CHAPTER 5

USE OF MARKET POWER

…free competition is worth more to society than it costs.[1]

Background

5.1 Market power enables a firm to behave persistently in a manner different from the behaviour that a competitive market would enforce on a corporation facing otherwise similar cost and demand conditions.[2] That is, market power is the ability of a firm to profitably divert prices, quality, variety, service or innovation from their competitive levels for a significant period of time.[3] The ACCC is of the view that the major chains have a substantial degree of market power.[4]

5.2 A firm's market power can be manifested on the supply side through increased prices and lower quality/service to consumers, or through predatory conduct with respect to its rivals. On the demand side, a firm's market power can be manifested through lower prices being paid for inputs, and reduced terms and conditions for its suppliers; or the ability to extract more favourable terms than those of its rivals.[5]

5.3 Lawful means of obtaining a powerful position in a market include taking advantage of superior efficiency, superior technology or superior products. The Trade Practices Committee of the Law Council of Australia state that the use of such means to achieve an oligopolistic position should not be illegal, nor should the legitimate acquisition or possession of any particular market share in a market be deemed to be illegal, irrespective of the causes.[6]

Market cap

5.4 The independent sector called for the market share of each major chain to be capped at 25 per cent, with divestiture taking place within 5 years where any one chain exceeds that figure. The Committee therefore devoted a significant amount of time examining the merits of this proposal.

5.5 NARGA's national spokesman, Mr Alan McKenzie, said:

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1 Oliver Wendell Holmes, *Vegelahn v Guntner*, 167 Mass. 92, 44 N.E. 1077, 1080 (1896).

2 Kaysen and Turner, *Antitrust policy* (1959), quoted with approval by Justice Dawson in *Queensland Wire Industries v BHP* (1989) ATPR 40-925.

3 Australian Competition and Consumer Commission, Submission 191, p 26.

4 Australian Competition and Consumer Commission, Submission 191, pp 28-29.

5 Australian Competition and Consumer Commission, Submission 191, p 26.

6 Law Council of Australia, Submission 283, p 3.

> If the government fails to intervene, the market share of the independent retailers will continue to be eroded, to the point where the entire sector will be threatened with irreversible market failure due to the loss of critical mass. The consequences of such an outcome will be severe and, in particular, will bring great hardship to rural Australia. At 80 per cent of the retail grocery market, when do we say enough is enough?[7]

5.6 NARGA put forward preliminary draft amendments to the *Trade Practices Act*, requesting that they be forwarded to the ACCC for review. NARGA's proposal is based on the market share measure of 105 items taken at the point of sale scan data or warehouse and distribution centre data relating to dry/packaged goods (see figure 5.1) *or* as determined by the ACCC.[8] Mr McKenzie said that it would be 'very representative, not highly representative, of the total volume going through distribution warehouses'.[9]

5.7 The Committee put NARGA's proposals to ACCC Chairman Professor Allan Fels. He said:

> The Commission is not keen on the cap. We have quite a bit of hesitation in supporting the cap. It is, firstly, not likely to be beneficial to consumers. In at least some cases, some areas or some product markets, it does mean that they may be condemned to supply by inefficient, high cost operators. Also, it is not even necessarily good for independents because it frees them from the shackles of competition by major players who may be entering the market. On the other hand, there is certainly a group of independent people who feel that, at some stage of their business career, they would like to be able to sell out to a major.[10]

5.8 Successful independent retailer Mr Roger Drake owns 21 stores in South Australia. Mr Drake confirmed Professor Fels' last point:

> For me, the best thing would be to have no cap, and sell to Woolworths or Coles – not a problem. Without question, I would not need to be sitting at this table today. I would not have a worry in the world. That would be my best option. My family is working in the business, my wife and my children. What is best for Australia long term? That is what we are about, surely – not what is best for Coles Myer, or Woolworths, what is best for me and what is best for Australia.[11]

5.9 The Committee was surprised that the Australasian Association of Convenience Stores Inc. (AACS), who compete vigorously with the major chains, is not in favour of a market cap. In describing the nature of a convenience store, Mr

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7 *Hansard*, Canberra, 12 July 1999, p 1031.

8 National Association of Retail Grocers of Australia, Additional Information 201B, pp 1-2.

9 *Hansard*, Canberra, 12 July 1999, p 1032.

10 *Hansard*, Canberra, 13 July 1999, p 1158.

11 *Hansard*, Adelaide, 8 April 1999, p 225.

Barry Anderson, Executive Director, said that they are 'today's corner store, corner supermarket, general store in the country'. Mr Anderson said that convenience stores directly compete with the major chains and the independents, and are expanding at the rate of about 11 per cent per annum.[12]

5.10 Mr Anderson told of past struggles in getting local government approval to open stores:

> Local government was pretty much influenced by whom? The existing small business. What would happen is that we would put in an application to council and we would get knocked back. We would take it to the land and environment court or the court of appeal or whatever and we would win it. It was just standard. It was a political situation that existed at the grassroots.[13]

5.11 Mr Anderson raised concerns about the motives of some:

> …and as we looked through the submissions that have been made and some of the statements that have been reported in the press – that is pretty much the same people, by and large, who opposed us who are now talking about doing something about the supermarkets. [14]

5.12 Mr Anderson is concerned that a market cap would effectively 'regulate the consumer':

> Those people who opposed us in those days have been proven, much to their embarrassment, very, very, wrong. Our stores are exceptionally supported by the community. Each store averages about 1,000 customers a day. We are expanding at a great rate. We have tremendous support. It has just proven the fact that retailing, if it is dynamic and if it appeals to the consumer needs and if it reaches consumer needs, can fulfil those needs and be successful.[15]

5.13 The Committee heard evidence from two market analysts on the impact that a market cap would have on share prices. Mr Richard Cahill, a retail sector analyst at international investment bank ABN AMRO, said that:

> As with any business, the profitability of the grocery retailers is a function of the volumes they are selling, and they are sensitive to the level of those volumes. Clearly, any reduction in the volumes sold by Woolworths or Coles, for example, would put some downward pressure on their margins and would tend to be a negative impact on their profitability. The opposite

12 *Hansard*, Canberra, 13 July 1999, p 1180.

13 *Hansard*, Canberra, 13 July 1999, p 1181.

14 *Hansard*, Canberra, 13 July 1999, p 1181.

15 *Hansard*, Canberra, 13 July 1999, p 1181.

> clearly would apply to any of the retailers who picked up market share or volume.[16]

5.14 Mr Cahill said that if there were market caps and enforced shedding of volume for the major retailers, then there would be a greater uncertainty applied by potential investors to the price and rating of the shares of the major chains.[17]

5.15 Mr Glynn Meth, an Associate Director at Rothschild Australia Asset Management, also predicted that a cap would impact on the risk factor applied to the shares, and that this would adversely affect not just the share price, but the market as a whole.[18] Mr Meth pointed out another implication if a market cap were applied:

> …if there was a forced divestiture the price of outlets would obviously decrease over that period of five years. That would have a positive impact for Dairy Farmers International [the owners of Franklins] – they would be able to pick up the outlets at reduced prices. But then there would be a negative impact for essentially the other two majors – and also for the independent property owners who own the sites on which they are situated and also any independents over that period of time who were actually wanting to sell out their retail operations.[19]

5.16 Mr Meth told the Committee of a possible consequence of a market cap for consumers:

> …if you have, further down the track, three players at the 25 per cent level and each of the players is trying to increase their returns to their shareholders, we believe there would be an incentive for there to be actually less competition, basically pushing up the prices.[20]

5.17 According to Mr Meth, the consequence of a market cap would also see the major chains more vulnerable to foreign takeover:

> …if it had an impact on the market capitalisation of Woolworths and Coles Myer, an outsider could possibly see it as an opportunity to take out one of those two chains.[21]

5.18 Mr Cahill commented on the problems associated with capping firms in a dynamic market:

> Say, for example, you decide to have a maximum of 25 per cent of the market being held by one of the participants and you apply that on a State-

16 *Hansard*, Canberra, 13 August 1999, p 1243.

17 *Hansard*, Canberra, 13 August 1999, p 1244.

18 *Hansard*, Canberra, 13 August 1999, pp 1245-46.

19 *Hansard*, Canberra, 13 August 1999, p 1244.

