

# Chapter 4

## Issues and problems faced by CHOICE

### Survey methodology

4.1 Retailers had been sceptical of the Australian Competition and Consumer Commission's (ACCC) attempt to develop a survey methodology to ensure like for like comparisons (e.g. for fresh food, meat and private label brands), with claims that a reliable method of comparison would be virtually impossible to achieve. These concerns were raised with CHOICE, which did acknowledge that there were difficulties, but claimed that on the new GROCERYchoice website they would not be insurmountable:

While the consumer will be the ultimate arbiter of shopping basket composition and perception of quality, and will apply the same shopping decision-making as they would in the supermarket, the website needed to address supermarket concerns on the ability to appropriately compare products.

As a result CHOICE developed a detailed methodology to enable like-for-like comparisons. The methodology for fresh food comparisons, for example, encompassed:

- tangible product features
- ethical food attributes
- common product descriptions
- quality descriptors that are current across fresh food categories.<sup>1</sup>

4.2 On the question of comparing private label or home brand packaged groceries between stores, CHOICE provided the committee with a copy of its principles for 'Like for like product matching', demonstrating the organisation's capability to develop and refine product comparison strategies (see Appendix 6).

4.3 Further discussion of like for like comparisons of fresh produce is in chapter 5.

### Collecting price data

4.4 Accurate, timely data was to be crucial to the new website's success, according to CHOICE. ALDI and FoodWorks were said to be cooperative in CHOICE's endeavours to access grocery data efficiently (as ALDI already applied

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1 CHOICE, *Submission 6*, pp 15–6.

consistent national pricing and FoodWorks had identified a technical solution to provide data).<sup>2</sup> However, when other retailers became less cooperative:

CHOICE investigated alternative sources including Aztec Point of Sale prices gathered by supermarkets and on-sold to manufacturers. We requested access and use of the Aztecprice and location data from Coles and Woolworths as this was already available to them but the request was declined. CHOICE also entered into an agreement with Freshlogic to deliver weekly specials from all the major retailers, a strategy that the Minister agreed would fulfil CHOICE's contractual obligations. Scraping retailers' websites was also considered as a data source. CHOICE had sought advice on this strategy to ensure its legality.<sup>3</sup>

## Cooperation from retailers

4.5 CHOICE stated that the failure of some supermarkets to provide price data was the primary problem it faced in delivering a website of the quality originally desired. (Nevertheless, CHOICE said it had developed an 'acceptable alternative approach' which still would have provided useful information to consumers).

4.6 The retailers' attitudes from the point of view of CHOICE are described below:

Woolworths was resistant to the idea from the beginning. They cited a range of issues from technology constraints to trade practices breaches, all of which CHOICE was willing and able to address. ALDI and FoodWorks were supportive and cooperative and while they cited technology as a challenge, they were willing to find solutions and work with CHOICE. Coles and Franklins were initially cooperative and open to the idea, but became increasingly distant. Ritchies and Metcash remained uncommitted until they saw what action the big two retailers would take. NARGA were hostile to GROCERYchoice from the outset, based on the fact that their members find it difficult to compete with the big two supermarkets (because of the Metcash monopoly), and difficulties in making information available for all stores. CHOICE therefore took the decision early on that NARGA members would be part of a post July 2009 strategy.<sup>4</sup>

4.7 The entry of the Australian National Retailers Association (ANRA) into the GROCERYchoice consultations was singled out by CHOICE as a 'turning point' in the project. Engagement with the retail sector deteriorated as:

Previously CHOICE had dealt with supermarkets individually, but after a meeting requested by ANRA on 30 April 2009, ANRA members Coles, Woolworths and Franklins would only communicate through their industry body. This new strategy gave these supermarkets an opportunity to present

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2 CHOICE, *Submission 6*, p 14.

