

Chapter 5

Concerns of the grocery retailers

5.1 Grocery retailers raised a number of concerns in relation to the GROCERYchoice website, including the survey methodology adopted by the Australian Competition and Consumer Commission (ACCC); problems with comparison of fresh food prices; the inclusion of ALDI in product range comparisons; the inclusion of independent stores with limited floor space; and the potential cost burdens on retailers which arose from CHOICE's proposal for a revamped website.

The ACCC website

Survey methodology

5.2 The National Association of Retail Grocers of Australia (NARGA) argued that the ACCC's survey methodology was 'seriously flawed and invalid; it had the hallmarks of a website designed by people who did not personally shop for groceries and who had no clue about how grocery customers actually shop'.¹

5.3 The system of 61 regions devised by the ACCC was heavily criticised on the grounds that the regions 'bore no relationship to actual commercial markets ... nor to the demographics of the regions'.² With some regions comparing prices in shops hundreds of kilometres apart, NARGA commented that:

Comparing averaged prices for a 'mystery basket' of unidentified products across ten unidentified stores spread across a region gave no indication of whether the basket prices identified in the survey bore even a passing similarity to the price of a basket of groceries that customer might actually want to buy in his or her nearest store(s).³

5.4 In hindsight, it may have been better for the website's regions to have been restricted to metropolitan areas and large towns, instead of the expansive regions in the ACCC's original design.

Inclusion of fresh produce

5.5 The issue of like for like comparisons of fresh produce as a part of the GROCERYchoice website was a major sticking point for retailers. The perishability of fresh food, it was argued, made it impractical for comparisons to be made based on price alone.

1 NARGA, *Submission 2*, p 2.

2 NARGA, *Submission 2*, p 3.

3 NARGA, *Submission 2*, p 3.

5.6 The Australian Retailers' Association (ARA) stated that it was impossible to make timely comparisons of fresh food which took into account varying quality:

In regard to both meat and fresh vegetables, there are different grades. For instance, if you take tomatoes and bananas, I think there are four different grades. First, you have to define the type of product you are talking about—is it a grade 1 or a grade 4? Obviously the price will vary in relation to that. You will also get situations in supermarkets where products come very close to the end of their use-by-date, in particular meat, and that is often put out on sale as a last-minute thing. So that comes down in price quite drastically. There are also other products that have use-by-dates that will be put out from time to time. Those products could be out of date on the basis that, even if the reporting was done weekly, decisions are made virtually instantaneously at supermarket levels to clear products towards the end of their use-by-dates. It will be out of date very readily.⁴

5.7 Master Grocers Australia similarly argued:

If you put up the price of apples, what product are you talking about and what grade of apple are you talking about? It can be very misleading. My particular store is in an affluent area and we only buy the very best quality and we charge accordingly. But you can eat every apple in a bag of apples that you buy from my store. If you go to a Dandenong market and buy a bag of apples there, they will be a lot cheaper but you will throw out the last five or six apples in that bag. If my price goes on the website, I am dear in comparison to the rest of the area. So my products may be perceived as dear, but in fact it is about the quality of the product.⁵

5.8 NARGA stated that it raised the issue of accurate data collection in relation to comparison of fresh food prices in discussions with the ACCC. Its submission drew attention to inherent difficulties in collecting such data, including:

- There are numerous varieties of potatoes, tomatoes, apples, oranges, grapes, etc., not all available in all stores at the same time – on which would data be collected?
- Prices vary by the day, depending on availability, weather events, season, availability of and source of imports, etc.
- Prices vary from location to location, with different regions ripening fruit and vegetables at different times – even within some of the ACCC's 'regions'
- Fruit and vegetable prices may vary by size of the produce

4 Mr Russell Zimmerman, Australian Retailers' Association (ARA), *Proof Committee Hansard*, 6 October 2009, p 19.

5 Mr Rodney Allen, Master Grocers Australia, *Proof Committee Hansard*, 6 October 2009, p 108.

- ... Meat prices vary by both grade and cut – would the data collectors be competent to distinguish lamb from hogget or mutton, for example?⁶

5.9 NARGA claimed that the ACCC ignored such concerns and 'purported to include price comparisons for fresh foods in its GROCERYchoice mystery baskets'.⁷

5.10 Retail*Facts stated that the ACCC had provided a methodology for comparing fresh produce, commenting that:

... it is always going to be a difficult assessment; however, the general assessment was on things such as discolouration. That was one of the main reasons why we were not to collect a price if necessary, if, in the case of fresh produce, it appeared not to be of a certain quality.⁸

Committee view

5.11 The committee believes that there were serious difficulties with the issue of like for like comparisons under the ACCC's version of the website, particularly given that the consumer was unaware of the contents of the ACCC's mystery baskets and therefore could not judge for themselves whether a like for like comparison was reasonable.