20 *Hansard*, Canberra, 13 August 1999, p 1246.

21 *Hansard*, Canberra, 13 August 1999, p 1247.

> by-State basis. In the major Australian States there tends to be only four competitors in grocery retail and wholesale, so you would always end up with a situation where it is going to be the existing four competitors with 25 per cent, each totally unable to actually increase or decrease their market share. You would achieve a situation which would be unworkable.[22]

5.19 Mr Meth questioned the effectiveness of a market cap, given geographic factors, and observed the somewhat arbitrary nature of the divestiture of stores:

> How does it apply geographically? Do you actually have a solution if the supermarkets have to sell down to 25 per cent yet they maintain a concentrated area in a locality and Woolworths or Coles Myer dominates a local area? Have you achieved your objective? If you have not, that creates further uncertainty in the market that you might do something again further down the track.[23]

5.20 ACCC Chairman Professor Fels also pointed out that there are significant mechanical problems associated with a market cap:

> There are problems about defining it. There are problems about policing it. There are problems about what happens if there is a strong case for the expansion by an established player into a particular area. Does that mean that they could only do so if they sold off some other part of their business, which might not be good for the area they are withdrawing from? It could also affect their incentives. In other words, if in going into an area you knew that you would have to give up something, then that might reduce the likelihood that you would enter a market that it would normally make a lot of sense to enter into. We also think that is the sort of law people spend a lot of time trying to think up ways around, often inefficient and artificial means of getting around the law.[24]

5.21 The issue of a market cap has been considered in the United States (US). A White House Task Force Report, published in 1968, recommended that a combined market share of 70 per cent by four or less companies be presumed to conclusively prove anti-competitive effects, and that companies holding such a share would have the onus of proving that de-concentration would reduce the efficiency of the industry.

5.22 The Committee notes that the US legislators rejected the Report due to recognition of the need for scale efficiencies to be internationally competitive, and various practical issues, which could not be resolved.[25] The Committee also notes that no other OECD country has enacted legislation capping the market shares of grocery retailers.

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22 *Hansard*, Canberra, 13 August 1999, p 1246.

23 *Hansard*, Canberra, 13 August 1999, p 1250.

24 *Hansard*, Canberra, 13 July 1999, p 1158.

25 Woolworths, Submission 229A, pp 139, 144.

5.23 The Committee believes that the arguments put before it in favour of a market cap must also be balanced against:

- Davids' recovery from setbacks suffered over the past few years due mainly to management problems.[26] Davids' share of the dry/packaged goods market dropped from 19.2 per cent in 1996 to 14.9 per cent in 1998.[27] Davids encountered considerable difficulties in becoming an effective 'fourth force' and this may be reflected in its decline in market share during that period.[28]
- The recent entry of Caltex is seen by the ACCC as a significant development in the supermarket sector. In February 1999, Caltex announced its opening of a supermarket in Sydney under the IGA Everyday banner. It also confirmed it would launch stand-alone convenience stores, without its traditional petrol offering, within months. As with Woolworths entry into petrol retailing, the ACCC believes that the entry of Caltex may signal a prospective increase in the competitiveness in the retail sector;[29] and
- The arrival of German-based retail giant Aldi, which has around 4,700 stores worldwide. Aldi has recently established a head office in Sydney and, although planning is currently at an early stage, it has long-term intentions with respect to the Australian grocery market.[30]

5.24 With new entrants beginning to position themselves in the market, the Committee is of the view that there would be no guarantee that a mandatory store sell-off by, say, Woolworths, would be taken up by the current independent sector.

5.25 Although the imposition of a market cap has strong support from small retailers in various parts of Australia, the Committee sees major difficulties, such as:

- the inconclusive and varying nature of market definitions;
- the likelihood of avoidance schemes arising;
- a restricted buyers' market for independent retailers wishing to sell their stores, with subsequent reductions in value;
- the opportunity for foreign retailers to enter the market to the detriment of Australian companies;

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26 *Hansard*, Melbourne, 7 April, p 135.

27 AC Neilsen, Additional Information 165A, p 7.

28 Australian Competition and Consumer Commission, Submission 191, p 18.

29 Australian Competition and Consumer Commission, Submission 191, p 23.

30 Information received by the Committee, from Mr Michael Kloeters, Managing Director, Aldi (Australia), August 1999.

- the possibility that major chain employees would transfer from higher paying jobs to lower paying jobs;[31]
- the possible devaluation of shares owned by ordinary Australians; and
- negative market implications beyond the retailing sector.

5.26 The Committee views NARGA's proposal for a market cap as one that is based on figures, not on competition. With the grocery market continuing to evolve and expand, driven by consumers, the Committee is of the view that a market cap would be extremely interventionist, unworkable and detrimental to consumers.

Divestiture

5.27 The *Trade Practices Act* permits divestiture only in the context of the powers to prevent mergers and acquisitions under section 50 of the *Trade Practices Act*. The ACCC, or any party who can show that it has a relevant interest, may seek divestiture under section 81 of the *Trade Practices Act* within the first three years after a merger, but not otherwise.[32] The power of divestiture is therefore limited, although the Committee is aware that there is some legal opinion to suggest that the *Trade Practices Act* already allows for divestiture under section 80, given the flexibility it gives the Court to grant 'an injunction in such terms as the Court determines to be appropriate'. However, the contrary view is that, since section 81 provides for divestiture only in merger cases, it was not intended that it should also be available as an additional remedy under section 80.

5.28 Divestiture is available to US courts to break up existing monopolies either in the context of an anti-competitive merger, or for breaches of the US antitrust laws.[33] For example, in 1911 the Standard Oil monopoly was broken up into competing units spread around the country.

5.29 Professor Fels said that the US experience on divestiture has 'not been that bad', but pointed out that opinion is divided on the merits of the US retaining their divestiture laws:

> There is also a contrary view that divestiture has not really worked well. I am reporting, frankly, the views of Professor F.M. Scherer of the Harvard School of Economics who has written about this. In Chicago, they were more sceptical about the whole thing. Professor Posner, for example, was sceptical about the lengthy delays, the impracticalities, the difficulties of finding buyers and so on.[34]

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31 Mr Joseph De Bruyn, National Secretary-Treasurer, Shop Distributive and Allied Employees Association, *Hansard*, Sydney, 15 April 1999, p 331.

32 Professor Allan Fels, Chairman, ACCC, *Hansard*, Canberra, 13 July 1999, p 1165.

33 For example, the *Sherman Act* or the *Clayton Act*.

34 *Hansard*, Canberra, 13 July 1999, p 1164.

5.30 In December 1991 the Senate Standing Committee on Legal and Constitutional Affairs presented its report *Monopolies and Acquisitions: Adequacy of Existing Legislative Controls.* That Committee considered and rejected a proposal for divestiture to be used as a remedy in cases of serious and persistent misuse of market power.[35] However, a dissenting report by two of the eight Committee members recommended that divestiture should be available as a remedy.[36]

5.31 Compared to the US, the Australian economy and population is small, with goods and services linked across a geographically diverse and large continent. For this reason, the Committee acknowledges the current structure of the grocery retailing sector, and the importance of economies of scale and scope to the Australian economy. The Committee is therefore of the view that, at this stage, the break up of economies of scale and scope, such as an order for Woolworths, Coles or Franklins to divest stores, would lead to an unpredictable result, and may undermine the benefits and efficiencies brought about by vertical integration. The Committee notes that divestiture, as a 'back up' measure, has been used very sparingly in the US.

Creeping acquisitions

5.32 'Creeping acquisitions' refers to the long-term strategy of a major chain increasing its market share through numerous individual acquisitions of other existing supermarkets, rather than by building new stores or expanding existing stores.

5.33 Creeping acquisitions are unlikely, under most circumstances, to breach the *Trade Practices Act*, because of the limited impact on the market caused by each individual transaction.[37] The ACCC has commented that the difficulties in establishing a breach of the law relate to the very small market shares generally being acquired, and the question therefore of whether the competitive effect is substantial:

> Of the acquisitions that the Commission has considered, none have been found to breach the Act. Under the previous dominance test that applied to mergers, the Commission would face a similar problem in that an accretion of such a small market share would be unlikely to create a dominant position.[38]

5.34 According to NARGA, the rise to market dominance by the major chains has been built on an aggressive program of acquisitions of successful independent stores and chain operations, with little or no intervention by the ACCC. NARGA said that

35 Senate Standing Committee on Legal and Constitutional Affairs, *Monopolies and Acquisitions: Adequacy of Existing Legislative Controls,* December 1991, p 99.

