholesaling operations with Woolworths, has highlighted many instances where we consider this influence has been abused to the detriment of fair competition and, ultimately, to the detriment of consumers.

It is therefore appropriate that we list the competitive disadvantages the independent wholesalers face in seeking to deliver goods to the their independent retailers at a price, that will keep them competitive in the marketplace.

Competing fairly and the unlevel playing field

The ongoing decline in the market share of independent retailers is an unfortunate reflection of the reality that, due to the size, scale and dominance of the major chains, there is unequal competitive strength across virtually all areas of the industry. The following list is by no means exhaustive but illustrates some of the disadvantages suffered by independent retailers in the retail grocery market:

(a) **Cost of capital**

Unlike independent stores, the chains have access to equity capital. Current borrowing rates for the chains would be no more than prime plus 50 basis points. In most cases, individual retailers are unable to borrow within 2-3%, of this figure. The margin gap is about the same as it was ten years ago when inflation was higher, but in relative terms this difference is much higher today.

(b) **Business risk**

Independent retailers are constrained by the high level of risk associated with a single site or even a few sites. A chain is able to take risks and sustain losses in several sites because it is spread across many hundreds of stores, with little or no impact on the balance sheet or profit and loss. This also provides an opportunity to run a store at a loss for several years and drive competitors out of the market.

(c) **Access to new sites**

To gain access to prime sites, retailers must have a strong relationship with developers and shopping centre operators. Only the chains have the countervailing power to command prime sites at favourable rentals (often as the anchor tenant), as the developer wants the financial strength and marketing of a major chain behind a 20 - 30 year lease and rent is set accordingly. No bank would finance an independent into a new store (which requires 18 months to two years to break-even) unless they provided a bond/security or their wholesaler guaranteed the lease.

(d) **Development approvals**

The chains have great success in gaining development approvals from local councils, often involving rezoning of land and waiving of parking, height and other restrictions. As was seen in Tasmania recently, local councils may also provide direct financial incentives for chains to locate new stores within their area. This willingness is often based on the promise of new jobs and increased business activity in the town and tends to ignore the impact on existing small businesses and jobs and the consequences for the socio-economic fabric of the town.

(e) **Overall buying power**

As discussed in more detail elsewhere in this submission, due to market dominance and the power arising there from, the major chains are able to secure a kaleidoscope of varying national terms of trade from manufacturers and suppliers that are not open to the independent wholesalers, who in turn serve the independent retailers. This buying power also extends into electricity, telecommunications, financial services, insurance and other goods and services used in their business.

(f) **Need for wider range**

Due to our wider duty of care to the public at large, (particularly in servicing rural and regional areas where the major chains tend not to service due to lack of sales volume), we carry a larger range of slower moving products. We also provide retailers with credit account facilities.

(g) **Chequebook acquisitions**

A significant challenge to the operation of small business is the 'carrot and stick' approach of the major chains in pursuing store acquisitions. A consideration of this approach was made in an article in *Foodweek*, (Attachment 2) in which it discussed the measures major chains take to encourage the sale of successful independent grocery businesses.[3]

Similar Concerns Expressed by Other Like Trading Nations

In 1999, Mr John Bridgeman, British Director General of Fair Trading decided, as a matter of concern, to initiate a major retail inquiry with respect to the top three major chains' market dominance in that country, which in aggregate held 45% of the retail grocery market.

Mr Bridgeman's published statement at that time, exactly mirrors the substance of our current concerns:

> *"My interest has been in trying to find out whether excessive profits are being earned and I have considered the results in the context of the wider concerns*

> *such as whether there are barriers to entering this industry or other factors affecting competition.*
>
> *...In this situation it becomes imperative that the competition authorities are satisfied that competition between existing grocery retailers is effective. I am not. I am concerned, for instance, that grocery prices are often set to match competitors rather than to undercut when particularly in catchment areas where consumers have a limited choice of supermarkets...*
>
> *I have had concerns for some time, though, that this power may become exploitative, and the many responses from suppliers during our inquiry suggests that it is something which needs to be looked at by the Competition Commission."*

It is very important that members of the Inquiry appreciate that the very focus of the concerns raised by the British Director General, was freely admitted as being standard practice in Australia by Dennis Eck, then CEO of Coles Myer, in an exclusive interview in the *Business Review Weekly* March 29 1999:

> *"...where we face competition we have the ability to go down in price to meet the competition"*[4]

And as to the British Director General's other major concern of 'excessive profits' serving as an important indicator as to market dominance and potential allegations for abuse of market power, Dennis Eck, in the same interview, appeared to admit this also:

> *"Looking at the offshore markets, I have to say that I have yet to see anywhere where we can make more money than we are making here"*[5].

Certainly, competition by its very nature (and it has been well defined in the courts) *is a commercially accepted philosophy of ruthlessness, with no holds barred*, and no independent retail grocer shirks from the challenge of operating in such an environment. However, also equally universal, are the concepts of *fair competition*, and *a relatively level playing field* on which the contestants compete.

It is our contention that neither of these pre-conditions exist in Australia at the present time due to the market dominance of the major supermarket chains.

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[3] *Foodweek*, 30 September 2002, pages 1-2
[4] *Business Review Weekly* March 29 1999 page 40

It is for this reason that we consider the current provisions of *Trade Practices Act 1974* entirely inadequate to deal with the abuse of market power problems faced by small business in Australia – at least so far as they apply to the retail grocery market.

The *Trade Practices Act 1974* was devised and drafted in an era when the current dominance of major chain supermarket market share did not exist and its provisions have proven inadequate to be able to address in any meaningful manner, the consequences of this significant shift.

Over the last 15 years, in a large part because of the practices of the major supermarket chains, the critical mass of the independent wholesalers has steadily been eroded, with consequential effects on independent retail grocers.

Where the opportunity exists, through market dominance, to exert market power to stifle legitimate and fair competition, it is to be expected that these opportunities will be taken advantage of. This is particularly so where the regulatory environment is not adequately equipped to address abuse of market power practices when and where they are implemented.

One only has to look at comments plainly stated in public in 1997, by Dr Ken Moss then Managing Director of Howard Smith Ltd; in relation to a similar (but far *less* dominant) form of oligopoly (Bunnings and BBC) in the retail hardware warehousing sector:

> *"We believe there is plenty of money for both of us if we attack the weak and defenceless and not each other."*[6]

[5] Ibid page 41
[6] *Inside Australian Hardware* August/September 1997

ISSUES THAT REQUIRE ACTION

Market Domination – An Overview

The two major supermarket chains control over the retail grocery market in Australia is approaching 80%, and the independents hold less than 25%[7]. As mentioned above, in Tasmania, this degree of market penetration is even higher. This market dominance of the major chains is unprecedented in the western world and must increase the opportunities for and the likelihood of anti-competitive behaviour. TIR fails to see how this can be in the public interest.

In the United Kingdom the three largest chains have less than 45% of the market, in the USA the big three chains have less than 28% and the 'big five' in Japan 17.5% (all assessed against equivalent criteria that indicate the major chains have a share approaching 80% in Australia).

Given the much lower degree of market penetration in the UK, it is interesting to note that the Institute for Public Policy Research (IPPR) described the supermarket and grocery stores sector of the retailing industry in the UK as follows:

> It… *"certainly does not fulfil the preconditions for the perfectly competitive market of the economic textbooks, which presupposes many small firms, vying to outdo each other and entering and leaving the market as some prosper and others fail. Instead there are a few huge retailers, getting bigger all the time and furiously resisting new competitors."*[8]

Negative consequences of market domination

The following list is by no means exhaustive but illustrates some of the negative consequences that such strong oligopolistic market domination, as exists in Australia (and even more so in Tasmania), can have:

(a) **Effect on price –**

Consumers are best served where there is strong competition. A number of surveys, including the 1996 survey conducted by *Choice* magazine and the January 1999 edition of the *Business Review Weekly*, have all shown that where the major chains and strong independents compete head to head, consumers are the beneficiaries.

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[7] AC Neilsen.

[8] *IPPR, Off Our Trolleys? – Food Retailing and the Hypermarket Economy,* Hugh Raven and Tim Lang with Caroline Dumonteil, 1995, p6

In 1999, *Life Be In It* commissioned the companies Taylor Research and Roy Morgan Research to compare prices across Australia for identical items at the same time on the same day. The results indicate that price depends on competition. For example:

> *Shoppers in Hobart where there is no third competitor pay 23% more on staple items than shoppers in MacKay, where there is a discounter'*[9].