3 CHOICE, *Submission 6*, pp 10–11.

4 CHOICE, *Submission 6*, p 13.

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a united front and agree an approach to block progress. Supermarkets stepped away from the negotiating table and let ANRA do the talking.<sup>5</sup>

4.8 CHOICE stated at the inquiry hearing that the supermarkets 'effectively sabotaged' the website:

I think there is an antidemocratic strain running through that because it was an election commitment of a popularly elected government. It is pretty antidemocratic for a body like ANRA and the supermarkets to block progress in that way.<sup>6</sup>

... The big two supermarkets in particular rarely take to public platforms or the media on this issue because I think they see it as damaging their brands in the eyes of the consumer. In a sense, ANRA becomes a whipping boy ... and a block and a protection to the two supermarkets.<sup>7</sup>

4.9 ANRA responded strongly to CHOICE's claims about its 'spoiler role':

I find these comments really offensive and indicative of what was and is the 'it must be someone else's fault' approach that CHOICE has taken on this issue from moment 1. ANRA is a not-for-profit body which fulfils its role as a good corporate citizen by supporting full compliance with the legislation and policy requirements of a democratically elected government of the day. We try to assist that process by presenting a unified and efficient voice to government and other stakeholders on behalf of our members.<sup>8</sup>

4.10 The committee heard evidence from ANRA on the chronology of interactions with CHOICE. ANRA stated that it convened the meeting on 30 April 2009 as a genuine attempt to:

... bring some focus to the range of issues that, just two months out from the launch of the site, CHOICE had still not dealt with or given any real clarity to the retailers on. At the meeting, the representative of the minister's office made it clear that the 1 July date for the launch was far less important than getting the basics of how the site might work right. In other words, they were flexible about that date and interested in understanding the stumbling blocks and getting to some sort of workable outcome. From that meeting, CHOICE committed to deliver to the retailers a draft MOU, and they indicated they had one pretty much ready to go and would get it to us ASAP with a copy of the Freshlogic report, which they felt would finalise the issue of how many items, how often et cetera.

We received an MOU pretty quickly after that, at the beginning of May. It was a two-page MOU. It was completely inadequate to the concerns of our members, and we had expressed those concerns at some length. So we went

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5 CHOICE, *Submission 6*, p 13.

6 Mr Nick Stace, CHOICE, *Proof Committee Hansard*, 18 September 2009, p 46.

7 Mr Stace, CHOICE, *Proof Committee Hansard*, 18 September 2009, p 48.

8 Mrs Margy Osmond, Australian National Retailers Association (ANRA), *Proof Committee Hansard*, 6 October 2009, pp 40–1.

back to CHOICE and indicated once again what those concerns were, and in the last few weeks of May we were still waiting for a redrafted MOU. At the end of May, while we had not received a copy of the Freshlogic report promised at that April 30 meeting, we did get a list of 7½ thousand items, including a wide range of clearly top-selling items like birdcage cleaner and a request that the price checks be done every week, twice a week in each store. When you do the maths on that it works out at something like two billion price checks a year, which is a pretty substantial task.<sup>9</sup>

4.11 CHOICE's draft Memorandum of Understanding (MOU) is at Appendix 7. Emails between ANRA and CHOICE showed the retailers' concern that the MOU needed to be more substantial and include issues such as:

Clear statements of when one or both parties are liable. For example, would CHOICE be liable for commercial harm caused to a participating retailer if CHOICE is negligent? What if any liabilities does a participating retailer have other than to provide data in good faith?

... How CHOICE will protect the integrity of the data – e.g. how will the data provided by retailers be manipulated by CHOICE?

