

AUSTRALIAN GOVERNMENT
RESPONSE
TO THE
SENATE STANDING COMMITTEE ON
ECONOMICS

**Inquiry into the
GROCERYChoice Website**

**GOVERNMENT RESPONSE TO
SENATE ECONOMICS COMMITTEE INQUIRY
INTO THE GROCERYCHOICE WEBSITE**

Committee Recommendation 1

The committee recommends that the Commonwealth Auditor-General investigate the tender process undertaken by the Australian Competition and Consumer Commission in relation to the data collection contract for the GROCERYchoice website.

Noted

The Auditor-General has discretion to exercise his powers and is not subject to direction in relation to whether or not a particular audit is to be conducted. The Auditor-General considered this matter and determined that further investigation was not warranted.

Committee Recommendation 2

The committee recommends that the Australian Competition and Consumer Commission take more care in the future to monitor and assess the performance of contractors that undertake data collection on its behalf.

Noted

The Australian Competition and Consumer Commission (ACCC) is an independent statutory authority. The Government has confidence in the ACCC's ability to manage its contractor arrangements in accordance with the *Financial Management and Accountability Act 1997* and the *Commonwealth Procurement Guidelines*.

Committee Recommendation 3

The committee recommends that the Government reveal its plans for an industry-operated grocery price data website.

Noted

The Government does not intend to mandate an industry-run website which compares grocery prices.

The Government notes that there has been an increase in the provision of online grocery price content by major supermarkets. The Government welcomes this move and encourages industry to continue to improve access to accurate, up-to-date information to assist consumers to make better-informed purchasing decisions.

Committee Recommendation 4

The committee recommends that the Government note the unfair manner in which its contractual arrangements with CHOICE were prematurely terminated by the Minister for Competition Policy and Consumer Affairs, the Hon. Dr Craig Emerson MP, without affording CHOICE a right of reply, and ensure that such unprofessional and discourteous conduct does not occur again.

Not accepted

The Government met with all relevant parties, including CHOICE, prior to making its decision to terminate the Grocerychoice website. Following these consultations, the Government determined that it was not feasible to implement the originally envisaged Grocerychoice proposal.

Committee Recommendation 5

The committee recommends that both the Government and the Australian Competition and Consumer Commission note that the operation of the GROCERYchoice website was prejudicial and unfair to independent retailers.

Not accepted

The Grocerychoice website was designed to improve transparency in the grocery market and to help consumers locate the cheapest overall grocery prices and supermarket chain in their area.

The selection of supermarkets for the Grocerychoice survey was generally restricted to those with a total floor area of greater than 1,000 square metres. However, a small number of exceptions to this were required where a sufficient number of supermarkets of this size did not exist. The survey was designed carefully to exclude 'express' or 'convenience' stores.

Committee Recommendation 6

Additionally and specifically, the committee recommends that the Australian Competition and Consumer Commission apologise to Tasmanian Independent Retailers for unfairly comparing small independent retailers to major chain supermarkets in its price surveys for the GROCERYchoice website, thereby disadvantaging smaller operators and contributing to undeserved negative press in the *Mercury* on 7 August 2008.

Noted

The ACCC is an independent statutory authority. The Government trusts that the ACCC will make its own decisions with respect to this matter.

Committee Recommendation 7

The committee recommends that the Australian Competition and Consumer Commission investigate any potential breaches of the *Trade Practices Act 1974* in relation to the role played by the Australian National Retailers Association in negotiations with CHOICE on the GROCERYchoice website.

Noted

The ACCC is an independent statutory authority established under the *Competition and Consumer Act 2010* (CCA, previously the *Trade Practices Act 1974*). The ACCC is tasked with the enforcement of the CCA including the prohibitions on anti-competitive conduct set out in Part IV of the CCA.

The Minister is specifically prohibited by the CCA from giving the ACCC a direction regarding its performance or the exercise of its powers under the anti-competitive conduct provisions of the CCA.

Whether anti-competitive conduct concerns arise in the context of trade associations advocating on behalf of their members will depend on the facts of each case. The Government understands that the ACCC has not identified any concerns under the competition provisions in the CCA with regard to the conduct of any party in relation to the Grocerychoice website.

Committee Recommendation 8

The committee recommends that the Government learn from this episode of waste and mismanagement and ensure that such inappropriate and careless spending does not occur again in the future, noting that now, more than ever, value for money for the taxpayer should be a top priority.

Noted

The Government has confidence in the framework provided by the *Financial Management and Accountability Act 1997* (FMA Act), which establishes a positive and personal obligation on every agency Chief Executive to manage the affairs of their agency in a way that promotes the 'proper use' of Commonwealth resources.