The inclusion of ALDI

5.12 ALDI is a German-owned grocery retailer which commenced operations in Australia in 2001. It operates across 207 stores in Queensland, New South Wales, Victoria and the Australian Capital Territory. ALDI's typical store size is around 1,200 square metres, with around 1 000 products stocked in each store.⁹ (A major full line supermarket can stock up to 30 000 product lines.)¹⁰

5.13 NARGA suggested that the ACCC 'devised' the special category of the 'basic staples basket' to allow ALDI to be included in comparisons on the GROCERYchoice website. Noting that the ACCC's 2008 inquiry into grocery prices had emphasised the significant competitive impact that ALDI's entry had brought to bear on the grocery retail market, NARGA asserted that:

GROCERYchoice had to be constructed to include the only company allegedly providing a "competitive dynamic" to the Australian grocery industry. ALDI's exclusion from GROCERYchoice would have called into question one of the ACCC's major findings from the grocery price inquiry.

6 NARGA, *Submission 2*, p 4.

7 NARGA, *Submission 2*, p 3.

8 Mr James Kelly, Retail*Facts, *Proof Committee Hansard*, 28 October 2009, p 36.

9 Mr Andrew Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 77.

10 Mrs Margy Osmond, ANRA, *Proof Committee Hansard*, 6 October 2009, p 36.

The problem remained, however, that ALDI did not have product range, nor the sites, to allow them to be included in the general GROCERYchoice price survey across Australia. A special category, the "basic staples basket" was devised by the ACCC to allow ALDI to be included. ALDI has a legitimate place in the Australian grocery industry, but it is not a direct competitor with full-service supermarkets or grocery stores offering much larger product ranges.¹¹

5.14 If one of the aims of GROCERYchoice was to help price-sensitive consumers find the lowest prices on basic items at the supermarket, it might also be argued that including large numbers of other goods in the rest of the basket categories was a distraction that artificially favoured the large supermarket chains.

5.15 NARGA was sceptical that the ACCC could have accurately compared ALDI products directly with branded products, calling into question the ACCC's 'independent testing' regime:

... the ACCC claimed to have hired an independent product testing laboratory to ensure that product quality was similar – that the comparison of prices was based on a comparison of "like for like". The independent product testing laboratory was never identified and no results of the alleged product comparison testing were ever published.¹²

5.16 In its advice to the then Minister for Competition Policy and Consumer Affairs, the Hon Chris Bowen MP, during the scoping stage of the GROCERYchoice project in early 2008, the ACCC had acknowledged there would be difficulties in incorporating ALDI, noting the issue of like for like product comparisons and its smaller range of products. On balance, the ACCC recommended including ALDI on the website because it was 'an important aspect of the competitive landscape in grocery retailing'.¹³ At the time, the ACCC noted that the:

... the website would make it clear that the [basic staples] basket price is calculated on a 'matched similar product quality' basis rather than on an 'identical product' basis, and that consumers need to make up their own minds as to the issue of product quality.¹⁴

5.17 Some retailers were alarmed that the website identified ALDI as being significantly cheaper in the 'basic staples' category in every region in which it was

11 NARGA, *Submission 2*, p 5.

12 NARGA, *Submission 2*, p 5.

13 ACCC, Answers to Questions on Notice (received 28 October 2009), 'Memorandum: ACCC Periodic Survey of Grocery Prices', advice from Mr Graeme Samuel to the Hon Chris Bowen MP, 22 February 2008, p 3.

14 ACCC, Answers to Questions on Notice (received 28 October 2009), 'Memorandum: ACCC Periodic Survey of Grocery Prices', advice from Mr Graeme Samuel to the Hon Chris Bowen MP, 22 February 2008, p 4.

present. The ARA called the initiative 'blatant Government brand promotion'. An ARA press release from 1 October 2008, submitted to the inquiry, stated:

But now the Rudd Government is taking a dangerous turn and promoting particular big supermarket brands by naming them the 'cheapest' in Australia. There is no place for Government interference in brand promotion and marketing of Australian supermarkets. This is overt favouritism of major brands while local grocers and fruiterers are being ignored.

... The market doesn't need government intervention, like GROCERYchoice, which discriminates against small independent grocers. It's not GROCERYchoice; it's GROCERYpromo.¹⁵

5.18 ALDI's response to the claim that its basket of goods could not be legitimately compared to those of other retailers because of ALDI's limited number of lines was that the number of lines had no bearing on the quality of products on offer.¹⁶ Also, the 'like for like' question raised by NARGA could equally be applied to major supermarket chains' home brand and private label products being compared against each other.