What obligations in terms of fair comment, accurate presentation does CHOICE accept when presenting data?<sup>10</sup>

4.12 ANRA argued that it was CHOICE's poor management of the programme and a reluctance to address the concerns of individual grocery retailers that necessitated their involvement:

Our feeling is that if CHOICE had managed the program better and worked with ANRA sooner then maybe a model could have been made to work. Far from holding up the process, we may have been able to help it being brought in earlier. CHOICE could have gone to government and said they needed more time as there were unresolved issues with the major chains. We do not speak for the government, of course, but I do not think it is unreasonable to suggest that they probably would have looked at some form of extension and deemed it acceptable to get the right kind of outcome. This is not what CHOICE chose to do. What they did do was to go to government and get a contract variation on 26 May, when they were still talking to us supposedly in good faith by email about the current contract. This contract variation allowed for them to get alternative data from Aztec point of sale pricing. Their stated intention in their submission was to pressure the retailers—to shame them, in effect—to give data which we knew could not have been accurate.<sup>11</sup>

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9 Mrs Osmond, ANRA, *Proof Committee Hansard*, 6 October 2009, p 37.

10 ANRA, Answers to Questions on Notice (received 27 October 2009), Email from Mr Malcolm Roberts of ANRA to Ms Linda Magee of CHOICE, 14 May 2009.

11 Mrs Osmond, ANRA, *Proof Committee Hansard*, 6 October 2009, pp 37–8.

4.13 Coles told the committee that the motivation for involving ANRA was to 'expedite and facilitate discussions around very complex and difficult issues' and to be able to get 'the insights of other members about how best to resolve the issues'. Coles stated it was 'extremely disingenuous' of CHOICE to say that involving ANRA was anti-competitive:

In fact, the intention was to be cooperative and to try and meet a very looming deadline. We had no confidence in CHOICE being able to meet its stated obligations.<sup>12</sup>

4.14 CHOICE's website proposal was 'extremely ambitious' according to Coles, which felt that the full product list and MOU promised by CHOICE had been delivered to retailers quite late ('we were operating in a vacuum for a long period of time'<sup>13</sup>). Coles described two 'fundamental hurdles'—the lack of legal certainty from CHOICE about ownership and use of the data, and the inability to 'technically provide in real time the information they were seeking from us.'<sup>14</sup>

4.15 Woolworths described CHOICE's proposal for real-time prices on a website as 'fraught with significant problems', suggesting that the consumer group had been 'applying pretty poor project management skills to something that was enormously large':

At the outset they asked us for 300 items and they then moved that to 1,500. They then said they wanted 7,500 items across our 800 stores and they wanted it three times a week. To do that we would have to build a whole new IT system to create those data feeds. We estimated that it would cost about half a million dollars if we outsourced that work to India. On top of that we would then probably have the ongoing headcount and capital costs of maintaining it. Once you get to the point of doing 15,000 price checks per store in a week, the error rate would start increasing and we would be significantly concerned about price representations that the website would then be giving consumers.

That is where we came to our final point with CHOICE. They were not prepared to accept any of the responsibility for the prices they published. They just wanted to be the portal. The ACCC, we know, would not accept that. Our trade practices lawyers would not accept that, and we never got any satisfactory response from them about the sort of disclaimers we would have to put on the website to tell consumers that it was not necessarily accurate information.<sup>15</sup>

4.16 Woolworths claimed that from its perspective, it had 'never ceased discussions with CHOICE' and that 'the need to amplify our voice' through ANRA arose because

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12 Mr Robert Hadler, Coles, *Proof Committee Hansard*, 28 October 2009, p 13.

13 Mr Hadler, Coles, *Proof Committee Hansard*, 28 October 2009, p 14.

14 Mr Hadler, Coles, *Proof Committee Hansard*, 28 October 2009, p 14.

15 Mr Andrew Hall, Woolworths, *Proof Committee Hansard*, 28 October 2009, pp 17–8.

CHOICE had not been answering Woolworths' questions ('it was a one-way discussion') or providing the necessary data 'to properly scope out the systems'.<sup>16</sup>

4.17 ANRA was also critical of the consultations that CHOICE held with industry. It cited the claim made by CHOICE in January 2009 that the new website would come at no new cost to supermarkets; this commitment was never restated in further consultations.<sup>17</sup> ANRA described the difficulties and uncertainty that arose during discussions with CHOICE:

Our large supermarket members began working with CHOICE towards the end of 2008, and a number of combined and individual meetings were held. CHOICE came to see me early in 2009 and I expressed a willingness to assist. In the following months, while ANRA heard little or nothing from CHOICE despite having indicated a willingness to help, meetings and conversations continued with our members. In April, retailers were still waiting for clear specifications and a range of details from CHOICE. For example, was this going to be 2,000 items or was it going to be 5,000 items? Both numbers had been discussed by CHOICE. You may or may not be aware from the earlier version of this particular website, after CHOICE took it over, that, in the frequently asked questions section, where people asked, 'Why do you have this number of items on the site?' which was somewhere around 300, the answer was: 'You do not really need more than 300 because that pretty much sums up the normal things that ordinary people would buy on a regular basis that should be in a basket.' I hope you can see our confusion in terms of understanding how we would scope it at our end when at that stage we still did not know how many items they were talking about.

Our members also needed to know how CHOICE were going to address such things as like for like, concerns that prices would not be accurate, the impact and liability that represented to retailers and the cost to retailers.<sup>18</sup>

4.18 Further discussion of the potential cost burdens to retailers is in chapter 5. Further discussion of potential breaches of the *Trade Practices Act 1974* in terms of data accuracy, as well as ANRA's involvement, is in chapter 6.

4.19 The National Association of Retail Grocers of Australia (NARGA) explained that its representatives met with CHOICE in late 2008 following reports that CHOICE was negotiating with the Government to take over the website. NARGA provided a critique of the website, outlining its failings and strongly advising CHOICE not to proceed 'on the basis that the task set was impossible to achieve'.<sup>19</sup> CHOICE was advised:

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16 Mr Hall, Woolworths, *Proof Committee Hansard*, 28 October 2009, pp 24–5.

17 Mrs Osmond, ANRA, *Proof Committee Hansard*, 6 October 2009, p 39.

18 Mrs Osmond, ANRA, *Proof Committee Hansard*, 6 October 2009, pp 36–7.

19 National Association of Retail Grocers of Australia (NARGA), *Submission 2*, pp 7–8.

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The GROCERYchoice budget was said to be \$13 million over four years and that had been based on one data collection a month – to make the data timely, data collection would have to be done more frequently and the cost of doing so was not covered by such a budget.<sup>20</sup>

4.20 According to NARGA, CHOICE claimed at a stakeholder meeting that it would set up a system for publishing weekly or continuous grocery prices for as many items as possible 'at zero cost to retailers'.<sup>21</sup> Industry representatives voiced a number of concerns, including:

- the inability to provide weekly or continuous data 'at zero cost', with costs necessarily being passed on to consumers;
- independent grocery businesses, mostly family-owned and operated, having to allocate resources to the data collection task with new software requirements (at an estimated cost of \$6,000 per store), given that current electronic price files included additional commercially sensitive information; and
- independents having to allocate further resources to uploading price data on their entire product range.<sup>22</sup>

4.21 Technical aspects of CHOICE's proposal were also questioned:

If even the top 1000 independent supermarket operators agreed to supply data electronically, CHOICE would require a very large number of modems and very substantial computer processing power to handle millions of product and price records.

CHOICE then suggested these stores could fax price changes once a week; however, NARGA pointed out that an average independent supermarket has about 3000 price changes a week, meaning CHOICE would have to key in about three million price changes every week for the top 1000 independent stores.

CHOICE could not explain how it would handle comparison of prices for fresh produce (fruit and vegetables, meat, dairy) and suggested omitting such prices - which account for about one third of all supermarket sales.

CHOICE could not explain how it would maintain security on price data if such data were to be forwarded to them - the data is, after all, commercially sensitive until price changes are on store shelves.

CHOICE had no plan or methodology to validate independently any data which might be given to it, running the risk that any incorrect data might unfairly create the impression that one store or group of stores was cheaper than a competitor/competitors, beyond a vague idea that its sympathisers

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20 NARGA, *Submission 2*, p 14.