Business Review Weekly article 18 January 1999

The Apple & Pear Industry Association was a co-sponsor of the above survey of supermarket prices. The summary of its findings provides:

> *"An analysis of the pricing differences on the tested basket within Australia indicated a total pricing range of $34.41 on an average grocery basket on $93.16 (40.6% variance) and a phenomenal 119% on fresh produce ($19.06 on an average basket of $24.19). The pricing analysis raises three basic questions which require detailed analysis and consideration –*
>
> 1. *Why are there such significant differences in pricing between different regions of Australia, which cannot be explained on the basis of distribution cost?*
> 2. *Why are Coles, BiLo and Woolworths substantially more expensive, on average, than Franklins? And as an extension of this, why are Woolworths and Coles regularly, on average, cheaper in areas where there is a Franklins as a competitor?*
> 3. *Why are prices on fresh produce not significantly lower where local produce is available and hence operational and transport costs should be lower?*

Although now a few years old, the enduring principle illuminated by these studies is that, without a viable independent sector to compete against the large supermarket chains, the chains will have much greater scope to raise prices to the benefit of their shareholders, but to the detriment of the consumer.

(h) Effect on jobs –

Employment: According to Federal Government commissioned research advice, every one new job in a major chain comes at the cost of 1.7 jobs in a smaller retailer. As at 1997, small supermarkets typically employed one person per $85,000 of turnover.[10] As a comparison the larger chains typically employed one person per $145,000 of turnover.[11]

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[9] Business review Weekly article January 18, 1999 p 48.

[10] Council of Small Business Organisations of Australia (COSBOA) Jobs in Our Regions – Building on the Small Business Base An initiative of the Federal Department of Transport and Regional Development November 1997, p 49.

[11] Ibid p 49.

Small business can be seen therefore as "job rich" while the major supermarket chains are "job-poor". As well as the above, COSBOA research shows for every 1% shift in market share to the retail chains, there is a net loss of 1800 full and part-time jobs (on a national basis).

Moreover, the larger supermarkets employ two part-time employees for each full-time position at a small store.[12] These statistics are reinforced in the ABS data provided by the Labour Force Statistics section of the ABS, which shows that full-time employees decreased as a percentage of the workforce from 60% of total employment in the supermarkets and grocery stores sector in 1985 to 38% of the total workforce in the supermarkets and grocery store sector in 1998. During that same period, market share for the independents decreased from 40% in 1985 to 19.4% in 1998.

(c) **Effect on small business -**

Small businesses in the retail sector are the *largest private sector employer of Australians.*[13] The increase in the major chains' market share adversely affects butchers, bakers, florists, pharmacists, petrol station operators, newsagents, photolab services, and also banking services, and liquor outlets.

(d) **Effect on families -**

Most small business grocery stores are family owned and operated. Their profits are reinvested locally not redirected elsewhere or overseas. The vast majority are Australian owned and operated.

(e) **Effect on choice –**

The diminishing independent sector in the retail grocery industry *is limiting the number of supermarkets.* In turn, this limits choice of where to shop and limits convenience. Small and independent retailers provide consumers with a diversity of shopping outlets from small convenience stores to large supermarkets providing a one stop shopping experience. All provide a blend of price and service consistent with their positioning in the market.

Independently owned stores tend to operate in more convenient locations for consumers who do not have ready access to or do not wish to shop in a large supermarket and their location is in many cases preferable for the elderly, people with disabilities, people without transport, mothers of young children, people who live in rural and regional areas and many more.

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[12] Ibid Chapter 6.

[13] ABS Small Business in Australia 1997. This figure comprises small business employees, own account workers – who work in their own business and employers – of which 97.2% of all businesses are small businesses.

With the diversity of shopping outlets provided by independents, comes a wider range of products than is offered by the chains, whereas the chain stores are constrained in their ranging by head office decisions.

Why is choice at risk? The answer lies in the issue of critical mass. As is discussed in more detail elsewhere in this submission, from our perspective as a wholesaler, without an adequate and sufficient number of small and independent stores operating around the country, it is not viable for wholesalers to supply them.

Vigorous Competition

It is our contention that for vigorous competition to exist in any market, it is necessary that entities with substantial power in that market do not:

- Extract from suppliers more favourable prices on the same quantities as prices given by the same suppliers to competitors to that entity
- Intimidate or otherwise pressure manufacturers and suppliers to discriminate on price, or otherwise, against competitors of that entity
- Engage in practices involving anti-competitive below cost or unreasonably low pricing
- Deliberately seek to harm a smaller competitor by charging prices in a market in which the smaller entity competes that are lower than those charged by the large entity in other equivalent markets, or
- Undertake anti-competitive creeping acquisitions.

TIR considers that were these prohibitions properly included in the regulatory and administrative competition regime in Australia, the scope of entities with a substantial degree of market power to stifle or destroy competition would be severely curtailed.

As mentioned elsewhere in this submission, competitive companies deliver benefits to consumers. Anti-competitive companies deprive consumers of those benefits.

To assist the creation of a competition regime capable of effectively prohibiting such behaviours, TIR support reforms which restore the Parliamentary intent behind Section 46 of the Trade Practices Act and which will be dealt with in detail in the submission from NARGA.

Manufacturer Support for the Independent Sector

The level of manufacturer support for the independent sector by way of marketing and advertising funds depends on the sector being able to maintain critical mass/buying volumes. These volumes are required to gain the manufacturer funding necessary to enable independents to drive their business through promotional and advertising activities such as handbills, newspaper ads and TV.

With the ongoing erosion of the market share of independents in Tasmania, it appears that many suppliers are reducing their commitment and investment, not only in terms of support funds, but more particularly in respect to their sales force, which traditionally called on independent stores.

The level of support provided to TIR and in particular the retailers associated with TIR, by manufacturers and suppliers, has been significantly reduced over the last few years.

Both Woolworths and Coles have relocated State decision making to Sydney (Woolworths) & Melbourne (Coles).

Many manufacturers and suppliers have closed their state offices and transferred responsibility for Tasmanian sales to their Victorian, New South Wales, Queensland or South Australian offices.

For TIR and its retailers, this has had a significant impact on the level of support we receive.

In the past three to five years, 69 companies have closed their Tasmanian Sales Offices and incorporated the Tasmanian sales responsibility to personnel in mainland capital cities as outlined above. (Refer to Attachment 3 for a list of these companies).

These closures have had a significant impact on our ability to negotiate with manufacturers and suppliers on day to day issues that affect our competitiveness in the Tasmanian marketplace. In many instances, we are dealing with mainland sales personnel who don't understand the Tasmanian market and who haven't got the time to respond to us in a timely manner because of the responsibility they have in their own State.

Manufacturers and suppliers have cut their sales team to the point where they can only focus on the major retailers at the expense of everyone else.

In our view, the reduction in support for independent retailers and TIR in Tasmania has been forced upon the manufacturers and suppliers by the excessive demands placed upon them by Woolworths and Coles.

The following emphasises our point:

(a) Those manufacturers and suppliers who have relocated company representatives now visit us only on three monthly, six monthly or 12-monthly visits

(b) Manufacturers and suppliers are unresponsive to inquiries from our buying department on competition related matters

(c) Manufacturers and suppliers are in many cases, unable or unwilling to provide us with competitive deals to enable us to compete

(d) Periodic business reviews between TIR and manufacturers and suppliers that include future plans for our joint business relationships no longer take place, and

(e) Basic information on price changes, pack changes, new ranging or market incentives, in many instances, is no longer provided to us.

Suppliers who have notably reduced their support to our retailers and us include Unilever, Johnson & Johnson, Carter Holt Harvey, Reckitt Benckiser, Golden Circle, to name just a few.

To illustrate the lack of support for our retailers, we have included at Attachments 4, copies of a 2001 and an August 2003 survey of 42 manufacturers and suppliers and the support they provide our retailers at store level.

As is readily apparent from these surveys, the in-store support being provided to the independent retail sector in Tasmania is extremely poor. Comparing the support levels for each manufacturer/supplier between 2001 and 2003 also identifies the fall in levels of support that have taken place in just the past two years.

This survey was conducted in all of our largest independent stores throughout Tasmania. Suffice to say, if most manufacturers and suppliers are ignoring our largest retailers, all of the smaller stores in our group would be supported even less, if that is possible.

We have also included copies of a similar survey conducted some 24 months earlier. A comparison of the two surveys also highlights the *decreasing trend* in manufacturer and supplier support.

It is concerning to contrast our situation of rapidly decreasing manufacturer support to that received by Woolworths and Coles, which would still be receiving weekly merchandising support from all of the manufacturers and suppliers surveyed.

It is also important to highlight the very low level of manufacturer support now received by the independent grocery sector in Tasmania in light of the consistent argument advanced by manufacturers and suppliers to justify their inability to match terms of trade.