36 Senate Standing Committee on Legal and Constitutional Affairs, *Monopolies and Acquisitions: Adequacy of Existing Legislative Controls,* December 1991, p 139.

37 Section 50 of the *Trade Practices Act* generally prohibits mergers or acquisitions which would have the effect or likely effect of substantially lessening competition in a substantial market for goods or services.

38 Australian Competition and Consumer Commission, Submission 191, p 32.

around 85 stores have been bought by the chains since 1995, comprising over $1 billion of retail turnover:[39]

> Independent stores would normally change hands on 3 times EBIT or 5-8 times average weekly turnover. For acquisitions deemed strategic, the chains have been known to often pay up to 16 times turnover. In Western Australia, Woolworths recently has offered 28 times EBIT for a leading independent.[40]

5.35 The Committee knows of no specific study that has been carried out on stores purchased and prices paid to determine the validity of NARGA's claims. However, anecdotal evidence suggested that the major chains do seek to acquire successful independent stores. Mr John Brownsea, Executive Director, SA Small Retailers, alleged that there is a predatory process in place, where even the best retailers may not survive:

> That is a major concern to us because in some cases people will be taken out of business whether they want to be or not, simply because they recognise that they may have no choice, even though they might be trading well.[41]

5.36 Victorian independent retailer Mr Ray Veal told of the dilemma when faced with the option of selling out to a major chain or not:

> The Festival store down there (Lakes Entrance) was offered quite a handsome sum, but it had been a family business and they said, 'No, we will keep it in the family and keep working. Thank you very much for your offer.' Safeway virtually bought the block across the road, built their own store, squeezed him out and ultimately offered him about two-thirds of their original offer as a goodwill gesture, simply to buy his liquor licence. If you do not sell out to them, they will just open up in opposition to you – squash you out.[42]

5.37 Mr Barry Alty, Managing Director of independent wholesaler FAL, said that in recent times the major chains have found some difficulty in establishing greenfield sites, and have turned to the acquisition of successful independents to expand their market share.[43]

5.38 Similarly, Mr John Berry, Executive Chairman of Foodlink Ltd, believes that each of the three major chains continually seek to increase their market share to satisfy investors.[44]

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39 Mr Alan Mackenzie, Director/National Spokesman, National Association of Retail Grocers of Australia, *Hansard*, 6 April 1999, p 57.

40 National Association of Retail Grocers of Australia, Submission 201, pp 87-88.

41 *Hansard*, Adelaide, 8 April 1999, p 176.

42 *Hansard*, Melbourne, 7 April 1999, p 104.

43 *Hansard*, Perth, 9 April, 1999, pp 304-305.

44 *Hansard*, Brisbane, 16 April 1999, p 453.

5.39 Despite this, Woolworths Chief Executive Officer, Mr Roger Corbett, told the Committee that store acquisitions have not been a significant factor in Woolworths' growth:

> I can say to you that acquisitions have been a relatively small part of our growth…acquisition growth has been one per cent or one and a half per cent – something of that order.[45]

5.40 Similarly, Mr Alan Williams, Managing Director of Coles Supermarkets, said that Coles' growth has been mainly due to store improvements and customer focus:

> If our sales trend last week was 10 per cent up on last year, and we took off the sales of the small businesses that we had bought, our sales trend last week would have been about 9.5 or 9.6. So it is a very small component of what has happened in our market share build.[46]

5.41 There was a degree of equivocation amongst those giving evidence as to whether there should be legislative action regarding creeping acquisitions:

> I have a bit of a problem myself sitting here saying we need to do something about this because I believe in free enterprise. My personal beliefs are that, if you have got a shop, it is your shop and you should be allowed to do what you want with it…I can see big problems, particularly in the rural area of the supermarket industry, if we do not do something.[47]

5.42 Currently, there is no obligation to notify acquisitions to the ACCC before they take place. The Law Council of Australia believes that voluntary notification 'has and continues to work well':

> So far as the Law Council is concerned, there is no evidence of any significant problems of enforcement which has arisen for the ACCC which would justify a mandatory system of pre-notification. Such systems are inherently complex to devise and administer, and greatly increase the workload and cost to both parties considering proposals for acquisitions, as well as the ACCC. Much of the difficulty lies in devising a system which filters out those matters that do raise competition concerns, from the vast majority of proposals which do not.[48]

5.43 Mr Brian Kewley, Chairman of the Law Council's Trade Practices Committee, told the Committee that:

> I think it would be very unlikely that any of the major chains would make an acquisition of any size at all without notifying the Commission. I am sure

45 *Hansard*, Canberra, 6 April 1999, p 15.

46 *Hansard*, Canberra, 6 April 1999, p 42.

47 Mr Richard Dymond, Owner / Proprietor, Toodyay Supermarket, *Hansard*, 9 April 1999, p 245.

48 Law Council of Australia, Submission 283, p 10.

> the Commission is watching them very closely and they would be concerned. They would look very closely at every acquisition.[49]

5.44 The Committee asked the ACCC to respond to the Law Council's position on mandatory notification of acquisitions. Mr Hank Spier, General Manager, said:

> The Law Council gave you a two pronged answer: firstly, they thought in most cases that there was notification; but secondly, in many cases there was no likelihood of a breach, in their view, so there was no need for notification. A fair few notifications come to us – I mentioned that Coles Myer seemed to come to us on most of those purchases, but others do not…Those that do come to us normally come fairly early in the piece but often they are urgent.[50]

5.45 The major chains have indicated to the Committee that they do not want mandatory notification of acquisitions. They are concerned about long delays, and pointed out that the seller often wants to get out and do other things. When asked to comment on this, ACCC Chairman, Professor Allan Fels, said:

> In the case of the particular acquisitions you have in mind, they are not done that rapidly. There are periods of negotiation, hitting a price, and all the other conditions. That usually takes quite a lot of time. They do not rush down there in the morning and buy half a dozen supermarkets that are being sold off around Australia. I would be sceptical on that time factor.

5.46 Professor Fels said that the ACCC get through easy mergers in two weeks or less, with the more complex ones taking no more than six weeks – 'unless we get held up by the parties'.[51]

5.47 The Committee notes that the ACCC has reviewed its merger statistics, which contain a detailed description of merger review timing. In 1997-98, 68 per cent of matters were cleared in less than 3 weeks and a further 16 per cent of matters were cleared in 4-6 weeks. In 1998-99, 58 per cent of matters were cleared in less than 3 weeks and a further 23 per cent of matters were cleared in 4-6 weeks.

5.48 More complex matters which require significant analytical work relating to the application of the Merger Guidelines can take longer to assess. The ACCC notes that in many cases the timeframe is extended because parties have delayed providing information that the ACCC has requested as being necessary for it to conduct its analysis.

5.49 The ACCC has suggested that mere voluntary notification can make it difficult for it to subsequently deal with the issue.[52] Professor Fels said:

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49 *Hansard*, Canberra, 13 July 1999, p 1151.

50 *Hansard*, Canberra, 13 July 1999, p 1171.

51 *Hansard*, Canberra, 13 July 1999, pp 1169-70.

52 Australian Competition and Consumer Commission, Submission 191, p 31.

> We see some merit in having notification. A voluntary notification can happen at the present time, but it may not. So it is a question of whether one would want to make it mandatory, whether one is sufficiently concerned about this issue that it is at least looked at in advance by the ACCC.[53]

5.50 Each acquisition of an independent store by a major chain has the effect of lessening the market share of the independent sector. This effectively reduces warehouse volumes and the buying power of the independents. The Committee considers that mandatory notification may expose more clearly whether a major chain is implementing a deliberate strategy of creeping acquisitions.