5.19 Prior to the website's launch, the ACCC had also acknowledged that making appropriate comparisons across major supermarkets on their home brand goods would present difficulties:

...particularly since higher quality home-brand products are now very common and have high market shares. Simply choosing the cheapest product would create a bias towards supermarkets promoting low quality products.¹⁷

5.20 To ensure that appropriate comparisons between products could be made, the ACCC engaged expert consultants and undertook industry consultations. The ACCC has advised that Symbio Alliance undertook the 'like for like' product testing, at a cost of \$13 999 (GST exclusive).¹⁸

Impact on independent stores

5.21 Independent retailers claimed that the ACCC's website placed them at a significant disadvantage, with inherent biases and shortcomings in its survey methodology. They argued that issues such as lack of competition in remote areas and the high costs of delivery (particularly for fresh produce) were not adequately

15 ARA, *Submission 7*, Attachment 1, p 7.

16 Mr Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 88.

17 ACCC, Answers to Questions on Notice (received 28 October 2009), 'Memorandum: ACCC Periodic Survey of Grocery Prices', advice from Mr Graeme Samuel to the Hon Chris Bowen MP, 22 February 2008, p 4.

18 ACCC, Answers to Questions on Notice prior to public hearing (received 17 September 2009), p 3.

accounted for and therefore resulted in 'negative press' about independents once the survey results were published.¹⁹

5.22 Giving evidence to the inquiry, Mr Grant Hinchcliffe of Tasmanian Independent Retailers, quoted a newspaper article from the *Mercury* on 7 August 2008, the day after GROCERYchoice went live:

... in southern Tasmania a shopping trolley full of meat, seafood, fruit and vegetables, dairy, bread, cereals, drinks, snacks and other household items costs \$161.51 at Coles, \$162.97 at Woolworths and \$185.66 at an independent grocers.²⁰

5.23 The article also reported that Mr Graeme Samuel, the Chairman of the ACCC, said that the website only compared supermarkets that were 1 000 square metres or larger.

5.24 Mr Hinchcliffe commented:

I am not sure whether any of my members were surveyed. I do not know whether it was IGA stores, FoodWorks stores or whatever, but that is about a 15 per cent price variation. For a price conscious, savvy consumer sitting at home reading that, it is going to send out the message quite clearly that independent grocers are very expensive to shop at. In my opinion, 15 per cent is way over the top, and I would suggest that with the larger independently owned and operated businesses in Tasmania it would be nowhere near 15 per cent.²¹

5.25 While the ACCC's general principle when conducting the price surveys was not to include any store with an area under 1 000 square metres, NARGA claimed that this principle was not adhered to:

We are aware that in some cases, independent stores as small as 270 metres were included, while similarly-sized petrol station convenience stores operated by Woolworths, Coles or the large petrol companies – charging convenience store prices – were excluded.

These smaller stores are not, to use the words of the UK Competition Commission, "close substitutes for other grocery retailers" and operate on a different business model. Yet the ACCC lumped the basket prices of these stores in with those of large independents which compete head to head with Woolworths or Coles in local markets, skewing upwards the basket price averages listed for the "independents" category, at the same time excluding the supermarket chains' petrol station convenience stores of similar size to small independent grocers.²²

19 WA Independent Grocers Association, *Submission 3*, p 2.

20 Sally Glaetzer, 'Top dollar groceries', *Mercury*, 7 August 2008.

21 Mr Grant Hinchcliffe, Tasmanian Independent Retailers, *Proof Committee Hansard*, 6 October 2009, p 93.

22 NARGA, *Submission 2*, p 7.

5.26 In Tasmania, it is claimed that the ACCC surveyed the Shearwater Supa IGA, with 891 metres of retail space, the Value Plus Valley Road in Devonport, with 312 square metres of retail space, as well as the Festival IGA in Lindisfarne, with 232 square metres of retail space (at which the proprietor refused entry to the data collectors).²³ The ACCC's response was that 'they were the exception rather than the rule'²⁴ and that those stores 'identified by industry as being smaller than desirable [were] removed from the survey list'.²⁵

5.27 In more isolated regional areas, the ACCC admitted that it ran into the problem of not having enough large-scale supermarkets in a particular region to 'cover off on the survey work':

In limiting those supermarkets ... it would have been fairly easy to identify the supermarkets in those areas that were actually being surveyed and also, possibly, to identify what was in the basket. On our website we had a notice that said that the GROCERYchoice survey was generally restricted to those with a total floor area of greater than 1,000 square metres, and it really was, in the Tasmanian instance in particular, an issue that we had identified after we started doing the surveys.²⁶

5.28 Tasmanian Independent Retailers noted that only Tasmania's northern region has any independent stores in excess of 1 000 square metres—one in an outer suburb of Launceston, and one in St Helens in the state's far north-east. It is understood that out of the two, the ACCC surveyed only the St Helens store:

It should be noted that this store is some two hours drive from the urban centre of Launceston where there are approximately nine major chain supermarkets (Woolworths and Coles) of which both are largely serviced for their grocery requirements by two locally based Distribution Centres. The Supa IGA supermarket at St Helens is also largely serviced for its grocery requirements from Launceston.