In Tasmania, based upon our own observations and experiences and backed up by the clear evidence from our survey, the vast majority of manufacturers and suppliers no longer incur the cost of in-store support. Hence this 'cost' cannot be used to justify differences in trading terms. In fact, with almost all manufacturers and suppliers, both Woolworths and Coles have vastly superior terms to TIR and receive vastly superior weekly in-store merchandising support.

It is difficult to understand how their costs of dealing with the independent sector could possibly be higher than those of dealing with our major chain competitor, when in most cases, goods are ordered and supplied through the same warehouse and distribution centres and far less in-store support is supplied to the independents.

Trading Term Issues

In Federal Parliament on 9 April 1999, Senator Andrew Murray stated:

> *"Every retailer knows that buying price is only part of the game; that trading terms in fact are absolutely material to stock turn, cash flow, discount rebates, whether other people stock your shelves for you and you do not have to pay the labour costs, and all that sort of thing."*, and
>
> *"Under American law you are given the same terms if you compete on the same basis. In other words, if you do the same volume of the same product, you are entitled to the same terms."*

Background

TIR is in a unique situation because of its association with Woolworths as co-owners of Statewide Independent Wholesalers (SIW). It gives us a far greater insight into the pricing structures that flow through to independent retailers and to Woolworths.

SIW purchases all warehouse stock supplied to independent retailers and to its Woolworths customers at the same landed into warehouse price which includes warehouse and distribution allowance, volume discounts (if applicable) and ullage. This price adequately reflects the fact that goods received from each manufacturer and supplier for distribution from the SIW warehouse (whether for the ultimate use of Woolworths or independent retailers) are ordered and delivered as part of the same transaction – and that, as a result, the costs of doing so do not vary regardless of the ultimate use. All of these terms are included into prices charged by SIW to both Woolworths and independent retailers.

Stock then sold by SIW to Woolworths and independent retailers have the following charges applied.

a) **Freight:** Which is calculated on distance from the distribution centre and is applied to both Woolworths' deliveries and independent deliveries at the same rate.

b) **Service Fee**: This fee is totally volume related and individual independent retailers pay between 2% and 5% more than Woolworths (as a single customer) because of the vastly lower volumes that they purchase.

Rebates not passed on in price

Below the line rebates paid to retailers such as Woolworths, Coles and TIR are a considerable component of manufacturer's total terms of trade with each organisation.

These rebates are generally broken down as follows:

1. State Rebate
2. National Rebate
3. Co-operative/Marketing Rebate
4. Investment Buy Rebate
5. Promotional Case Discounts are additional to points 1 – 4 and in most cases are agreed by negotiation with manufacturers and suppliers for each six monthly promotional program.

Promotional case discounts are, in many cases, very open ended in that manufacturers and suppliers guarantee a minimum case discount spend, but no maximum spend. As discussed below, it is our belief that Woolworths and Coles receive substantially more from manufacturers and suppliers in this category than independent groups such as ours.

The four cash components that make up below the line terms, State Rebate, National Rebate, Co-operative/Marketing Allowance and Investment Buy Rebates are generally deducted by the retailer from payments to manufacturers and suppliers as part of their settlement between the organisation, for the purchase of goods. A few manufacturers and suppliers pay rebates by cheque monthly, quarterly or six monthly, but the vast majority are claimed as outlined above.

Based on our knowledge of the market, we believe there is an average of 5% difference in the below the line terms being paid to Woolworths and Coles compared to the same paid to TIR in Tasmania.

The following calculations illustrate the huge gap in below the line payments received by Woolworths compared to TIR for goods commonly purchased through SIW distribution centres, remembering that independents (at 43%) withdraw a comparable proportion of the volume from SIW's grocery distribution centre as does Woolworths (at 57%).

At a Statewide Independent Wholesalers (SIW) level, out of SIW's two distribution centres, Woolworths annually purchases around $200 million worth of product, which at an average rebate of 10.5%, leads to a rebate return of $21 million.

Contrast this with the $7.5 million in rebates TIR's receives on its rebatable warehouse purchases for the same period, out of the same distribution centres, on sales of around $150 million, as a result of its far lower average rebate of only 5%.

As such, although Woolworths does only around 1.3 times TIR's purchase volume through the SIW distribution centres, it receives 2.8 times TIR's rebate income. This is despite the fact that that goods received from each manufacturer and supplier for distribution from the SIW warehouse (whether for the ultimate use of Woolworths or independent retailers) are ordered and delivered as part of the same transaction – and that, as a result, the costs of doing so do not vary regardless of the ultimate use.

This outcomes also fails to recognise that without the contribution of TIR's volume through the SIW distribution centres, SIW would not be able to achieve the same level of economies of scale that are enjoyed by Woolworths through their terms of trade.

From this, it is clear that Woolworths, on trading terms alone, has a huge and unfair advantage over TIR in the Tasmanian market. TIR would welcome legislative or regulatory change that promoted better transparency in the terms of trade offered to all retail groups, specifically including a requirement for full disclosure of maximum terms available to customers and what criteria need to be met to obtain those terms. This could be achieved either through amendments to the *Trade Practices Act*, or even by strengthening the *Retail Grocery Code*.

The only way to balance the advantages that both Woolworths and Coles are able to obtain from manufacturers and suppliers, by using their market power to extract far more favourable terms than TIR, is to apply the principal of **"like terms for like customers"** when considering whether there has been an abuse of market power.

The rationale for **"like terms for like customers"** is as follows:
TIR is able to buy in similar quantities to the chains, we are able to provide similar services, in fact we provide additional services relative to the major chains because we have to provide business managers to support independent retailers as manufacturers and suppliers, in the majority of cases, do not visit independent retailers in Tasmania.

The current terms of trade structure does not recognise or reward the additional costs associated with independent groups such as TIR in carrying the debt and the risk, for product supplied to a large number of small retailers (ie through its *charge through facility*).

It also fails to consider the cost of distribution independent wholesalers have across the length and breadth of the state. These services provided by independent wholesalers would be far beyond the capacity of manufacturers and suppliers to economically perform in their own right.

TIR is in partnership with Woolworths in Statewide Independent Wholesalers Distribution Centres in Tasmania. We buy out of the same warehouses yet our total funding from manufacturers and suppliers, in most cases, is less than half of what is being provided to Woolworths.

Manufacturers and suppliers must recognise the additional difficulties of distribution and the additional costs of managing such a large number of retailers in the independent channels and provide the appropriate terms in recognition.

Woolworths and Coles have a combined national market share approaching 80% of the fast moving consumer goods (FMCG) market. The power that they exert on manufacturers and suppliers is evidenced by the large differences in rebates paid to them in comparison to the independent sector.

As a direct result, and based on estimated national sales figures, we estimate that Woolworths' income from below the line rebates to be in the vicinity of $1.1 billion to $1.3 billion on national rebatable grocery, frozen and chilled purchases.

To further illustrate the effect on terms of trade of the dominant market position of Coles and Woolworths we would like to draw the attention of this Inquiry to the increasing pressure manufacturers and suppliers are under to provide the chains with long-term retail price support through the introduction of Every Day Low Prices (EDLP) and roll-back.

Every Day Lower Price (EDLP) and impact on market

Manufacturers and suppliers are being asked to subsidise the lower shelf price of many major selling grocery lines in Woolworths. Lines such as 1.25lt Coke, 1.2kg Pal, 2lt Cottees Cordial, 4 pack Sorbent Toilet Rolls are selling in Woolworths at Every Day Low Price cheaper than our regular cost price as the table below outlines.

Manufacturers and suppliers we have spoken to, privately indicate that they are being forced into the EDLP programs by the threat of cancellation of promotional programs and other measures to impede sales.

A major chocolate manufacturer has been resisting the push from Woolworths for some months and has found that due to the consequent lack of promotional support from Woolworths, its volumes have reduced and they are now, we believe, reluctantly going to agree to join the EDLP program. We believe they have major concerns with the price point Woolworths tells them it wants to sell at and the funding they are required to provide to enable Woolworths to meet that price point.

Our buyers have contacted a number of manufacturers and suppliers to discuss the impact of EDLP on the Tasmanian market place, given the already overwhelming dominance that

Woolworths and Coles have. The response we receive from manufacturers and suppliers is that they have no choice but to agree if they want to maintain ranging and volume within the biggest grocery retailer in the country.

Many suppliers will not provide us with comparable deals because they say they cannot afford to.