Manufacturers and trading terms

5.51 Trading terms set out various discounts and allowances paid by manufacturers to its customers. The wholesaler or major chain will negotiate specific trading terms with all manufacturers which supply it. These terms cover settlement discounts, warehouse allowance, quantity buy allowances, shelf positioning and ullage (an allowance given by manufacturers for shrinkage and damage). In addition, case deals (contributions to support a particular product promotion) are paid by a manufacturer.[54]

5.52 Before the advent of the major chains goods were supplied to wholesalers at a wholesale price. As the chains developed, they used their buying power to pressure manufacturers to supply them at wholesale prices instead of retail prices. They argued that the wholesale price differential was actually a distribution allowance and as the chains operated distribution centres, just the same as wholesalers, they were entitled to get goods at the same price. The majority of manufacturers succumbed to either the logic of this argument or the market power of the major chains. Hence, the major chains use their buying power to extract the best deal possible from suppliers.

5.53 Similarly, independent wholesalers such as Davids use the combined volumes of their customers, the independent retailers, to do likewise. Wholesalers therefore compete directly with the major chains on price and trading terms.

5.54 Trading terms are also influenced by the manufacturer's brand strength. A strong brand name enables a manufacturer to negotiate from a stronger position. However, in most cases, the power derived from brand strength is modified by manufacturers' reliance on the custom of the major chains, who account for a large share of total food product purchases.[55]

5.55 Mr Andrew Reitzer, Chief Executive Officer of Davids, believes that it is essential for Davids to maintain a 'critical mass', and sees the current situation as hanging in the balance:

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53 *Hansard*, Canberra, 13 July 1999, p 1169.

54 Australian Competition and Consumer Commission, Submission 191, p 11.

55 Australian Competition and Consumer Commission, Submission 191, pp 11-12.

> You try to put pressure on that manufacturer and then he turns around and says. 'The turnover you guys are doing as independents is marginal. I am not prepared to invest. I am not prepared to give you marketing money and I don't want to be part of your TV advertising. It is worthless because the volume you are going to do as a result of it is nothing.' I think we are very close to that in this country at the moment.[56]

5.56 Mr John Cummings, Vice-President of the Western Australian Independent Grocers Association, explained to the Committee that when volume falls below the critical mass warehouse efficiencies fall, economies of scale fall and ultimately, the costs that wholesalers charge the independents rise:

> If they rise, we then must put these costs on to our customers, which means that some of our customers will go to Coles or Woolworths, our competitors, and which means that the mass will fall again, the warehouse withdrawals will fall, the economies will fall, the prices will go up and it will be a self-accelerating circle down which we go. Through absolutely no fault of any individual who owns a supermarket today, he will go broke without a chance of even having a look-in. It will not be because of his inefficiencies, it will not be because he cannot run a business: it will be simply because he cannot source his product at the right price.[57]

5.57 Western Australian independent retailer, Mr Neville Gale, believes that the superior buying power of Coles and Woolworths enables them to receive more favourable trading terms than the independents, which effectively tilts the playing field in their favour.[58] Mr Gale maintains that their demands are met by the suppliers out of fear of retribution – actioned by range reductions, relocation to slower selling shelves or a lack of promotional support:[59]

> The trading terms are remarkably different. We are dealing in an industry that works on two or three per cent profit and yet the difference in trading terms is often far greater than that. There is as much as five, six, or eight per cent difference in trading terms. How can an independent like me compete against all of that: the sites, the capital, the trading terms and the advertising power, which comes as a result of those trading terms, and then what I believe to be unconscionable behaviour – predatory pricing.[60]

5.58 Mr Gale sees nothing unconscionable about the major chains' getting better trading terms from manufacturers, but maintains that a level playing field must be set in place to enable independent retailers, through their wholesalers, to negotiate exactly the same terms as the major chains. However, Mr Gale acknowledged that part of the problem is that, while the volume of stock delivered to an independent supermarket

56 *Hansard*, Melbourne, 7 April 1999, p 126.

57 *Hansard*, Perth, 9 April 1999, pp 289-290.

58 Advantage Supermarkets (WA), Submission 10.

59 Advantage Supermarkets (WA), Submission 10, p 3.

60 *Hansard*, Perth, 9 April 1999, p 247.

may be comparable to that delivered to a major chain supermarket, none of the independent wholesalers operate nationwide.

> I do the same volume on a store level, but of course nationally Coles versus the total volume of Advantage is vastly different, and that is what the suppliers basically use as their argument.[61]

5.59 Procter and Gamble (P & G), one of the world's leading packaged goods manufacturers, maintains that it treats all customers equitably and without discrimination.[62]

5.60 The following are specific elements of P & G's trading terms:

- List Price – P & G have one price list for all competing customers in Australia. Only cost justified streamlined logistics discounts are deducted from this common list price.
- Streamlined Logistics – This defines the way P & G manage the transactions between itself and its customers relative to physical product, information and financial flow. This program seeks to ensure that P & G's customers know all their options and that the discount structure is cost justified.

  For commercial reasons, P & G were reluctant to disclose their actual discounting terms. However, the following example indicates the general discounting structure it applies:

  Example: Where a truckload of goods contains 500 cases of Vicks, a customer would receive a certain percentage discount for a *minimum* order quantity of 50 cases (10 per cent of the truckload), which is sold at a list price. If the customer were to order 100 cases of Vicks (20 per cent of the truckload), the next percentage discount level would apply, and so on until a *maximum* percentage discount is reached (say, an order for 400 cases or 80 per cent of the truckload).

- Prompt Payment Discount and Payment Terms – Cash discounts and payment terms are the same across all P & G's customers in Australia.
- Business Development Fund – This fund is used to work with P & G's customers and influence shopper behaviour. It is available to all customers who meet defined participation criteria.
- Temporary Price Reduction – This is made available to all P & G's customers. It is consistent, based on a percentage of sales. P & G intend to eliminate this element of their trading terms.[63]

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61 *Hansard*, Perth, 9 April 1999, p 252.

62 Procter and Gamble, Submission 304, p 2.

63 Procter and Gamble, Submission 304, p 3.

5.61 P & G offer volume discounts equally across the board. Mr Frank Tylman, Managing Director of P & G Australia, told the Committee that:

> We offer the same terms to all of our customers that meet the same criteria. When you speak of volume discounts, we have certain costs that we incur in the supply chain. For instance, it costs us more to ship 50 cases of product than to ship a whole truckload and we know what those costs are – we do activity based costing – and we will pass those on to our customers.[64]

5.62 Mr Tylman said that P & G's payment terms are the same for all customers, provided they meet certain 'credit check' criteria.[65] Mr Tylman also said that P & G does not get involved in rebates to stores for shelf positioning.[66]

5.63 Having received no evidence to the contrary, the Committee notes that P & G's relationship with its customers appears to be healthy and transparent.

5.64 Kraft Foods told the Committee that it operates on the philosophy of an open and transparent selling environment, with a level playing field of opportunity for all its customers. Mr Roderick Moffatt, Sales Director of Kraft Foods Ltd, said:

> Our principles are: any customer may purchase any Kraft product upon meeting the criteria of our pricing policy; any customer is entitled to the applicable quantity discounts relating to order size; the discounts applicable to parcel buyers reflect the savings achieved in the economies of scale between the various order sizes; and Kraft uses our customer distribution networks to efficiently distribute goods to individual stores.[67]

5.65 Mr Moffatt said that trading terms are in place with each customer, and are based on customer performance criteria, negotiated in a competitive environment:

> We have developed pricing and allowance protocols which are open to all customers who have the opportunity to purchase products on the same terms meeting our purchase requirements.[68]

5.66 Mr Moffatt explained that trading terms and pricing policy were two separate issues. Kraft's pricing policy is based on a volume discount, for example:

- 50 – 100 cases attracts a 5 per cent discount;
- 100 – 200 cases attracts a 10 per cent discount;
- 200 – 750 cases attracts a 12.5 per cent discount; and

64 *Hansard*, Canberra, 12 July 1999, p 1012.

65 *Hansard*, Canberra, 12 July 1999, p 1013.

66 *Hansard*, Canberra, 12 July 1999, p 1013.

67 *Hansard*, Canberra, 13 August 1999, p 1203.

68 *Hansard*, Canberra, 13 August 1999, p 1203.