21 NARGA, *Submission 2*, p 14.

22 NARGA, *Submission 2*, p 15.

would report if they noticed price discrepancies between shelf and website.<sup>23</sup>

4.22 Having undertaken to consider these issues, on 26 March 2009, CHOICE emailed NARGA to advise that because of the difficulties raised in relation to independent retailers, the website would proceed without them:

When asked specifically whether that decision meant Woolworths, Coles, ALDI and Franklins had agreed to provide pricing data, [CHOICE] said only that [it] had received "adequate commitment from enough sources to proceed."

Woolworths, Coles and Franklins later denied any such commitment. As far as NARGA is aware, if CHOICE has any support for its plans it is only from ALDI.<sup>24</sup>

4.23 NARGA met the responsible Minister, the Hon Chris Bowen MP, on 22 April 2009:

... and made clear to him that while we had no problem in principle with providing price data and did so continuously through shelf prices, advertisements and catalogues, the prohibitive cost of complying with CHOICE's requests and the methodological issues raised with them made resolution unlikely.

Mr Bowen acknowledged that the independent sector had special issues because of the large number of individually owned small and medium sized family businesses in the sector, but expressed the view that industry representatives should try to reach some form of agreement with CHOICE to allow the new website to build up over time.<sup>25</sup>

### **Cooperation from government**

4.24 Given the retailers' unwillingness to provide data, CHOICE requested the help of ministers and officials to influence and press the supermarket CEOs:

The Government made it very clear that their preference was to proceed in a conciliatory manner, giving supermarkets a longer time-frame to comply rather than increasing pressure on them to act.

In further discussions with Minister Bowen and officials it was agreed to continue with the launch on 1 July 2009, to increase the number of products displayed every day, with an acceptance that greater pressure on the supermarkets may have been required after launch to achieve the original aims of the project in relation to price information. The Minister agreed to a series of changes to the contract to reflect this new position.<sup>26</sup>

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23 NARGA, *Submission 2*, p 15.

24 NARGA, *Submission 2*, p 16.

25 NARGA, *Submission 2*, p 16.

26 CHOICE, *Submission 6*, p 14.



4.25 'A lack of political will to seek legislative and non-legislative solutions had a detrimental impact on the ability of CHOICE to deliver the website the public wanted', CHOICE claimed.<sup>27</sup>

4.26 Associate Professor Frank Zumbo called the decision by the new Minister, the Hon Dr Craig Emerson MP, to close down GROCERYchoice just days from its re-launch, a 'fundamental failure':

The Federal Government had a leadership role to play given that GROCERYchoice was part of the Government's election commitment to put maximum downward pressure on grocery prices. This leadership role was also clearly essential given that the Federal Government had spent or had committed to spend millions of taxpayers' dollars on the website.

The Federal Government's leadership role was particularly critical given the growing recalcitrant behaviour by the major supermarket chains towards CHOICE's work on the new GROCERYchoice website.

... After all, it was the Federal Government that turned to CHOICE when it became obvious that the ACCC's version of the GROCERYchoice website was failing to deliver any relevant information to consumers. It was only fitting, therefore, that the Federal Government would seek to use its best endeavours or even its legislative powers to ensure that the taxpayer funded CHOICE version of GROCERYchoice had every chance of success in delivering meaningful and comparative pricing information to consumers.<sup>28</sup>

4.27 He commented at the inquiry hearing that:

To pull the plug a few days beforehand is just unbelievable from the simple point of view that the government let its own website run for a few months to give it a go and see how it went, but they were not willing to extend that courtesy to CHOICE ... With the CHOICE website ... we would have known very quickly whether it was a goer or not – and, if it was not, Minister Emerson could have pulled the plug two weeks after its launch.<sup>29</sup>

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27 CHOICE, *Submission 6*, p 14.

28 Associate Professor Frank Zumbo, *Submission 14*, pp 3–4.

29 Associate Professor Zumbo, *Proof Committee Hansard*, 6 October 2009, p 11.