Comparison of cost and retail prices of goods subject to EDLP's

Product	Size	Woolworths EDLP Retail Price	TIR Normal Cost
Cadbury Chocolate Biscuits	200g	2.28	2.22
Westons Chocolate Biscuits	200g	1.96	2.13
Westons Plain Biscuits	200g	.98	1.01
Pringles Chips	200g	2.98	2.65
Coca Cola	1.25lt	1.35	1.70
Cottees Cordial	2lt	2.98	3.25
Dolmio Pasta Sauce	550g	2.75	2.57
Continental Pasta Sauce	125g	1.48	1.56
Go Cat Cat Food	400g	1.14	1.13
Snappy Tom Cat Food	400g	1.00	.98
Spree Washing Powder	1kg	2.48	2.38
Sorbent Toilet Rolls	4pk	2.92	2.93
Nan Baby Formula	900g	13.98	16.15

Quite simply Woolworths is "bleeding" manufacturers and suppliers with the following consequences:

- They have been forced to reduce the level of support to independent groups in comparison to Woolworths and Coles.
- They have been forced to reduce store level support for independents in Tasmania to, in most cases, no service at all.
- Many have closed their state office and retrenched state personnel or transferred them out of the State.

- At best, many now only provide three monthly, six monthly or annual visits from mainland sales offices.
- A diminishing number of company representatives are being forced to take on greater levels of account responsibility with the result that they are only able to provide very poor, or no communication with us on day to day business issues (refer to *Foodweek*[14] article annexed as Attachment 5), while Woolworths and Coles have dedicated teams of business managers supplied by manufacturers and suppliers to manage their accounts.

One example of the unreasonable market power pressure exerted by Woolworths relates to San Remo Fantastic Snacks. We are aware that Woolworths requested an EDLP deal from San Remo on its range of products. San Remo refused to agree to the arrangement and, subsequently, the fantastic snacks range was deleted from all Woolworths' supermarkets. Woolworths subsequently negotiated an EDLP deal with another brand of noodle snacks.

Roll-back and impact on market

Woolworths has identified the number two, three or four brands (ie those brands that are next in line after market leaders) in categories and products that are not meeting the major chains required sales rates and has imposed long-term deals on the manufacturers and suppliers of these less popular brands to reduce the retail price in their stores.

These deals are put in place for between three and six months. Manufacturers and suppliers of these products have very little choice but to comply with Woolworths' request because the two options given are deletion or reduced price to lift sales. The net effect in many cases is that manufacturers and suppliers end up subsidising Woolworths' lower shelf price. In some cases, the only way manufacturers and suppliers can recover these subsidies by providing less service and support in other areas of their businesses.

A leading manufacturers representative informed us in late August 2003, that they needed to produce a 20% increase in sales through Woolworths to cover the cost of providing EDLPs and roll-back deals to Woolworths. He did not believe they could achieve such a result.

It is our view that the introduction of long-term price reductions (EDLP or roll-back) on major selling lines in both Coles and Woolworths will eventually have serious consequences for the number three or four brands in categories and for the manufacturers and suppliers who produce them. These concerns regarding long-term consequences have also been expressed to us by company representatives from a number of manufacturers and suppliers over the last few months.

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[14] *Foodweek*, 14 July 2003 at pages 1-2

The obvious end result is the negative consequences for consumers. These include higher long term prices once competition from the independent sector is removed, less diversity in offerings and in suppliers and manufacturers, range reductions, retailers choosing the range to be offered rather than consumers and a lower reliance on local suppliers.

Woolworths and Coles are able to exert this type of pressure because they control the vast majority of the grocery market in this country. If suppliers and manufacturers want to be represented on their supermarket shelves, they have no choice but to comply with the demands of the major chains. Failure to do so can result in a loss of opportunity to sell their product in approaching 80% of the FMCG market. Nowhere else in the Western World do two retailers so dominate a market.

A higher degree of transparency in the terms of trade that Woolworths and Coles 'negotiate' with suppliers is required.

Both Woolworths and Coles are now moving towards domination of the packaged liquor and fuel markets in the same way that they dominate the grocery market and moves are also afoot in the pharmacies and newsagents markets.

Intimidation of Suppliers

Our information and experiences on the demands of Coles and Woolworths, when dealing with suppliers and manufacturers is based upon what has been directly passed onto us by company representatives and our experiences from our relationship with Woolworths in Statewide Independent Wholesalers. In addition, from time to time, a frustrated manufacturer may air his/her views through *Foodweek*.

However, on the whole, manufacturers and suppliers will not speak out because of the enormous risk that doing so could lead to their loss of representation on the shelves of Woolworths & Coles.

For any Inquiry to be able to get to the truth of what really occurs in this market – particularly as it relates to the misuse of market power when dealing with suppliers and manufacturers, a framework must be developed in which manufacturers and suppliers can discuss openly the circumstances on which they deal with the major supermarket chains – **without fear of retribution**. To be able to fully and properly address these important issues, we must have legislative checks and balances that ensure transparency and enable appropriate disclosure by the major manufacturers and suppliers of their dealings with all retail/wholesale groups within the Australian market place.

Our preference would be for manufacturers and suppliers to annually provide the ACCC with 'in confidence' information on their trading terms with Woolworths, Coles, Metcash, FAL and TIR. Verification could be provided by the ACCC requesting Woolworths, Coles, Metcash, FAL & TIR to also annually provide details of the terms received from manufacturers. This allows the ACCC to have a checks and balances mechanism.

If this can't be achieved, Woolworths and Coles will simply power ahead until the critical mass required for their competitors to effectively compete head to head will simply not be available.

Case Study – Milk Distribution in Tasmania

Woolworths and Coles achieve margins of around 20-25% on their milk sales. They also sell their housebrand products at a substantial discount to the branded product, while maintaining their very healthy gross profit margins.

Product is supplied into Woolworths and Coles stores throughout the State free into store at one Statewide price. For independent retailers, the situation is very different. At present, manufacturers and suppliers refuse to provide housebrand at competitive prices to independent retailers. Independent retailers receive milk from vendors at prices set by vendors that includes a freight component of up to ten cents per litre.

Three tables are set out on the following page which demonstrate the challenges faced by independents in competing fairly with the major chains in milk sales. The first table sets out under a number of columns, the cost to the milk vendor of various sizes of milk product from the two major milk suppliers in Tasmania, and then the cost to, retail price and margins earned on each of those products for TIR, Woolworths and Coles.

The second and third tables compare the TIR recommended prices with the actual loaded cost of delivery of the same products to sample of independent retail stores across Tasmania. Loaded price, means the base cost offered to independents plus the cost of freight (which is never charged to the major chains for delivery of milk in Tasmania).

A number of conclusions are apparent from an examination of these tables:

- The base (unloaded) cost of identical milk products delivered to independents and the major chain stores (often as part of the same delivery on the same truck) varies from between around 10 cents to 35 cents a litre higher, depending on the product
- If independent retailers are to remain competitive, they need to accept margins on the sale of their products that are far smaller than that open to the major chains
- If independent retailer received the same terms, they would be able to compete on price (to the benefit of consumers) and still return better margins than they are at present
- Where independent retailers have agreed not to stock a competitors brand, the terms on which their product is delivered are far more advantageous (compare the loaded of cost

of the Hobart store – which is actually below the unloaded cost – with the loaded cost of delivery to the South Hobart store), and

- Independent retailers who match the chain retail price on branded milk receive between 12% and 15% gross profit.

Looking at the figures for the South Hobart store as an example to highlight the challenges faced by independent retailers. The milk vendor delivers one litre cartons of milk to Woolworths in Hobart at a fixed Statewide rate. That same vendor, as part of the same delivery run, then delivers the same product to the independent retailer in South Hobart at an unloaded rate that is 10 cents higher **plus** an eight cents plus per litre delivery fee. The cost to the independent retailer is 18.2 cents (or 16%) higher than the cost of delivery to Woolworths in its local area, Sandy Bay.

Woolworths' margin is 21.2%. The independent retailer, if he sells at Woolworths' branded price, returns 8.9%. For the independent to sell at Woolworths' housebrand price, he would make very little, if any margin.

The independent sector, up until a few years ago, had over 60% of the state's milk sales. It is now paying for the nationally negotiated prices of Woolworths and Coles.

Milk vendors are forced to accept only a small delivery fee for delivering to Woolworths and Coles and have to make up their margins on the independent transactions. The milk manufacturers forced this deal upon them a few years ago.

Housebranding of milk has become a significant part of the retail milk market. So much so, that housebrand suppliers can no longer afford to lose housebrand volume. As such, they are becoming increasingly subject to the major chains buying power.