- 750 cases attracts the maximum 13.5 per cent discount.[69]

5.67 Trading terms are made up of many elements, including settlement discounts and promotional allowances. However, even taking all these into account, Mr Moffatt said:

> …When you take them all through to the bottom line, they are basically the same with all customers.[70]

5.68 Mr Bradley Alford, Managing Director of Nestle Australia Ltd, similarly advised the Committee of the volume discounts and trading terms applying to its customers:

> We endeavour to offer consumers as many opportunities as possible to purchase a broad array of products, which is one of the keys to our success. Consequently, we work closely with all of our customers and treat them equitably to achieve this outcome. The existence of a vibrant, competitive retail sector in Australia is clearly in the long term interest of Nestle.[71]

5.69 The Commercial Director of Uncle Ben's Australia, Mr Grant Glinski, told the Committee that its trading terms and promotional agreements are uniformly available to national chains, independents, wholesalers and retailers:

> Trading terms are absolutely uniformly applied. We are quite happy to supply them to anybody who comes to us and asks to buy from us. We are quite happy to provide them to you. They are completely transparent.[72]

5.70 Mr Enzo Allara, Chairman of Unilever Foods, said that his company's relationship with customers 'relies on trust, a transparent pricing and selling environment, and equal opportunity to all customers to purchase our products'.[73] Mr Allara said that, depending on the food categories, such as Flora, Miracle etc., trading terms may differ, but they all are available to the same level to all customers. He added:

> We will obviously try to influence where we are located on the shelf. We do not pay for being on the shelf, but we try to influence where the product is located.[74]

5.71 Mr Allara believes that, because of the interdependence of retailers and suppliers, transparency is evident:

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69 *Hansard*, Canberra, 13 August 1999, pp 1206-07.

70 *Hansard*, Canberra, 13 August 1999, p 1206.

71 *Hansard*, Canberra, 13 August 1999, p 1210.

72 *Hansard*, Canberra, 13 August 1999, pp 1221 and 1225. Uncle Ben's specific terms of trade are contained in Submission 332.

73 *Hansard*, Canberra, 13 August 1999, p 1233.

74 *Hansard*, Canberra, 13 August 1999, p 1235.

> There is a clarity of trading terms. It is almost like self-regulation is happening in this area already. It is by default, because nobody wants to get out of bed with one big customer.[75]

5.72 By contrast, many small retailers complained that the manufacturer of the biggest selling item in Australia – Coca-Cola – does not offer 'like customers like terms'. In other words, Coca-Cola was said to be using its market power to selectively choose which of its customers gets the better deals.

5.73 During the course of the inquiry, many were reluctant to give evidence in public for fear of commercial retribution. The Committee therefore took *in camera* evidence from a number of small retailers.

5.74 One small retailer told the Committee that a 1.25 litre bottle of Coca-Cola, purchased direct from Coca-Cola, costs $1.80, whereas Coles, Woolworths and Franklins have it on special every week or every fortnight for $1.30. A lot of small retailers are therefore forced to buy their Coca-Cola from the major chains, where it is $6 per box cheaper. They cannot afford not to stock it.

5.75 In addition, the major chains are said to benefit from 'shelf space' and promotional deals. For example, it was claimed that, whilst the base price of Coca-Cola might be, say, $1.30, the chains get the equivalent of another 30 cents per bottle for display and promotion, so they are only paying a net price of $1 per bottle. Small retailers argue that Coca-Cola should offer these deals to everybody, not just the major chains.

5.76 The Committee asked Mr Jeremy Lowes, General Manager of Coca-Cola Amatil's Sales and Distribution division, whether he thought it unfair that some small retailers throughout Australia are forced to buy their supplies from Coles or Woolworths, rather than their wholesaler. Mr Lowes said:

> No. We need to understand the whole business picture. In fact, I would like to say that we create a very viable commercial environment for all our customers.[76]

5.77 Coca-Cola's marketing strategy divides the market into two outlets:

- food stores; and
- cold drink.

5.78 Food store outlets include Coles, Woolworths, Franklins and the supermarket banners supplied by Davids and FAL. Cold drink outlets make up the balance of Coca-Cola's customer base, and include convenience stores (including corner stores),

75 *Hansard*, Canberra, 13 August 1999, pp 1239-40.

76 *Hansard*, Canberra, 12 July 1999, p 976.

take away food shops, quick service restaurants, petroleum outlets, cinemas, catering, licensed premises etc.[77] Mr Lowes said:

> In food stores the primary products sold are what we call multiserve packages, or packages from which multiple servings can be made, and these packages are sold primarily at ambient temperature or warmth; 97 per cent of volume sold through food stores is sold warm. Alternatively, in the cold drink market, most of the business is in immediate consumption packages, individual serving packages, and more than 90 per cent of this business is sold ice-cold for immediate refreshment.[78]

5.79 Coca-Cola's pricing is therefore structured by pack and retail channel. In essence, it has two net prices, and has a different pricing attitude towards wholesalers, preferring to deal directly with all of its customers:

> Wholesalers supplying our customers is not our preferred option and the pricing reflects that. That is the issue of Davids per se.[79]

5.80 Mr Lowes explained that the Coca-Cola system invests significant money in driving category growth or creating new business, and he believes that everyone benefits:

> We benefit of course, the Coca-Cola company benefit and in turn our retailing partners. That investment extends to advertising, et cetera, but also to a significant investment in cold-drink equipment in the marketplace, primarily outside of food stores. We have 140,000 pieces of cold-drink equipment – vending machines, glass fronted refrigerators, fountain equipment – and that the investment at purchase cost is valued at half a billion dollars.[80]

5.81 However, Cooma small retailer Mrs Terry Edwards said:

> Coke have given me a fridge, and I have to stock it with 80 per cent of their goods. Coke knows that I do not buy my Coke from them, and I have told them that I cannot afford it because their prices are too high.[81]

5.82 With regard to shelf positioning, Mr Lowes said that it occurs 'through the influence we can bring to the table in our negotiations':

> The value of the brand, the potential the brand has to grow their business. We bring that potential to the table.[82]

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77 Coca-Cola Amatil, Submission 314, p 1.

78 *Hansard*, Canberra, 12 July 1999, p 974.

79 *Hansard*, Canberra, 12 July 1999, p 975.

80 *Hansard*, Canberra, 12 July 1999, pp 974 - 975.

81 *Hansard*, Cooma, 6 July 1999, p 692.

82 *Hansard*, Canberra, 12 July 1999, p 977.

5.83 At the Perth hearing, small independent retailer, Mr Richard Dymond, told the Committee of his past experience as an employee of one of the major chains:

> I was managing a major chain store at one stage and a particular product – a Coca-Cola product – was on special at a price that they felt was too cheap in another store. It was actually an Action store that had this product out too cheap. We, as store managers – and this was every store manager in every store in the state – were instructed to move that product to the top shelf with a minimal facing so that it would not sell until the supplier saw sense and did not sell the product to the Action supermarket at the cheaper price.[83]

5.84 The evidence suggests that there is a lack of transparency on the part of some manufacturers in their dealings with customers. A number of witnesses were not prepared to give evidence in public, fearing a commercial backlash. This, together with the inherent advantages enjoyed by the major chains due to their vertically integrated structure, prompted debate on whether there was any evidence of market failure.

5.85 Dr Darryn Abraham, Senior Economist with Access Economics, believes not:

> The fact that you have a small number of relatively large companies with what would probably be argued as a reasonably large share or broad definition of the market does not necessarily mean the market is failing. In fact, the fact that we see an evolution of larger firms evolving and changing the composition of small firms probably says that the market is working extremely well, that it is not failing.[84]

5.86 Dr Abraham said that market shares must first be examined to establish a *prima facie* case of potential abuse of market power; then things like behaviour, the existence of potential competitors, the actual rates of entry and exit turnover into the industry and many other factors:

> …all of which, we argue in our supporting submission to Coles' paper, would point to retailing being one of the most open and competitive industries in Australia.[85]

5.87 Mr Barry Alty, Managing Director of independent wholesaler FAL, disagrees. Commenting on the economic rationalism argument, Mr Alty said:

> This argument has as its basic tenet that the market is fair, that there is equal opportunity for all players, so let the market sort it out. It implies a perfect market and I have not seen those since Economics 1 and Samuelson at university. In other words, we are saying let the law of the jungle prevail; let the strongest survive.

83 *Hansard*, Perth, 9 April 1999, p 238.

84 *Hansard*, Canberra, 6 April 1999, p 33.

85 *Hansard*, Canberra, 6 April 1999, p 33.