Unfortunately, the ACCC would not reveal the supermarkets that were surveyed but it would be fair to assume that it is unlikely the other supermarkets surveyed in the northern area of Tasmania did not have the transport disadvantage of being located some two hours from their main Distribution Centre.²⁷

5.29 The Western Australian Independent Grocers Association expressed the concern of its members about the lack of consultation and prior warning about the price surveys:

23 Tasmanian Independent Retailers, *Submission 5*, p 3.

24 Mr Brian Cassidy, ACCC, *Proof Committee Hansard*, 18 September 2009, p 36.

25 ACCC, Answers to Questions on Notice prior to public hearing (received 17 September 2009), p 4.

26 Mr Mark Pearson, ACCC, *Proof Committee Hansard*, 28 October 2009, p 2.

27 Tasmanian Independent Retailers, *Submission 5*, p 2.

... in some cases, the first store owners knew of any website was when individuals turned up at their door step and declared that they were there to collect pricing data that could take them up to 8 hours to complete.

... Store owners originally were unsure if the people in their stores had any legal right to be there and did not know if they should put a staff member with them for the whole day that they were there or leave them alone or ask them to leave without collecting the data.²⁸

5.30 Tasmanian Independent Retailers was also disappointed that there was 'no protocol established by the ACCC with regard to informing our members that their premises were to be surveyed'. It was highly critical of the ACCC's inconsistency on the floor space issue, stating:

... Attempting to compare supermarkets with differing floor sizes is similar to attempting to compare an aircraft carrier with a speed boat.²⁹

5.31 At the inquiry hearing, Mr Hinchcliffe elaborated on the reasons why the comparison of independents on price alone was unfair:

I think it is widely accepted that the smaller the operation the less opportunity you have to get goods into your store at the same landed in store cost as a larger store would have—that is, there are obviously efficiencies in buying if you are purchasing more and if you have the volume to purchase more. There are also efficiencies with respect to how you operate your business as well. All of those come into play when retailers are ultimately seeking their margins. I feel that it would be fair to say that from the Tasmanian experience, the independent retailers in Tasmania, generally probably have to accept a lower margin on their grocery items simply to remain competitive against the might of Woolworths and Coles. Also in some of the areas obviously freight and distribution come into play such as the outlying areas that are away from the main distribution centres in Launceston and also Woolworths have a distribution centre in Hobart. That comes into play as well.³⁰

5.32 Master Grocers Australia gave similar evidence:

Smaller retailers certainly have less scale than a large, 3,000 square metre supermarket. There is no doubt about it. There are different costs associated with running those different businesses, whether it be labour, overheads, rent, wage percentages and so forth. There is a higher cost to running a smaller store. Subsequently, those higher costs are reflected in price in some of those stores that are conveniently located. I think it is generally accepted that the small to medium type stores that are conveniently located may incur higher costs to operate but the fact is that those stores do play a

28 WA Independent Grocers Association, *Submission 3*, p 2.

29 Tasmanian Independent Retailers, *Submission 5*, p 3.

30 Mr Hinchcliffe, Tasmanian Independent Retailers, *Proof Committee Hansard*, 6 October 2009, p 95.

role within our community. It is genuinely accepted that the prices might be slightly higher.³¹

5.33 While it is clear that independent retailers do face higher operating costs that are reflected in higher prices, it could be argued that GROCERYchoice was not necessarily 'inherently unfair' given that it simply reported what independents already state to be the case. The question of *whether* a price is higher is a different issue to *why* it may be higher.

5.34 Senator Barnett asked Tasmanian Independent Retailers whether any legal action against the ACCC had been considered for putting evidence into the public arena that was damaging to independents in a competitive marketplace:

I did consider that briefly but at the end of the day Tasmanian Independent Retailers is a small business. It is owned by small business operators and for us to consider legal avenues against the ACCC is like a David and Goliath fight to be honest. We did issue a press release on the same day voicing our concerns that the website was false and misleading with respect to the statements that were contained in that article.