Vendor Cost			TIR Recommened Prices			Woolworths			Coles		
			Cost	Retail	Margin	Cost	Retail	Margin	Cost	Retail	Margin
	Betta										
$1.0680		1lt	$1.25	$1.46	14.38%	$1.1480	$1.46	21.37%	$1.1480	$1.46	21.37%
$1.9460		2lt	$2.29	$2.70	15.19%	$2.1060	$2.70	22.00%	$2.1060	$2.70	22.00%
	Pura										
$1.0871		1lt	$1.28	$1.47	12.93%	$1.1500	$1.46	21.23%	$1.1500	$1.46	21.23%
$1.8726		2lt	$2.35	$2.72	13.60%	$2.0000	$2.70	25.93%	$2.0000	$2.70	25.93%
	Own Brand										
		1lt				$1.0000	$1.31	23.66%	$1.0000	$1.31	23.66%
		2lt				$1.7900	$2.42	26.03%	$1.7900	$2.42	26.03%

Vendor Cost			TIR Recommened Prices			Nth East/Scottsdale			Hobart			Sth Hobart		
	Betta		Cost	Retail	Margin	Cost	Retail	Margin	Cost	Retail	Margin	Cost	Retail	Margin
$1.0680		1lt	$1.25	$1.46	14.38%	$1.2550	$1.46	14.04%	Not Stocked			$1.3300	$1.46	8.90%
$1.9460		2lt	$2.29	$2.70	15.19%	$2.3000	$2.70	14.81%	Not Stocked			$2.4400	$2.70	9.63%
	Pura													
		1lt	$1.28	$1.47	12.93%	$1.2700	$1.47	13.61%	$1.2515	$1.47	14.86%	$1.3300	$1.47	9.52%
		2lt	$2.35	$2.72	13.60%	$2.3300	$2.72	14.34%	$2.3100	$2.72	15.07%	$2.4400	$2.72	10.29%
$1.0871														
$1.8726														

Vendor Cost			TIR Recommened Prices			Devonport			East Coast			West Coast		
	Betta		Cost	Retail	Margin	Cost	Retail	Margin	Cost	Retail	Margin	Cost	Retail	Margin
$1.0680		1lt	$1.25	$1.46	14.38%	$1.2700	$1.46	13.01%	$1.3498	$1.46	7.55%	$1.3000	$1.46	10.96%
$1.9460		2lt	$2.29	$2.70	15.19%	$2.2890	$2.70	15.22%	$2.4941	$2.70	7.63%	$2.4000	$2.70	11.11%
	Pura													
		1lt	$1.28	$1.47	12.93%	$1.2750	$1.47	13.27%	$1.3498	$1.47	8.18%	Not Stocked		
		2lt	$2.35	$2.72	13.60%	$2.3490	$2.72	13.64%	$2.4941	$2.72	8.31%	Not Stocked		
$1.0871														
$1.8726														

Independent Market Share Loss – Impact on Warehouse and Distribution

As previously stated, Statewide Independent Wholesalers is owned by TIR and Woolworths in partnership. Woolworths has publicly stated that it will exit wholesaling in Tasmania sometime in the near future.

This is part of a national policy by Woolworths to only distribute to its own supermarkets.

The greatest acknowledgment of the very small size of the Tasmanian retail grocery market is the fact that both Woolworths and TIR found it advantageous to form a joint distribution partnership over 20 years ago to gain sufficient economies of scale to minimise the cost of distribution within the State.

TIR suspects that, in accordance with its public statements, when Woolworths decides on its future wholesaling requirements in Tasmania, it will choose to exit the current SIW distribution arrangement. When this happens, the outlook for TIR to assume ownership of SIW and to continue its wholesaling operations (in the face of a nearly 60% volume turnover reduction and the consequent loss of ability to deliver required economies of scale), is very bleak indeed.

The reduction in independent volume now occurring because of deregulated trading hours and the price discrimination faced by independent retailers through terms of trade differences, when combined with the likely withdrawal of Woolworths from SIW, would certainly make it uneconomical for TIR to be able to competitively provide goods to independent retailers from a locally owned Tasmanian grocery warehouse. Transparency and enforcement of the principle of **like terms for like customers** would significantly enhance the opportunity for SIW to effectively compete in a post Woolworths warehousing environment. otherwise, between 100 and 350 warehouse jobs will be at stake.

Market Concentration and the Abuse of Market Power

Issues relating to the misuse of market power in the retailing industry are not new. There have been a host of inquiries and examination of the issues over the past ten to fifteen years and all have found evidence exists that the greater the concentration of market power, the more prevalent the presence of predatory behaviour.

What has differed is the approach taken to addressing such behaviour. However, despite the consistent findings that evidence exists of predatory behaviour in the grocery market and the differing recommendations, no actual changes have been implemented that have adequately addressed the problems identified.

TIR argues that this Inquiry, if it is satisfied that evidence exists of predatory behaviour in the industry, should 'grab the bull by the horns' and make strong and clear recommendations for change designed to address this destructive form of behaviour once and for all.

Baird Report

> *"...the Committee is concerned about the activities of the major chains with respect to small retailers. Some of the evidence brought to the Committee's attention indicates that their behaviour is inconsistent with their public image of being good corporate citizens."*[15]

In August 1999, the Baird Report, *Fair Market of Market Failure?* - the report of an inquiry conducted by the Federal Parliament's Joint Select Committee on the Retailing Sector, found that there was considerable evidence of predatory behaviour in the retail grocery market in Australia.

The Baird Report found there was a clear need to address the issues of predatory behaviour that arose as a result of the fact that '*...the market is heavily concentrated and oligopolistic in nature...*'[16] and made a series of ten recommendations to address these issues.

These recommendations did not seek to invoke protectionist measures, but, rather were aimed at promoting competition – an outcome TIR supports and seeks out of the current Inquiry.

> *"By its recommendations, the Committee does not seek to invoke protectionist measures for small independent retailers. Rather, it provides for measures which it believes will enhance competition in the market place."*[17]

The Baird Report's recommendations included a number of measures to advance this objective. The Committee clearly accepted that the high degree of market power had led to many demonstrable instances of predatory behaviour by the major chains, and that the provisions of the *Trade Practices Act 1974* rendered it difficult to establish such conduct.

[15] Baird Report *Fair Market of Market Failure?* – August 1999
[16] Ibid

> *"A significant body of evidence alleged instances of predatory pricing ... The evidence was consistent and widespread, with the common complaint being that the difficulties lie in establishing predatory conduct under the current provisions of the Trade Practices Act"*[18]

Although it accepted much of the evidence relating to predatory behaviour, it was hesitant to recommend strong action to address the issue, preferring to adopt softer recommendations intended to address the issues, pending a review of their success within three years. For example the Committee examined the possibility of replacing the current 'purpose' test in Section 46 of the Act with a 'reverse onus of proof' test, but rejected it as it considered the recommendations it did make, might solve the problem.

> *"...the Committee believes that a 'reverse onus of proof' test may well be appropriate should the core recommendations prove to be ineffective in preventing predatory conduct."*[19]

TIR strongly suggests, on the basis of the evidence and discussions contained in this submission, that the recommendations that were implemented as a result of the Baird Report have not been effective in preventing predatory conduct and that, as a result, stronger action needs to be actively considered.

Reid Report

> *"There needs to be a recognition the Australian commercial environment is no longer conducive to fair competition because of high levels of concentration in many industries – including retailing. It is naive to expect small business to survive unrestrained "competition" without some form of protection from the worst excesses of the exercise of economic power."*[20]

The Report by the House of Representatives Standing Committee on Industry, Science and Technology entitled *Finding A Balance – Towards Fair Trading in Australia* May 1997 reported in the Foreword by Hon. Bruce Reid MP:

> *"After detailed investigation the Committee has concluded that concerns about unfair business conduct towards small business are justified and should be addressed urgently."*

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[17] Ibid
[18] Ibid
[19] Ibid
[20] Reid Report Finding A Balance – Towards Fair Trading in Australia May 1997

The realities of commercial practice had been uncovered to some extent and the Committee Chairman reported that:

> *"Unfair conduct by big business towards small business is one such major concern. Indeed it has been a matter of grave concern for many years. Not only has such conduct the potential to impact heavily on the economic health of the small business sector and the allocation of resources generally, it can also involve heavy social costs".*

The Fair Trading Report uncovered the inadequacies of the *Trade Practices Act 1974*. For example, after Section 49[21] of the Trade Practices Act (Price Discrimination) was repealed in 1995, following the National Competition Policy review chaired by professor Fred Hilmer, the *Trade Practices Act* Section 46 (Misuse of Market Power) was established to combat price discrimination.

The Reid Report acknowledges the fact that the current regulations in Australia will not provide a remedy for all price discrimination problems faced by small business in Australia[22]. It is our contention that Section 46 has failed as a tool for minimising the misuse of market power.

The issues highlighted in both the Baird and Reid Reports, as requiring action, tend to be in the very areas where without new instructions from Federal Parliament, the ACCC has no authority to act. The provisions of *Trade Practices Act 1974* as it then stood, were not capable of adequately addressing the problems that the Reid report identified.