> I do not know how we can allow this to happen. It is a bit like saying, 'We should apply the same principles to society. Let the strongest survive,' but we are civilised and we have rules that protect the weak and the economically disadvantaged. There are also rules in business, rules that are supposed to provide fair competition, rules that are supposed to allow customers the opportunity to choose between competing offers – and the offer is not just the price. There are many other things, among them convenience of location, convenience of access, range, service, quality, presentation, hygiene, food safety, general ambience. 'Choice' is the operative word in a competitive market, but the current rules are not working. Choice is being diminished.[86]

5.88 Mr Alty told the Committee that cutting out the wholesaler was not the answer:

> How, pray tell, would hundreds of manufacturers then manage to get goods to thousands of retailers in rural Australia, at what cost and with what regularity of supply? Frankly, all the arguments about level playing fields and fair and equal competition leaves me cold. The playing field is tilted very severely against the independent sector and it is actually of credit to the tenacity and the resilience of wholesalers and independent retailers that we have held up against overwhelming odds. We do not, in appearing before this committee or making submissions, seek protection but we seek a fair go that there is a competitive market, so that consumers have choice and so that rural Australia is adequately serviced at low cost.[87]

5.89 Evidence taken at the Melbourne hearing suggests that the independent sector is at least buoyant and sustainable. The Committee notes the following exchange between Davids' Chief Executive Officer, Mr Andrew Reitzer, and Senator the Hon. Ron Boswell:

> *Senator Boswell*: Andrew, you have said that you do a lot for the independents: you do their buying, advertising and store refurbishment. Why can't you cut the mustard? Why aren't you up there with [the major chains]? Why are they beating you off the pace? What advantages have they got?
>
> *Mr Reitzer*: There are two reasons – one is evident; it is in the press. Davids, over the last three or four years, was not a well-managed business. Our bottom line is the result of all those decisions and bad management, or whatever you want to call it, which we are trying to rectify. The real issue is critical mass.
>
> *Senator Boswell*: So your critical mass is at a break-even level?
>
> *Mr Reitzer*: Yes. We believe we can still make money, which is why we made the investment, and we think we can still run a healthy wholesale

86 *Hansard*, Perth, 9 April 1999, p 306.

87 *Hansard*, Perth, 9 April 1999, p 306.

> distribution company. With that, we can get the retailers that we have to grow. In terms of critical mass, it is touch and go.[88]

5.90 As mentioned earlier in this Report, the Committee notes that Davids has recently undertaken a program of acquisitions of independent wholesalers to build itself up as a 'fourth force' in grocery retailing, with the aim of matching the scale economies of the major chains.[89] The Committee is therefore of the view that these recent acquisitions will result in Davids having greater buying power, enabling it to at the very least maintain its current trading terms and prices.

5.91 However, the Committee remains concerned that, during the course of the inquiry, a significant number of small retailers were fearful of commercial retribution from big business if they were to raise their concerns in public. The Committee is therefore of the view that small and independent retailers are entitled to seek immediate and timely redress to unfair practices from big business, without fear of retribution, and has recommended that a Retail Industry Ombudsman and a mandatory Code of Conduct be established to deal with this recurring problem.

Primary producers and supply contracts

5.92 The NSW Farmers Association (NSW Farmers) told the Committee that the increase in concentration presented its members with a dilemma. Although farmers appreciate the professional and efficient role that the major chains play in food markets, members have nevertheless reported instances where some major chains appear to have used their power to influence the operations of the marketplace.[90] The NSW Farmers told the Committee of:

- significant added costs being imposed on suppliers via enhanced labelling and packaging requirements;
- the use of various tactics to limit the establishment of brand names by suppliers;
- breaches of contract;
- the 'flexible' use of quality standards as grounds for product rejection;
- the use of what is said to be exclusive supply agency arrangements in certain markets; and
- unfair negotiating practices.[91]

5.93 In calling for transparency measures to be implemented via the establishment of an industry Code of Conduct, NSW Farmers cited US legislation[92], requiring:

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88 *Hansard*, Melbourne, 7 April 1999, p 135.

89 Office of Small Business, Submission 285, p 7, and see paragraphs 2.31-2.33 of this report.

90 Mr Michael Keogh, Policy Director, NSW Farmers Association, *Hansard*, Sydney, 15 April 1999, p 348.

91 NSW Farmers Association, Submission 216, p 1.

92 The *Perishable Agricultural Commodities Act* of 1930, and the *Packers and Stockyards Act* of 1921.

- post-farm market participants to be licensed and to enter into financial arrangements that provide security for farmers' proceeds;
- comprehensive record keeping and disclosure provisions to facilitate investigations of unfair market activities;
- summary powers to enable government agencies to investigate and penalise unfair practices; and
- a reliance on free and open information flows to ensure that the market remains transparent and efficient.[93]

5.94 The Queensland Fruit and Vegetable Growers' (QFVG) main concern is the imbalance in market power between the major chains and growers. While some growers have reported good business relationships, others feel that they have not been treated in a fair and businesslike manner:

> One thing is certain: there is no question that there is a huge imbalance of market power between the major chain stores and growers. Our economic study indicates that many of our growers are financially on the borderline. Their problems are compounded by the fact that they are dealing in perishable commodities and if their product is rejected for whatever reason after initial acceptance, the financial impacts can be devastating. In many cases, because of 'seasonality', they only get one chance to profitably market their product. An example of that is mangos, where there might be a three- or four-week period in which their product can be picked and marketed.[94]

5.95 Mr Paul Ziebarth, Chairman, QFVG, told of ill feeling among some growers regarding loss leader initiatives, and relayed instances where growers, in the negotiation phase of price setting, are told:

> 'Oh, by the way, we intend to go special with this product next week at such and such a price in such and such a place; therefore we will offer you X amount for this product,' which is always a discounted price. The issue that the growers have is to say, 'Wait a minute. You're on special, not us. If you choose to use our product on a special, you should pay the growing market price that's set by the supply and demand thing, and what you choose to do with it once you own it is your business. If you want to use that as a loss leader, go for your life, but it's not our loss that you're leading, it's yours.[95]

5.96 The major concerns of the QFVG are:

- Frequent changes of staff in key positions in large retailing organisations, resulting in inconsistent interpretation of produce quality.

93 Mr Michael Keogh, Policy Director, NSW Farmers Association, *Hansard*, Sydney, 15 April 1999, p 342.

94 Mr John Pritchard, Deputy General Manager, Queensland Fruit and Vegetable Growers, *Hansard*, Brisbane, 16 April 1999, p 498.

95 *Hansard*, Brisbane, 16 April 1999, p 503.

- Return of product to growers or cancellation of orders as a result of what appears to be over-ordering. In these situations, growers are often left with little opportunity to re-consign the product to alternative outlets.

- Demands for very high levels of quality assurance, which take little account of the high cost of these requirements and the ability of growers to implement them. In addition, growers believe that these high standards are often not adhered to by the large retailers themselves.

- For a range of products, rigid specifications demanded by the retailers means that a substantial proportion of the crops grown are not acceptable to them. This in turn means that 'out of size' and lower quality products are consigned to central markets and other outlets. The effect of this lowers the average quality of throughput and places downward pressure on prices received. In some situations, those reduced prices are quoted as benchmarks by the retailers in negotiating prices.[96]

5.97 Mr Bill Bishop, market analyst with SA Farmers Federation, described how the individual labelling of produce, demanded by the chains, places added pressure on growers:

> Once the supermarkets – in the interests of their efficiency, not ours – decided that they needed individual labels on the fruit so that the checkout people, rather than being trained to understand what they were handling, were able to read it on the side of the apple and thus be able to tell the difference between a Granny Smith and a Red Delicious. I have heard that because squash did not have a label on the side of them, a checkout lass was confused and thought it was a mushroom.[97]

5.98 The price look-up number for Woolworths is different to that of Coles. Growers are therefore tied to the supermarket after the labels are applied:

> If the supermarket rejects that and somebody else makes an offer for it, what do you do with the damn labels? Are they the property of the supermarket or can they sell them to a Torrens Island Sunday market and get rid of them that way or what do you do with them? Yesterday I was watching a guy in one of the stores in Adelaide, out at Pooraka, picking the labels off tomatoes in trays because he wanted to sell them to a greengrocer. Unfortunately the Vietnamese grower had put the wrong labels on the tomatoes. They were not only price look-up numbers that were wrong but it was the wrong variety and so forth, so what the hell he was going to do with them anyway I don't know. This is a problem and it is one way that the supermarkets tie you in – if you have to have price look-up numbers, they are exclusive to them.[98]

96 Queensland Fruit and Vegetable Growers, Submission 203, p 14.

97 *Hansard*, Adelaide, 8 April 1999, pp 208-209.