... That press release conveyed our concerns that in Tasmania, as I have said, with two out of the three regions there were no independents over a thousand square metres, so from my perspective the ACCC was clearly operating in breach of its own guidelines that had been set and to date we have not received any formal notification, apology or correspondence from the ACCC.³²

5.35 Responding to the claim that the website had favoured the major retailers over the independents, the ACCC said:

If you look at our grocery inquiry report, you will see that we made the point that the independents have a lot of difficulty competing with Coles and Woolworths because of the prices that they are charged by their wholesaler Metcash, and that certainly showed up in the GROCERYchoice website during the time it was operating. We were doing 61 regions a month for six months, which gives you 360-odd regional readings. I think in about only eight of those did the independents come out as being the cheapest. So, even during those six months, I think the website illustrated the difficulty independents have competing with Coles and Woolworths.³³

Committee view

5.36 The committee is of the view that the generalised information disseminated by the ACCC through the GROCERYchoice website was prejudicial and unfair to

31 Mr Jos de Bruin, Master Grocers Australia, *Proof Committee Hansard*, 6 October 2009, p 112.

32 Mr Hinchcliffe, Tasmanian Independent Retailers, *Proof Committee Hansard*, 6 October 2009, p 96.

33 Mr Cassidy, ACCC, *Proof Committee Hansard*, 18 September 2009, p 36.

independent retailers, which do not and cannot operate to the same economies of scale as major chain supermarkets.

Recommendation 5

5.37 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.

Recommendation 6

5.38 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.

The CHOICE website

Fresh produce comparisons

5.39 NARGA also raised its concerns about fresh food comparisons with CHOICE. At a meeting between CHOICE and other industry participants on 25 February 2009, NARGA claimed that:

CHOICE's initial response was to offer to exclude fresh produce prices from the data collection process. Industry representatives pointed out that fresh produce sales account for about 30 per cent of all sales and any basket of groceries would be unrepresentative if they were not included.³⁴

5.40 Woolworths also had concerns about how CHOICE was going to undertake like for like comparisons:

Woolworths has a quality assurance program, particularly around its fresh [products] that is unique. It is one of a very high standard. We know from past experience that when our meat is compared with some of our competitors' meat, our meat comes out more expensive, but that is because they are doing incorrect like-for-like comparisons. They are comparing cow meat with quality rump. We are very sensitive to that. That was another issue that we could not get a resolution on that was satisfactory from CHOICE. They were insisting they were to apply their own standards, and we felt that ignored the standards of our suppliers and that we abide by within our own store. We were not comfortable about a third party applying

34 NARGA, *Submission 2*, p 3.

their own standards on information we give them and then publishing it and then taking the liability for that.³⁵

5.41 Freshlogic, which had worked with CHOICE to design a system to sort through and compare fresh produce descriptors (but without making an assessment of quality), noted that while meat, dairy and deli items ran mostly on weekly cycles, fruit and vegetables were the most volatile in terms of price and supply. Pursuing the question of fresh fruit comparisons, the committee asked:

Senator BARNETT—How do you compare a banana that is four days old and about to go off and a ripe banana or a barely ripe banana?

Mr Kneebone—We do not have a solution for how you would do that. You would be relying on the retailer's ability to manage stock and assuming there was some average quality there.

Senator FISHER—Surely that undermines the very wisdom of GROCERYchoice for genuine perishables? Standard quality bananas might be four bucks a kilo, but at the end of their life they may be one buck a kilo. A price of one buck a kilo might reflect that the bananas are at the end of their life. On the other hand, a retailer might want to have a loss leader, and thus sells bananas at one buck a kilo when they are at the top of their quality. How would a consumer know that? A consumer might second-guess the website and undermine the purpose of it anyway.

Mr Kneebone—I cannot rule out circumstances like that happening. My experience is that it is the exception rather than the norm. If the market price of bananas is \$4, there will only be a small number of retailers selling them at a grossly different price.

Senator FISHER—So a cheap price would mean they were second quality or third quality, and the consumer would be expected to deduce that?

Mr Kneebone—It could mean that they were clearing the product. It could mean they got the stock rotation on a product wrong. It could mean it was Saturday afternoon and they were not going to open on Sunday. It could be that it was the last 1½ hours of trade and they were simply clearing stock. That happens in the fruit and vegetable area more than anywhere else. Those are the practices in the market, and that is how they are going to recoup some costs from distressed stock.³⁶

5.42 Freshlogic did note, however, that the grade of fresh product stocked by major retailers was quite narrow:

If you look at the grades of product that the major retailers take, they are not massive in my opinion. You do get some mixing of that going on—they might buy one or two grades and put them in there. Bear in mind that when they are communicating their offer to consumers—and they do that quite a lot—they do not communicate grade, they communicate product and price.

35 Mr Andrew Hall, Woolworths, *Proof Committee Hansard*, 28 October 2009, p 28.

36 *Proof Committee Hansard*, 6 October 2009, p 30.

The consumers are by and large being met with a relatively consistent grade. They would get in trouble if they did that.³⁷

5.43 CHOICE rejected the retailers' claims that it is impossible to make valid comparisons of fresh foods:

This is insulting to consumers who are required to make such comparisons everyday of the week. Consumers make comparisons between fresh food items all the time, taking into account whatever information may be available to them at the time which may – or may not (for example, in the case of online shopping or standing orders) – include physical inspection of goods.