> *Unfair conduct by big business towards small business is one such major concern. Indeed it has been a matter of grave concern for many years. Not only has such conduct the potential to impact heavily on the economic health of the small business sector and the allocation of resources generally, it can also involve heavy social costs.*[23]

The major recommendations relating to small business and relevant to this Inquiry (from our perspective) in the Reid Report on fair-trading include:

> *Recommendation 1.1*

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[21] Section 49 made it unlawful for a supplier to discriminate in the price charged to purchasers of goods of like grade and quality if the discrimination was of the magnitude, or of a recurring character, that it was likely to have the effect of substantially lessening competition.

[22] House of Representatives Standing Committee on Industry, Science and Technology May 1997 Finding A balance – towards fair trading in Australia p 125.

> *Due to the ineffectiveness of the Australian Competition and Consumer Commission in small business matters in the past, the Committee believes there is an urgent need to establish a body of precedents under the new provisions as quickly as practicable.*
>
> *Recommendation 4.1*
> *The Committee recommends that the Trade Practices Act 1974 be amended to give the Australian Competition and Consumer Commission the power to take representative actions under Part IV of the Trade Practices Act which deals with various forms of restrictive trade practices, including the misuse of market power.*
>
> *Recommendation 4.2*
> *The Committee recommends that the Australian Competition and Consumer Commission make investigation of complaints, and enforcement of law, in relation to the misuse of market power in the retail sector a top priority in light of the high degree of concentration in that sector and the disturbing evidence submitted to the Fair Trading Inquiry.*

Both the Baird and Reid Reports, in their suggestion that small businesses in the retailing sector in Australia have clearly been exposed to some illegal and unethical practices of abuse of market power in Australia, supports our own direct and indirect experiences in the Tasmanian grocery markets.

The time has come to take decisive action that will clearly address such anti-competitive behaviour.

[23] Ibid.

Predatory Pricing and Amendments Required to s46

The types of conduct that are likely to attract examination under Section 46 include: exclusive dealing arrangements and requirements contracts, withdrawal of and refusals to supply, price discrimination, loyalty rebates, tie-ins, certain 'lease only' policies, raising of rivals' costs and the strategic creation of entry barriers, denial of access to essential facilities, predatory pricing and refusal to deal / price or supply squeezes by vertically integrated corporations.

Our understanding is that, despite a number of instances that have been drawn to the attention of the Australian Competition and Consumer Commission (ACCC) by both independent retailers and their wholesalers in relation to predatory pricing, the ACCC has proceeded with very few cases and has only recently succeeded in prosecuting its first case under Section 46 of the *Trade Practices Act 1974*.

That case is *ACCC v Australian Safeway Stores Pty Ltd*, handed down on 30 June this year. The case was lost by the ACCC at first instance and then won on appeal to the Full Court of the Federal Court. As it is expected that Woolworths will seek leave to appeal to the High Court, the matter may not yet be finally resolved. Despite this, the findings of the Full Court are illuminating as to the practices undertaken by Woolworths through Safeway. For instance:

> *"We have also held that his honour should have found that Safeway's purpose in deleting Buttercup's products from the Cheltenham and Vermont supermarket was to deter Buttercup from continuing to sell bread to independent retailers (Cheapa Food Barn) at a discounted price.*
>
> *These findings lead to the conclusion that Safeway, in these four instances (Frankston, Cheltenham, Vermont and Albury (May 1995)), took advantage of its power in the Wholesale market for the purpose of deterring or preventing both the plant bakers and the independent retailers from engaging in competitive conduct, in contravention of s 46(1)(c) of the Act. Safeway was faced with competitive conduct by the independent retailers, in the form of discounting of bread products. The* raison d'etre *of Safeway's over-deletions and purchase of other price-fighting bread was to put pressure on the plant bakers in order to stop them providing discounted bread to independents (in itself a form of competitive conduct) and, in turn, to prevent or deter the independents from engaging in competitive conduct at the retail level. Section 46(1)(c) explicitly contemplates that the purpose of the proscribed conduct might be to deter or prevent conduct*

in a market quite different from that in which the firm holds a substantial degree of power."[24], and

"What Safeway did was not the sort of thing that happens by accident in a large commercial organisation. As we have discussed, the fact that the deletions had adverse consequences for Safeway strongly suggests that there must have been a rational purpose underlying its conduct. That purpose could only have been to persuade the plant bakers to cease supplying discounted bread to the independent retailers and, in turn, to end discounting by those retailers. Safeway's success in inducing Tip Top to cease discounting confirms that Safeway's purpose was to prevent or deter competitive conduct."[25]

This case related to conduct dating back to 1995 and is no doubt, not yet over. The reality is, that even with the resources available to the ACCC, a case like this will take years before an outcome is finalised, if defended vigorously.

In May 2000, the ACCC took action against two manufacturers after they modified their terms of trade with the Tasmanian independent retailer, Chickenfeed Bargain Stores. In both cases, the parties settled before the matter was judicially determined (in a manner that suggests pressure was placed on all parties by the major chain involved), but comments on the facts made as part of the preliminary hearings are nonetheless illuminating.

" It is appropriate that I summarise the facts relating to each of them in some detail.

The December 1994 Conduct

In October 1994, Chickenfeed purchased from Prego 10,368 packets of 140g Colgate Regular Toothpaste for retail sale in Tasmania. Early in November 1994, it advertised the toothpaste on television at a price of $2 per packet. Shortly thereafter, Woolworths (Victoria) Pty Ltd, trading in Tasmania as both Purity Supermarkets and Roelf Vos Supermarkets, complained to Colgate about the fact that its toothpaste was being advertised for sale at that price.

In November 1994, Chickenfeed ordered a further 20,736 packets of 140g toothpaste from Prego. Prego in turn ordered the necessary stock from Colgate.

On or about 1 December 1994, Peter Nathan, the State Manager, Pharmacy for Colgate informed Uri Bar, the Managing Director of Prego, and Ashley Wilson, the Merchandise Manager for Chickenfeed, that Colgate would supply the further

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[24] *ACCC v Australian Safeway Stores Pty Ltd* [2003] FCAFC 149 at paragraphs 337-338

[25] Ibid. at para 344

packets of toothpaste to Prego for onsale to Chickenfeed, but only on condition that Chickenfeed undertook not to advertise that product for sale at $2 per packet. Mr Wilson refused to give any such assurance. As a result, Colgate withheld supply of the product.

The February 1997 Conduct

On or about 7 February 1997, Chickenfeed placed an order with Prego for a number of Colgate products. These included various types of toothpaste, as well as Gow's Laundry Detergent, Ajax Liquid Gel and Ajax Crème Cleanser.

Colgate's Pharmacy Business Account Manager in Victoria, Margaret Watson, told Prego that Colgate would supply it with these products on condition that Chickenfeed agreed not to advertise them. Her reason for imposing that condition was that she believed that Chickenfeed was likely to advertise the products at prices below those preferred by Woolworths for the same or similar goods.

On 12 February 1997, Chickenfeed wrote to Ms Watson agreeing not to advertise the products, thereby enabling them to be supplied. On 18 February 1997, the products were dispatched."[26]

The second Chickenfeed case involved the 'punishment' Woolworths delivers to suppliers who allow independents to discount. This case involved Chickenfeed selling discounted biscuits manufactured by George Weston Foods Ltd and an attempt by Woolworths to induce price fixing. In its finding on facts, the Court stated:

> *"Mr Sheehan said that in line with company policy Purity [Woolworths] intended to claim from George Weston the difference of 24 cents per packet between the price of $1.99 at which Purity had initially offered Lots O' Cookies and the price of $1.75 at which Purity was selling the biscuits."*[27]

The problem from Purity's perspective was that Westons was supplying the product to Chickenfeed at a price that enabled Chickenfeed to enter a price war with Purity, forcing Purity to reduce its prices to match. Purity's response was to seek reimbursement from Westons for the price difference.

The difficulty facing the ACCC in dealing with allegations of misuse of market power under Section 46 is no doubt based in the fact that the section is not a simple provision to interpret

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[26] *ACCC v Colgate Palmolive Pty Ltd* FCA 619 at paras 6 to 12 in Reasons for Judgement

[27] *ACCC v George Weston Foods Ltd* [2000] FCA 690 at para 12

and apply. The Act does not refer to predatory pricing – the issue is whether there has been conduct that involves the exercise of market power with a proscribed purpose.

Predatory pricing will generally involve pricing below a particular cost measure (examples of which are discussed elsewhere in this submission) with a longer-term aim of recouping the loss with higher prices at a later time, in a less competitive environment. However, there is no barrier at law to pricing below a cost measure *per se*.