98 Mr Bill Bishop, SA Farmers Federation, *Hansard*, Adelaide, 8 April 1999, p 209.

5.99 The Committee notes that in the US, the opposite occurs, where the supermarkets pay growers to label their produce.[99]

5.100 The evidence suggests that a commercial relationship with a major chain may constitute more than 70 per cent of a farmer's business.[100] Mr Bishop expressed concern about this, and the methodology that supermarkets use in obtaining produce, He believes that, over the years, the major chains have encouraged producers to grow exclusively for them:

> They can encourage them to produce more, which means greater infrastructure. They have to have more land perhaps but they certainly have to have better package facilities, put in more irrigation and so on, and it is a tremendous amount of money that is spent on behalf of the supermarket – I emphasise – by some of these people. At the end of it all they are thoroughly in the hands of the particular supermarket and should they wish to get out, they are unable to do so – because what do they do with their product? There is no profitable market for it because the alternate market for that product is already catered for, yet there are plenty of suppliers who are ready to fill the breach for the supermarket if they choose to drop off a particular supplier.[101]

5.101 Coles maintains that it does not demand exclusive access to the produce of individual suppliers:

> It is a free market out there. What we look for from a consumer's point of view is quality and whether the value proposition is right from a consumer's point of view – quality, price, the whole network of getting the product in front of the consumer. We do not demand exclusivity.[102]

5.102 Coles believes that its relationships with suppliers must be 'open, fair and ensure a reasonable return for all parties'.[103] Mr Alan Williams, Managing Director, said that it was of absolutely no advantage to Coles if a supplier does not have sufficient funds to continue to develop, and highlighted the need for the whole chain to be strong, to be innovative and to go forward.[104] However, Mr Williams also acknowledged that Coles' relationship with suppliers a few years ago was 'very, very poor':

> Over the last four or five years, we believe we have addressed those issues. We have several procedures which are in place. We have a Coles Myer Code of Conduct which covers the whole ambit of the Coles Myer

99 *Hansard*, Adelaide, 8 April 1999, p 209.

100 NSW Farmers Association, Submission 216, p 1.

101 *Hansard*, Adelaide, 8 April 1999, p 201.

102 Mr Peter Scott, General Manager (Perishable Merchandise) Coles, *Hansard*, Canberra, 6 April 1999, p 37.

103 Coles, Submission 168, p 18.

104 *Hansard*, Canberra, 6 April 1999, p 32.

> organisation. We have our own buying guidelines. We have dispute mechanisms in place and we are happy to supply the Committee with copies of all of that documentation.[105]

5.103 Mr Peter Pokorny, General Manager (Fresh Foods) Woolworths, believes that relationships with suppliers must be consumer-focused. Mr Pokorny said that both parties first seek to identify a common objective, which relates to customer wants and needs. Mr Pokorny said that, in developing a formalisation, a contract arrangement or a memorandum of understanding, Woolworths seek to ensure that primary producers understand the needs of consumers:

> We then work together to implement the appropriate standards and practices to achieve those objectives. It is very important to us that our suppliers are profitable, and part of ensuring profitability is to take the risk out of the business. Quality assurance, food safety programs, long-term planning and supply scheduling are all activities that take the risk out of the business and allow our suppliers to plan with more confidence and plan effectively, and to access finance at more acceptable rates.[106]

5.104 The Committee was surprised to learn that there is a general lack of formality attached to agreements between growers and the major chains. Mr Ziebarth (QFVG) said that he did not know of anybody who has got a 'signed, sealed, legal contract to supply'.[107] This lack of contractual formality also concerns Mr Michael Keogh, Policy Director, NSW Farmers:

> …contracts are often verbal, or at best, very rudimentary, so there may be situations where there are more detailed contracts entered into, but certainly the most frequent comment from our members was that there is almost a discouragement from going to too formal a contract.[108]

5.105 The Committee notes that primary producers are mindful of the benefits of direct relationships with the major chains, although some problems still persist. These include:

- inconsistent interpretation of product quality;
- over-stringent demands for quality assurance, with risk attached to the grower; and
- over-ordering, leading to return of product and little opportunity for producers to sell elsewhere.[109]

105 *Hansard*, Canberra, 6 April 1999, p 32.

106 *Hansard*, Canberra, 6 April 1999, p 24.

107 *Hansard*, Brisbane, 16 April 1999, p 503.

108 *Hansard*, Sydney, 15 April 1999, p 345.

109 Queensland Fruit and Vegetable Growers, Submission 203, p 14.

5.106 The Committee appreciates that fruit and vegetable growers have to deal with a range of market characteristics, including perishability, market volatility and a high degree of risk exposure, which collectively contributes to an unhealthy degree of vulnerability with respect to the major chains.[110] In addition, individual farmers may be reluctant to place their businesses at risk in attempts to redress what some claim to be unfair treatment at the hands of the major chains. The Committee is therefore of the view that the power of individual growers in the market place is limited, and believes that a mandatory Code of Conduct will address the problems raised.

Capital

5.107 South Australian independent retailer, Mr Keith Powney, identified the cost of capital as a major barrier to the growth of small independent retailers:

> Another problem we have is that we want to grow all the time; we want to expand. Because we are a partnership and because of all the uncertainty in the retail sector at the moment, banks do not want to know us unless we own our own homes or we have got solid collateral. The banks are not prepared to support us to grow. One of our stores has a Coles seven-day store nearby which does not trade as Coles – it just trades with no name – which is open extremely long hours, as we are. They recently did a $300,000 refurbishment. They will not recoup that money for probably 10 years. If I went to the bank and said, ‘Give me $300,000 and I’ll pay that back over 10 years,’ they would laugh at me. We do not have that level playing field. We do not have access to that sort of money, which just gets very frustrating, because we want to compete; we want to grow.[111]

5.108 The evidence suggests that independent retailers may be paying up to three per cent more for finance than the major chains, effectively limiting their scope for expansion. However, when finance is available to independents, it generally comes with a heavy onus to succeed. Mr John Cummings of the Western Australian Independent Grocers Association said:

> In our business there are three partners. We have between us some $2.5 million invested. We have borrowings of $1.2 million and, like most small businesses, our borrowings are fully secured by our personal homes, our wives’ assets, our families assets – and the dog’s paws on one of the documents. I am sure. It just goes on and on and on. So everything we own is invested in our business.[112]

5.109 Foodlink Ltd (Foodlink) services around 320 independent retailers throughout Queensland. Foodlink use their members’ combined purchasing power to negotiate with suppliers and wholesalers. Mr John Berry, Executive Chairman, noted the importance of access to capital:

110 Queensland Fruit and Vegetable Growers, Submission 203, p 13.

111 *Hansard*, Adelaide, 8 April 1999, p 182.

112 *Hansard*, Perth, 9 April 1999, p 289.

> Senator, I can tell you now that if you get a good retailer who is an independent who can get hold of finance, we can put him in a marketplace and he will definitely not only survive but will take on the big ones and fight. The reason is that you get personal, hands-on retailing – as Jeff Antcliff could say, having come from the chains – versus an instruction that comes out to managers. They really do not have that same personal approach.[113]

5.110 Mr Berry explained why he thought it was now so difficult for independent retailers to access finance:

> Let me just say this to you – and it is a very real thing: following the 1987 crash, by 1991 it was impossible for us to obtain any leasing for new plant and equipment for an independent retailer unless they had more than twice the value that they wished to borrow in bricks and mortar – more than twice – because every time you spoke to a banker, they all lost money during the 1987 crash on leasing, because they were leasing to everybody prior to the rush of the eighties. Consequently, there are those sort of problems.[114]

5.111 Mr Berry believes that, if independent retailers had access to finance over a longer period of time, and at an acceptable rate, then this would go a long way towards helping them to compete against the major chains.[115]

Rent

5.112 The issue of retail tenancy in shopping centres was examined in detail in the Reid Report, and is largely a matter under the jurisdiction of State governments.[116] However, a number of submissions again raised some concerns.[117]

5.113 In large shopping centres, independent retailers pay more per square metre for rent than the major chains. According to market analyst Mr Bill Bishop, the smaller you are, the more you pay:

> [The major chains] get cheaper rental space in their shopping centres. Every shopping centre has to have a supermarket in it to attract custom; that is the first thing a new shopping centre looks for. Small businesses in the shopping centre are paying up to three times and more per square metre space.[118]

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113 *Hansard*, Brisbane, 16 April 1999, p 457.