There is a big difference between observing that fresh food comparisons present some challenges and at the end of the day it is up to the consumer to place a value on particular qualities that suit him or her (size, variety, grade), and claiming that such comparisons are not 'valid'.³⁸

5.44 CHOICE had acknowledged that 'any solution implemented won't satisfy every retailer and will at best be a compromise'. In correspondence with the Australian National Retailers Association (ANRA) during development of its website, CHOICE said it was 'genuinely open to finding a workable solution':

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, CHOICE proposes the following options:

1. Use size as a differentiator where applicable (e.g. small/medium/large apples) or budget/everyday/premium for meat, as decided by the retailer.

OR

2. List price and other product information provided by retailers and let consumers decide.³⁹

5.45 The Australian Chamber of Fruit and Vegetable Industries' submission stated that it would support a price comparison website for fresh produce, contending that such a website would be:

...feasible [and] would be of value to consumers ... Chamber members undertake 'price reporting' and this data is used by ABS and ABARE in ascertaining GVP for fruit and vegetable production.⁴⁰

37 Mr Martin Kneebone, Freshlogic, *Proof Committee Hansard*, 6 October 2009, p 30.

38 CHOICE, Answers to Questions on Notice (received 22 October 2009), p 2.

39 Australian National Retailers Association (ANRA), Answers to Questions on Notice (received 27 October 2009), Letter from Mr Nick Stace, CEO of CHOICE, to Mrs Margy Osmond, CEO of ANRA, 29 April 2009, pp 3–4.

40 The Australian Chamber of Fruit and Vegetable Industries Ltd, *Submission 8*, p 3.

5.46 A GROCERYchoice website could have been designed in such a way as to allow fresh produce comparisons to a certain extent. For example, to address the problem of use-by dates for meat or deli products, one could specify that products for comparison on the website must not be within 'x' days of their use-by date. While it is true that fresh produce comparison is not as simple as a comparison of identical branded products, it is worth noting that the Consumer Price Index relies on a regular analysis and comparison of fresh food prices. This begs the question: how accurate must the information be before it is better than nothing at all?

5.47 Comparison of fresh food must also be undertaken by supermarkets themselves when determining their own pricing against those of rival chains, so the argument that no valid or useful comparisons could ever be made appears questionable. Woolworths stated that it used 'its own expert staff to assess quality and price in competitive price checking.'⁴¹

ALDI's views

5.48 ALDI had a more favourable view than the independents about CHOICE's proposed version of the website. As CHOICE had described, ALDI had been cooperative in providing data for the GROCERYchoice initiative:

ALDI's philosophy is one of consumer transparency. As a matter of principle, the company was prepared to cooperate with the ACCC, and subsequently CHOICE, on GROCERYchoice if the website could be established in such a way that would provide accurate and meaningful information to consumers.⁴²

5.49 The policy of national pricing, introduced by ALDI in 2008 (with the exception of fresh fruit and vegetables and bakery lines), ensured that ALDI was able to provide centralised pricing data fairly easily. Consumers are able to search for a product or look at product lists on ALDI's own national website.⁴³ ALDI commented that its situation was different to that of its major retailer competitors, which would have to provide a lot of 'complex and specific information' in terms of price data.⁴⁴

5.50 While ALDI stated in-principle support for a website that is 'able to deliver transparent, robust and dependable information to the consumer', it did express concern about the challenge of like for like comparisons:

One of the challenges that is faced in the creation of such a site is to ensure that we move further away from the technical requirements of just pasting up prices of groceries and move towards assessing the areas of comparative quality grocery pricing. That is the like-for-like principle that is so often

41 Woolworths, Answers to Questions on Notice (received 11 November 2009), p 4.

42 Mr Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 78.

43 Mr Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 80.

44 Mr Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 82.

discussed. I can give you an example: our Remano basil pesto at \$2.69 a jar is at a 36 per cent discount to the market leading brand. It has 47 per cent basil as opposed to the market leading brand at 27 per cent basil. They are both Australian made. The question is, if you just have prices up, how is the consumer to understand what the offerings are that are available to them?⁴⁵

Cost burdens on retailers

5.51 ANRA argued in its submission that CHOICE's proposal to create a system of centralised real time prices would add significant costs to retailers:

There are some key misconceptions that need to be corrected in any cogent analysis of grocery pricing. Firstly, no retailer has a centralised data system which records in real time the prices of grocery items sold across the chain ... ANRA estimates that compliance with unit pricing has cost the grocery sector approximately \$40m. Provision of real time pricing data would be expected to impose a higher ongoing compliance cost than unit pricing. These compliance costs would need to be passed on to consumers through higher prices.⁴⁶