Proper use is defined in section 44 of the FMA Act as the efficient, effective, economical and ethical use of Commonwealth resources that is not inconsistent with the policies of the Commonwealth. Although the concepts of efficient and effective already encompassed the concept of economical, the Government inserted the term 'economical', with effect from 1 March 2011, to emphasise the requirement to avoid waste and increase the focus on the level of resources that the Commonwealth applies to achieve outcomes.

Senator Xenophon Recommendation 1

That the government improves competition in the groceries sector by requiring supermarkets to provide full price transparency to enable and empower consumers with pricing information before they shop, enabling greater entry to the market by independents and small retailers; and by addressing geographic price discrimination, predatory pricing and other anti-competitive practices.

Noted

The Government is committed to encouraging competition in the groceries sector and has undertaken a range of measures to increase opportunities for entrants and promote competition. To date, the Government has:

- changed the foreign investment policy to extend the timeframe for the development of vacant commercial land;
- clarified the predatory pricing provisions in the *Competition and Consumer Act 2010* (CCA);
- provided information about the Australian retail grocery industry in international trade forums to attract new entrants into the Australian market; and
- introduced a mandatory, nationally-consistent unit pricing regime to enable consumers to easily compare different brands or product sizes.

In addition, on 16 June 2011, the Government introduced the Competition and Consumer Legislation Amendment Bill 2011. This Bill includes proposed amendments to clarify the operation of the mergers and acquisitions provisions of the CCA in relation to 'creeping acquisitions'. These amendments were previously introduced in 2010, but lapsed at the time of the 2010 Election.

The Government is also working with the States and Territories, through the Council of Australian Governments, to ensure that any unnecessary or unjustifiable planning and zoning restrictions that protect existing businesses from new and innovative competitors are eliminated. To assist in this process, in April 2010, the Government requested that the Productivity Commission undertake a study of the operations of the states and territories' planning and zoning systems. The Productivity Commission released its report, *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments*, on 16 May 2011. The report identifies best practice approaches to support competition in land use markets.

Further, the ACCC has announced agreements with major supermarket operators to phase out restrictive provisions in supermarket leases. Coles, Woolworths, ALDI, Franklins, SPAR, Foodworks, Metcash and Supabarn have all agreed with the ACCC that they will not include restrictive provisions in any new supermarket leases. For existing supermarket leases, the supermarket operators have also agreed that they will not enforce any restrictive provisions beyond five years after the commencement of trading.

The Government notes that a prohibition on geographic price discrimination was considered and rejected by the Senate Standing Committee on Economics in its inquiry into the Trade Practices Amendment (Guaranteed Lowest Prices – Blacktown Amendment) Bill 2009, which proposed to amend the CCA.

Senator Xenophon Recommendation 2

That the system of dealing with tenders by the ACCC be improved and more transparent given the curious and unsatisfactory explanation given for why Informed Sources was not awarded this tender on the basis of cost and its prior work with the ACCC.

Noted

The ACCC is an independent statutory authority. The Government has confidence in the ACCC's ability to manage its contractor arrangements in accordance with the *Financial Management and Accountability Act 1997* and the *Commonwealth Procurement Guidelines*.

Senator Xenophon Recommendation 3

That prior to any government-run or government funded price comparison website being established in the future, significant time be allocated towards planning, modelling and consultation so to ensure effectiveness, relevance and requirements of such a website.

Noted

The Government does not intend to re-establish a government-run website which compares grocery prices.

Senator Xenophon Recommendation 4

That companies providing bids for government projects identify any potential conflict of interest and that they be required to provide detailed information on how confidentiality and integrity of the project will be adhered to. Further, that an ongoing audit of their work be carried out at random intervals throughout the project, regardless of whether an incident has first arisen to cause suspicion.

Noted

The Government is confident that the *Commonwealth Procurement Guidelines* and *Fraud Control Guidelines* under the *Financial Management and Accountability Act 1997* provide agencies with the appropriate framework to effectively manage their contractor arrangements, including conflicts of interests.

Senator Xenophon Recommendation 5

That the Trade Practices Amendment (Guaranteed Lowest Prices – Blacktown Amendment) Bill 2009 is enacted, to deal effectively with the anti-competitive practice of geographic price discrimination.

Noted

As noted in the Government's response to Senator Xenophon Recommendation 1, a prohibition on geographic price discrimination was considered and rejected by the Senate Standing Committee on Economics in its inquiry into the Trade Practices Amendment (Guaranteed Lowest Prices – Blacktown Amendment) Bill 2009.