The issues that must be taken into account in establishing a *prima facie* case include:

- In the absence of the elusive 'smoking gun' type of documentation, or a supplier willing to take the risk of whistle-blowing, the purpose must be inferred (eg, on the basis of invoices showing goods sold below cost so as to eliminate or substantially damage a competitor)
- The need to establish the market and the degree of market power in relation to conduct, in terms of:
  - The geographic market – ie how far people travel to shop
  - average prices across the market, and
  - the extent of market power held by the major chain being investigated.

Given the above and the reluctance of suppliers and manufacturers to risk blowing the whistle, it is not hard to understand the difficulties faced by the ACCC when considering and pursuing allegations under Section 46.

Recent High Court cases have further complicated the issue and effectively limited the circumstances in which a successful action can be pursued. As such, it is clear that Section 46 has failed those who it was intended to protect and needs radical amendment to render it more accessible and workable in the interests of small businesses and the consumers they serve.

The ACCC has in the past indicated that it had done some work in relation to moving to an 'effect' test as compared to the 'purpose' test. Another option would be to place the onus of proof of disproving predatory conduct on the retailer accused of the breach (as occurs elsewhere, such as France).

What is required is a legal and/or regulatory remedy that does not require the outlay of massive amounts of money. Otherwise, only government, or big business have the resources to be able to pursue remedies – which, of course, undermines the reasoning behind the need for the laws in the first place. To ensure that small businesses can compete fairly, the remedies provided must be accessible by small businesses.

TIR believes that predatory pricing goes to the core of the challenges facing independent retailers when attempting to compete with the major chains. Addressing the need for appropriate remedies capable of dealing with price discrimination should be the major priority.

In the United States, the *Robinson-Patman Act* prohibits price discrimination. A legislative or regulatory provision that achieved the same outcome in Australia would significantly assist small businesses' prospects of being able to compete fairly in the retail grocery market.

One of the advantages is that the issue of price discrimination can be considered on the numbers involved and there is no requirement to examine the far more subjective issue of 'purpose'.

The submission to this Inquiry by NARGA discusses these issues in far greater detail and TIR wholly endorses its recommendations.

DETRIMENT TO CONSUMERS FROM INACTION

In many ways the Tasmanian marketplace should be viewed as a litmus test for what may occur over the next five to ten years in the rest of Australia.

Woolworths and Coles control 85% of the Tasmanian FMCG market and retail prices in this State are the highest of any State in Australia.

- When Woolworths exits the wholesaling partnership with TIR, the critical mass available to us to run a cost-effective warehouse and distribution service for the independent sector may not be available.
- With such a small population and very low turnover, independent grocery retailers who already work on lower retail margins to compete, do not have the ability to significantly re-invest in their businesses and therefore present a more competitive offer to consumers.
- Consumers who may be enjoying some short-term benefits in price at present will ultimately pay a much higher price if legislators are not prepared to ensure the existence of a competitive environment that promotes more than two players within a market.

Over and above all of this, are the consequences for consumers and the Tasmanian community at large, of a continuing slide in the level of competition that the independent retailing sector in Tasmania is able to provide to the major chains. The loss of benefits and consequences include:

Effect on Jobs

ABS unpublished data provided by the Labour Force Unit shows that between 1985 and 1998 more part-time than full-time positions were created in the supermarkets and grocery stores sector in Tasmania - representing a decrease in the quality of employment in this sector.

	(000's)	
	1985	1998
Full-Time Employment	2.7	3.7
Part-Time Employment	1.2	2.5
% part-time employment in workforce	30%	40%
Total Employment	3.9	6.2

We attribute this decrease in quality of employment to the growth in the market share of the major supermarket chains.

Further, where the major chains are particularly dominant in terms of market share - Australia's cities (including Hobart) - the number of full-time positions has actually decreased over the period 1985-1998 in 5 out of 7 states.[28]

Effect on Full-time Employment in the Supermarkets and Grocery Stores Sector within Australia's Cities – Where Major Chains Dominate

	(000's)	(000's)	%
State	1985	1998	+ or -
TAS City	1.1	1.0	-9.1
NSW City	18.7	17.1	-8.6
VIC City	17.5	14.7	-16.0
QLD City	6.2	6.4	3.2
SA City	5.2	3.3	-36.5
WA City	5.9	6.4	8.5
Australia's Cities	54.6	47.6	-12.8

According to recent COSBOA research advice, every one new job in a major chain costs 1.7 jobs in a smaller retailer. Small supermarkets typically employ one person per $85,000 of turnover.[29] As a comparison the larger chains typically employ one person per $145,000 of turnover.[30] Small business can be seen therefore as "job-rich" while the major supermarket chains are "job-poor". The recent Major Chain Dominance Inquiry Report provided:-

> "In particular, COSBOA's contention that the net benefit of the shift is negative in terms of employment may well hold true in many rural and regional areas ... the Committee does not dispute COSBOA's contention in relation to employment within the retailing industry, and the implication that small retailers are more labour-intensive than larger ones."

As well as the above, COSBOA research shows for every 1% shift in market share to the retail chains, there is a net loss of 1800 full and part-time jobs in Australia.

The Right to Choose and Accessibility

Choice is a product of competition. Where there is little competition, there is little choice. Without independent stores in the community consumers would be left to the whim of major chains without the competitive pressure to maintain standards of service and product choice.

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[28] The period 1985-1998 was a period where the chain's market share increased from 60% to almost 80% nationally.

[29] Council of Small Business Organisations of Australia (COSBOA) Jobs in Our Regions – Building on the Small Business Base An initiative of the Federal Department of Transport and Regional Development November 1997, p 49.

[30] Ibid p 49.

The demise of small and independent shops will mean that consumers will lose their right to choose where to shop.

For reasons of personalised service, convenience of location, range of specialty goods or other factors, many consumers patronise local independent stores as an alternative to or a complement to their supermarket shopping.

Such independent stores not only offer personal service not available in the large supermarkets, they also offer through a knowledge of their customers' particular needs or specialty in a particular area and a diversity of range not available through a supermarket with its rigid national buying structure.

An independent grocer, for example, may stock one or two of a particular line because they know they have a regular customer who prefers that brand. Similarly the small delicatessen may specialise in local gourmet produce, supporting the local economy as well as providing a depth of range not available in the supermarket context.

As such, TIR members provide consumers with a diversity of shopping outlets from the small grocery and convenience stores to large supermarkets providing a one stop shopping experience. All provide a blend of competitive price and service consistent with their positioning in the market.

This is particularly an issue in rural and regional areas and for those members of the community whose mobility may be limited, such as the elderly, people with disabilities, young families without private transport, etc.

For these people, it is not a matter of choice. If their local independent store goes, they have nowhere else to go. For the elderly, this can even mean the difference between having the independence of staying in their own home, or having to move into a care situation.

For people in rural and regional areas, it can mean having to choose between travelling long distance for their basic needs, or moving from that area altogether to one where services are more accessible, hence adding to the declining population and fragile infrastructure of rural townships.

The following Supplementary Remarks to the Report by the Joint Select Committee on the Retailing Sector by committee member Senator Ron Boswell assist in understanding the importance of maintaining a strong independent retail grocery sector in Tasmania:-

"Across Australia and specifically in rural and regional Australia, the Committee received evidence of the closure of many small independent retailers due to the operations of shopping centre developments, anchored and occupied by the chains and their associated businesses. This covered a broad range of retailing including grocery, florists, stationery, butchers, greengrocers, tobacconists, hardware and petrol retailing.

Evidence was given of the closures and business losses of locally owned small businesses and of the impact on their country towns and regions. In relation to grocery retailing, evidence was received of the threat from the loss of the crucial critical mass necessary for an independent wholesale sector to serve these independent retailers."

Grocery Prices

Hobart's grocery prices are consistently cited as the most expensive in Australia and this was the case again in the January/February 2000 edition of the Australian Consumer Association's Choice Magazine.

The presence of a third competitor is essential to ensure competition in the grocery-retailing sector.

In Tasmania, independent supermarkets are a necessary component in the market as a means to keep prices competitive. Duncan Kerr MHR's January 2000 price watch survey for the Denison electorate (Hobart) showed that Ralph's Independent Supermarket in Campbell Street, offered the lowest prices in the Hobart area surveyed. Woolworths have since done a "cheque book acquisition" of Ralph's.

As such, not only can the independent sector compete effectively against the major chains, but they can be more competitive, making their continued existence essential in retaining a competitive retail market in Tasmania.

Research presented in Business Review Weekly confirms the importance of competition in restraining prices. The research concludes that prices in Australia's two biggest supermarket chains depend mainly on the presence of a third competitor – far more so than geographic location, or freight/distribution distances.