5.52 ANRA asserted that the pattern of local short-term discounting or sudden shifts in the standard price across retail outlets would render GROCERYchoice inaccurate:

... Shelf prices in individual stores frequently vary from what might be called the standard price. Store managers have the discretion to respond to local competition by marking down products. Store managers may also discount below the standard price to clear perishable products. On a broader scale, a standard price set on one day can be changed across many stores the next day as retailers respond to competition. Thus the standard price is often not the actual shelf price in many stores or may only be valid, for many stores, for a short period.⁴⁷

5.53 Woolworths put forward similar arguments, saying that CHOICE had wrongly assumed that the retailer had:

...a central database on a computer that sits in our head office and can tell us exactly the price of a good as it goes through the register and sells in real time ... We have about six systems that control our pricing in our business and they do not necessarily talk to one another.⁴⁸

5.54 The data feed that would have been required did 'not exist in the IT form and it was going to cost millions of dollars to get that up and running'. Senator Joyce clarified with Woolworths that to build such a system to link up price databases, the

45 Mr Tindal, ALDI, *Proof Committee Hansard*, 6 October 2009, p 86.

46 ANRA, *Submission 11*, p 5.

47 ANRA, *Submission 11*, p 5.

48 Mr Hall, Woolworths, *Proof Committee Hansard*, 28 October 2009, p 18.

initial quote was for 'about \$500 000'.⁴⁹ Even if such a system were built, Woolworths claimed it would 'have no need for it from a business point of view' and the only reason for it would be to support CHOICE's website.⁵⁰

5.55 Associate Professor Frank Zumbo's view was that the argument advanced by the major supermarkets on cost burdens is overstated:

The reality is that that information changes in real time on the company's computer system. The fact that you have a checkout means that that information has to be up to date at the checkout. That information is available in real time at the checkout. That information at the checkout would be uploaded to the head office. How often during the day? I cannot tell you. That is probably commercial-in-confidence information. But I can tell you that it is uploaded and it is probably uploaded very regularly because it helps with stock management. You know what is being scanned out, so that helps you manage your stock purchases. You know what you are selling. So you manage your stock by carefully following the information flows. When the stock comes in, it is loaded in. When the price is put on to the system, when the product is scanned out—all that information is very powerful for the supermarket chains. They will drill down into that information on a regular basis to work out the profitability of individual products. So the information is there. It is uploaded. It is just a matter of providing a public interface between the information that is stored on the supermarket computer systems and the public.⁵¹

5.56 However, he did acknowledge that smaller operators were not equipped with the same sophisticated IT systems as the bigger supermarkets and would not be in the same position to supply information easily.⁵² In its advice to the Minister on possible options for a GROCERYchoice website model, the ACCC had also noted that it was likely there would be a significant burden of data provision for smaller supermarkets, but that 'Coles and Woolworths would likely be able to comply readily with such a data request'.⁵³

5.57 Coles stated at a public hearing that it had 'partial price data centrally on a computer' that was monitored regularly but that it did not monitor real-time price data across all stores.⁵⁴

49 Mr Hall, Woolworths, *Proof Committee Hansard*, 28 October 2009, p 18.

50 Mr Hall, Woolworths, *Proof Committee Hansard*, 28 October 2009, p 27.

51 Associate Professor Zumbo, *Proof Committee Hansard*, 6 October 2009, p 12.

52 Associate Professor Zumbo, *Proof Committee Hansard*, 6 October 2009, p 8.

53 ACCC, Answers to Questions on Notice (received 28 October 2009), 'Memorandum: ACCC Periodic Survey of Grocery Prices', advice from Mr Graeme Samuel to the Hon Chris Bowen MP, 22 February 2008, p 6.

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

5.58 In January 2000, Synovate Aztec, a scan data service provider, won the contract to act on behalf of Woolworths supermarkets in the sale of their (raw) scan data. Aztec claims that:

The services developed as a result of this relationship have revolutionised the use of grocery scan data by retailers and suppliers alike.⁵⁵

5.59 According to Synovate Aztec's website, access to every single transaction that occurs within all Woolworths supermarkets is available through their BasketView service. Customers are able to purchase: state and store level raw data via the web; regional data or store clusters; and control/test store-level analysis.

5.60 BasketView is available to subscribers 'in the shortest possible time frame after the transaction occurs'. Reports derived from the data include:

- penetration/average weight of purchase
- promotional analysis
- promotional analysis by day
- common basket items
- time of day, day of week
- cross promotional impact analysis.⁵⁶

5.61 The wealth of data quickly accessible through Aztec point of sale data seems to contradict the claim put forward by supermarkets that they were unable to provide accurate and timely product pricing information to CHOICE for the GROCERYchoice website. CHOICE claimed it had requested the use of Aztec point of sale data from Coles and Woolworths but the request was declined.⁵⁷

5.62 The committee asked the supermarkets why they wouldn't be able to provide the same pricing data that is available at the point of sale. Their response was:

The only data that Aztec receives is dollars received and units of goods sold. From that data, an average price can be calculated, but this average price will not be the actual shelf price paid by a customer. The average price would be an amalgamation of all the prices that may have applied in a day or a week, including outliers such as clearance prices, scanning errors, etc.

55 Synovate Aztec, 'Data Agency Services', <http://www.aztec.com.au/DataAgencyServices.html> (accessed 20 October 2009).

56 Synovate Aztec, 'Services', <http://www.aztec.com.au/Services.html> (accessed 20 October 2009).

57 CHOICE, *Submission 6*, pp 10–11.

We also note that third party information providers such as Aztec and Nielsen charge for access to their data and reports on the basis that they have invested in the collection and aggregation of the data.⁵⁸

The data provided to third party contractors under legally binding commercial agreements is partial data that is not suitable for on-shelf price comparisons because of local pricing differences.⁵⁹

5.63 The submission from Associate Professor Peter Earl of the School of Economics at the University of Queensland suggested that the lack of uniform pricing across chains was a reason why supermarkets would see provision of real-time price data as onerous. He argued that:

Such price differences are essentially ploys by the stores to maximise returns by price discrimination and the result quite often can be that those who are poor, either in terms of access to transport or time to shop, end up paying more than those who are better endowed with resources.⁶⁰

5.64 He believed that there was a 'strong case' for introducing regulations that require stores to have uniform prices within each urban area, noting that 'if ALDI can do it, their major rivals can, too'.⁶¹ (The Senate Economics Legislation Committee's current inquiry into the Trade Practices Amendment (Guaranteed Lowest Prices—Blacktown Amendment) Bill 2009 is relevant here).

5.65 NARGA disputed CHOICE's claim that the large supermarket chains put pressure on the Government to shut down the website, citing the widespread concern across the grocery retail sector about the feasibility of CHOICE's proposal and its potential cost burdens:

With the possible exception of ALDI, every supermarket chain and the independent sector were united in the view that the task set could not be achieved without significant cost to the industry and would have no identifiable benefit to customers.

... In the case of the independent grocery sector, a very large burden would have fallen upon independent family businesses.

... The average independent grocery business handles about 3000 price changes a week and notification of prices changes on a weekly basis would represent a significant additional workload and cost across 4500 independent stores as a group. These stores are not networked and would have to report price changes store by store. And in any case, the computerised price files used in the independent sector could not isolate shelf prices from other commercial-in-confidence data. The data are not

58 Woolworths, Answers to Questions on Notice (received 11 November 2009), p 4.

59 Coles, Answers to Questions on Notice (received 12 November 2009), p 2.

60 Associate Professor Peter Earl, *Submission 15*, p 2.

61 Associate Professor Earl, *Submission 15*, p 2.

available in the form CHOICE requested and would not be likely to become available in that form.⁶²

5.66 According to the Western Australian Independent Grocers Association:

There was not one retailer who held the information in a form that would be able to be transferred to CHOICE and not one who was willing to do it if the information was to be made available at a cost to the individual owner.

As was pointed out to CHOICE earlier, all independent stores in WA run their own point of sale system that primarily complies with the collection of GST and as such has costs and sells in the file for the calculation of GST and the running of weekly specials which are the life blood of the grocery retail industry. All of this information is of course highly confidential and no business owner would want to share this with competitors or for that matter consumers. Also none of the systems are connected to the internet for data transfer as each system picks up required data on a once a week basis by traditional dial up modem.

Each system uses different product numbers to identify items, and in some cases different descriptions, so there is not even a common thread to the information available in each system.

Simply the data requested by CHOICE was not available from independents in WA who make up in excess of 30% of the market. So to proceed with such a website and think that it would contribute anything was in our opinion not realistic.⁶³

5.67 Tasmanian Independent Retailers said that it would have been burdensome for independent retailers to have provided CHOICE with the information that had been requested, and explained the flexible pricing policy at independent retailers:

... ultimately it is up to the independent retailer to determine at what price point they want to sell a product. In general terms the majority of independent retailers would operate off our host price file. It is generally very competitive in reference to Woolworths and Coles because they are the only ones we have for comparison in Tasmania.⁶⁴

62 NARGA, *Submission 2*, pp 8–9 (see also Master Grocers Australia, *Submission 13*, p 4).

63 WA Independent Grocers Association, *Submission 3*, p 3.

64 Mr Hinchcliffe, Tasmanian Independent Retailers, *Proof Committee Hansard*, 6 October 2009, p 97.