Life Be In It commissioned the companies Taylor Research and Roy Morgan Research to compare prices across Australia for identical items at the same time on the same day. The results indicate that price depends on competition. For example:

> "Shoppers in Hobart [Tasmania] where there is no third competitor pay 23% more on staple items than shoppers in Mackay [North Queensland], where there is a [independent] discounter"[31].

TIW suggests the market dominance and the over-capitalisation by the major chains is the cause of the higher than average prices in Hobart as compared to the other states.

If the inequitable terms of trade open to Tasmania's two major supermarket are not countered, there will be less competition and enormous pressure on grocery prices to rise.

Tourism

Tasmania's tourism industry needs a viable rural and regional sector twelve months of the year not just the peak four or five months. Continued market domination by the supermarket chains will affect the sector's critical mass to trade. Without critical mass the independents ability to continue to supply competitive prices throughout Tasmania's rural and regional areas is severely diminished. Tourism in towns such as Richmond, Strahan, Swansea, Bicheno, Longford, Ulverstone and others would be detrimentally affected as a result of loss of a local retailing presence.

Services Beyond the Cash Register

In addition to the basic issues of choice and accessibility, the loss of independent stores, particularly in rural and regional areas, means the loss of much more than just the goods they sell.

Think of any country town – where do you go for tourism advice, the key to the local hall, information about the local fire service, a place to put the community notices, etc, etc, etc. The answer is quite clearly – the local store.

The local store is the economic and social focus of the township, providing jobs, local cash flow, a meeting place, access to banking, postal and other services in areas where there are no banks or post office, tourist information and community services, sponsorship of local activities, personal assistance and expertise. Such a quality of service goes way beyond the dollars and cents of operating a business in the area.

Often the storekeeper is an active member of the community in his or her own right involved in the local Rotary or Lions Club, as an executive for the local sports club, serving on Council or on the Board of local organisations.

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[31] *Business Review Weekly* article January 18, 1999 p 48.

The stores also provide sponsorship for groups as diverse as the local fire brigade, school, sports clubs, cultural festivals and many more.

In examining the effects of major chain dominance and the resultant closure of independents in rural townships, we must consider these public interest ramifications and not just view the closure of these stores in terms of statistics.

Tasmanian Producers and Supermarket Suppliers

Increasing centralisation of the major chains causes difficulties for Tasmanian producers. Purchasing decisions are now made in the head offices of Sydney or Melbourne, making the job of putting Tasmanian products on the shelves of the major chains difficult. Centralisation limits opportunities for Tasmanian producers as well as decreasing job opportunities for Tasmanians locally.

Family Business

It is important to remember that small business is mostly family business and their demise often threatens the livelihood of many generations and their families.

Local family businesses support, on the whole, other local family businesses and help keep money circulating locally. Tasmania needs a strong independent sector to ensure local manufacturers and suppliers do not lose jobs. Centralisation is affecting nearly every rural and regional area in Tasmania.

Tasmania's Vulnerability

Where we are particularly vulnerable in Tasmania is that a large proportion of our small businesses are in fact micro-businesses (a business with less than 5 employees), and therefore extremely vulnerable and financially least capable of combating the economic muscle of major supermarket chains.

Effects on Older People

It is clear that independent retailers, particularly in rural and regional areas, are a major component of the lives of the older people in their area.

Having served their customers (often for generations), the storekeeper has an intimate knowledge of the likes and dislikes of their elderly customers. They often buy in specific items to meet the needs of just one customer.

They also give dignity to that person in their later years by addressing them by name, assisting with their purchases and, when they are no longer able to come to the store, delivering the goods to them, sometimes even to the extent of putting the purchases away in their cupboards. They often also give assistance in terms of credit for goods in between pension payments.

For this reason, the older person's daily or weekly visit to the store is a social event, a chance to stay in touch with friends and local news.

Many older Tasmanians do not have the mobility, or financial flexibility of younger people, when it comes to shopping. Whilst younger people leave regions and towns as businesses close down, older people often do not have the ability to relocate to a city in Tasmania or interstate.

For many older people, the services provided by their local store allows them the dignity of staying in their own home rather than needing the care of a residential home.

Busy shopping centres are often frightening and overwhelming for older people, who are either dependent on family or friends to negotiate them through the maze of car parks, brightly-lit shopping aisles and long check out queues, or choose to shop at their familiar local store which is quite often within walking distance from their home.

Infrastructure and Employment

Even more fundamental to rural townships, is the way in which independent stores provide their basic infrastructure. By providing local employment and supporting local producers, the independent stores supply the local cash flow vital to the survival of country towns.

As mentioned, in many cases they are also the providers of local services such as banking, filling the void left when the banks and other institutions rationalised their services.

In fulfilling these roles as well as the community services outlined above, independent stores form the cornerstone of the township.

Without them, the town has no focus, no cash flow and no underlying structure from which it can operate.

COLLECTIVE BARGAINING

Collective bargaining had been part of the way of life for our Cooperative for over 50 years. Tasmanian Independent Retailers represent their members in all negotiations with manufacturers and suppliers.

Our ability to collectively bargain on behalf of our retailer members has been severely eroded by the significant loss of market share to the chains - particularly over the past five years or so and through the removal of local representation in Tasmania by many manufacturers and suppliers.

When two organisations control 85% of the Tasmanian grocery market share (Woolworths 56%, Coles 29%), any competitive balance that the market might enjoy is completely undermined with the result that any ability of smaller groups to negotiate competitive outcomes is seriously diminished.

Clearly, collective bargaining does provide advantages for some industry groups, but in the face of dominant market players, it does not replace the need for strong pro-competitive regulation and active policing of that regulation.

CONCLUSION

Ultimately, consumers will suffer in any market where active and vigorous competition ceases to exist.

TIR is concerned that without action to ensure that the independent grocery retailer sector in Tasmania is able to access like terms for like customers, the ability of that sector to continue as a vigorous competitor to the major chains will be lost.

As the independent sector's share of the market in Tasmania declines, so does its ability to secure terms from manufacturers and suppliers that are sufficiently close to those provided to the major chains to enable it to vigorously compete. And the root cause of the decline in the grocery market share held by independent retailers is unequal opportunity.

Through their immense and unprecedented market share, as power buyers, the major chains are able to demand terms of trade between suppliers and manufacturers that the independents are simply not able to obtain.

The experience of TIR, as co-owner with Woolworths of the Tasmanian grocery wholesaler, Statewide Independent Wholesalers (SIW) highlights this inequality of opportunity.

From the perspective of the manufacturers and suppliers, there is no difference between goods sent to the SIW warehouse for the end use of both Woolworths and independent grocers in Tasmania.. Products that are ordered from manufacturers and suppliers and sent to SIW, are ordered, delivered and placed in the warehouse as part of the same homogenous transaction. Economies of scale is not the problem, as the volume of product withdrawn by the independent sector from SIW's grocery distribution centre, at 43%, is comparable to the volume withdrawn by Woolworths, at 57%

Despite this, manufacturers will return far larger rebates to Woolworths for the products they take out of SIW's warehouse, than they will to TIR.

Why does this happen? Because Woolworths can demand that it does. The threat of Woolworths removing, or even failing to promote the goods of a manufacturer or supplier is in almost all cases, enough to achieve the outcomes Woolworths seek. And failure to comply can result in drastic consequences, as is discussed in this submission.

Other practices are also made possible as a result of the extraordinary levels of market power both Woolworths and Coles have in Tasmania.

Manufacturers and suppliers (as well as independents) are suffering as a result of the practices of Every Day Low Prices (where a major requires them to supply at what is often an unreasonably low price to enable a long term special) and roll-back (where second and third most popular lines are forced to cut back prices to perform better).

Although providing short-term price benefits to consumers, in the long term, these practices will lead to a lowering of competition, higher prices, lower service and loss of amenity and convenience for the consumer.

Issues related to misuse of market power in the retail grocery market have been examined on a number of occasions in recent years, its existence acknowledged and a number of recommendations put forward for dealing with such predatory behaviours. However, it is clear from the practices that the major chains continue to employ that the measures implemented so far have been inadequate in addressing the problem.

Even when successful, as the ACCC has been recently in a case against Safeway (Woolworths), the process takes many years and costs millions of dollars.

In the interests of both the consumer and small business, the time for tinkering at the edges has past. Changes need to be made to the *Trade Practices Act 1974* that properly equip it and the ACCC to be able to seek out and remove such behaviour, both quickly and inexpensively.

TIR submits that this Inquiry presents the ideal opportunity to examine the legislative and administrative processes that form Australia's competition regime and to recommend changes that will ensure it is capable of adequately and fairly addressing these issues with a view to promoting competition in a secure and equitable business climate.

In that regard, we acknowledge the submission made to this Inquiry by the National Association of Retail Grocers (NARGA) and endorse its recommendations.