114 *Hansard*, Brisbane, 16 April 1999, pp 457-58.

115 *Hansard*, Brisbane, 16 April 1999, p 456.

116 House of Representatives Standing Committee on Industry, Science and Technology, *Finding a Balance Towards Fair Trading in Australia*, May 1997.

117 See, for example, Mr Charles Stewart, State President, Queensland Hotels Association, *Hansard*, Brisbane, 16 April 1999, pp 414 -15.

118 *Hansard*, Adelaide, 8 April 1999, p 202.

5.114 The Small Retailers Association of South Australia claimed that the two major chains often pay only 20 per cent of the going rate.[119]

5.115 Mr Colin Otto runs a small butcher shop within a regional shopping centre in Queensland. He said that the old rule of thumb 10 years ago was that the major chains rent 60 per cent of the space and pay 40 per cent of the rent:

> I suspect that this has now risen to be more like 70:30. In other words, small retailers are subsidising the rentals per square metres of the major stores.[120]

5.116 A number of transparency issues were also raised during the course of the inquiry. Mr Otto suggested that State-based public lease registers should include information on the cost per square metre of rent paid by lessees:

> Confidentiality in my opinion is not a concern in this because, if someone can find out how much I paid for my particular dwelling or farm or whatever, I cannot see any difference in details of the lease being made public. I think that would give small retailers a much better leverage and more argument to try to negotiate more suitable rentals – this is especially in shopping centres. The secrecy of these rentals under the name of 'confidentiality' is like trying to break into ASIO.[121]

5.117 NARGA maintains that only the major chains have the countervailing power to command prime sites at favourable rentals. It believes that developers want the financial strength and marketing of a major chain behind a 20-30 year lease.[122]

5.118 The Committee took evidence from Mr Mark Baillie, Chief Executive Officer of CountryWide Retail Trust (CRT), Australia's largest owner of supermarket centres with 60 properties located across Australia. Thirty-four of these are freestanding supermarkets, 25 are supermarket-based shopping centres, and one is a stand-alone department store. Of these, 32 are anchored by Coles, 26 by Woolworths and two by Franklins. Its properties are mostly located in rural and regional Australia.

5.119 Mr Baillie said that CRT had invested a large amount of capital in its refurbishment of supermarket centres, which he believes provides economic benefits to smaller communities:

> Refurbishment and expansion of supermarket-based centres supports local businesses at different levels, from the construction, the refurbishment works…through to providing new specialty space available for local businesses outside the major chains…Anchor tenant leases act as a catalyst for retail development in rural Australia, without an anchor tenant

119 Small Retailers Association of South Australia, Submission 215, p 3.

120 *Hansard*, Kingaroy, 8 July 1999, p 930.

121 *Hansard*, Kingaroy, 8 July 1999, p 930.

122 National Association of Retail Grocers of Australia, Submission 202, p 88.

> committed to a long-term lease, any proposed major retail development will flounder.[123]

5.120 Mr Baillie confirmed that the major chains do receive cheaper leasing rates as the anchor tenant over the specialty shops:

> It is obviously cheaper, but it is again reflective of the value that an anchor tenant brings to the property development. Not only are they renting a very large area of space…they are spending quite a considerable amount of money on the inside of their property…It is reflective of the relative contributions: the length of the lease – obviously, a 20-year lease with a credit quality tenant who has the financial security to honour the obligations of that lease over the long term – the area, the amount of value that they invest in the centre themselves and the marketing dollar that they bring.
>
> …With all these factors, there is no doubt that anchor tenants do get a cheaper rent than specialty tenants, but it is reflective of those factors.[124]

5.121 In responding to questions about how the quality of support services and security is provided to supporting tenants, Mr Baillie said:

> When we write an anchor tenant lease, on a large number of occasions it will define the range of products that are offered there…The worst thing for us is to build a new centre and because the range of products offered within the existing supermarket we cannot lease up the specialty shop space because they just cannot compete. So we are very mindful of that. It is a case of striking the right balance between the two and ensuring there is no overlap. It is no good for us as the landlord having empty space in our centres.[125]

5.122 The security of specialty tenants in large shopping centres came to the attention of the Committee at the Melbourne hearing. Anecdotal evidence revealed that one specialty tenant, a florist, had been forced out of business when the anchor tenant, Safeway, decided to stock pre-made bunches of cut flowers. It was alleged that the florist went out of business within 3 months.[126] Mr Baillie said:

> We are on about providing retail offers that complement the anchor tenant. We want to provide somewhere that the customer can get into, buy what they need from the newsagency, the drycleaners, the chemist and so on, and get out again. It is all about time efficiency of shopping. At the end of the day, we put in as broad a clause for the anchor tenant as we think is

123 *Hansard,* Cooma, 6 July 1999, p 646.

124 *Hansard,* Cooma, 6 July 1999, p 652.

125 *Hansard,* Cooma, 6 July 1999, p 650.

126 Mr Ray Veal, Owner/Manager, Stratford Licensed Grocery, *Hansard*, Melbourne, 7 April 1999, pp 106-107.

> reasonable, without being to the detriment of specialty shops, because again it is not in our interest to have empty specialty shops sitting in our centre.[127]

5.123 Despite this, Mr Baillie agreed that there may be overlaps:

> To our knowledge, we understand that the anchors quite like some of those specialties outside the entrance of their store because they actually attract customers to the centres as a whole. At the end of the day it is about competition, with all businesses competing for increased sales revenue.[128]

5.124 The Committee notes that the cost of floor space is probably the largest business cost, after labour and product costs, for any retail business. The evidence clearly indicates that specialty shops in shopping centres often pay a substantially higher rate for their floor space than the anchor tenant. The Committee accepts that there may be good reasons for this. However, so that prospective specialty shop tenants can make a proper assessment of their ability to compete with other tenants, the Committee believes that they should be able to access information about the net rental being paid by other tenants.

Electricity and EFTPOS

5.125 Situated in country Victoria, small independent retailer, Mrs Barbara Murdoch, raised a number of concerns, one of which was the cost of electricity:

> With regard to the contestability of electricity, we are the last on the line. Therefore, we are not competing at the same rate as what the major chains are at the moment because our electricity is costing us a lot more.[129]

5.126 Consumers now demand the EFTPOS facility wherever they shop. The evidence suggests that independent retailers are charged between $100 and $130 per month by the banks.[130] Mrs Murdoch said:

> At the present moment, we pay $100 a month to have the EFTPOS in the shop, which is $25 a week. Plus, if we have credit, which we are getting on, we have to pay about 1.5 per cent. That is a rather difficult thing because if somebody buys on credit that is 1.5 per cent of your profit down the drain. Often when somebody stops for petrol at the garage across the road and they don't have any money, they come to us to use the EFTPOS machine. At times I really feel quite angry that we are providing a service for the banks and are paying for it.[131]

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127 *Hansard*, Cooma, 6 July 1999, p 650.

128 *Hansard*, Cooma, 6 July 1999, p 651.

129 *Hansard*, Melbourne, 7 April 1999, p 157.

130 *Hansard*, Melbourne, 7 April 1999, p 158, *Hansard*, Perth, 9 April 1999, p 241.

131 *Hansard*, Melbourne, 7 April 1999, p 172.

Access to new sites

5.127 Mr Neville Gale, Advantage Supermarkets (WA), believes that the difficulties associated with access to new sites is stifling competition:

> In the marketplace of supermarkets it has become nearly impossible for independents to gain the sites that the majors do. I think that the gaining of sites is the major impediment to the growth or the independent situation.[132]

5.128 It appears to be increasingly difficult for the major chains to find sufficient 'greenfield' sites for expansion and growth. Because of this, the independent sector is concerned that the major chains have developed and introduced new medium-sized format stores, such as the Woolworths Metro and the Coles Express stores, which are expected to be rolled out over the next few years.[133]

Access to new product lines

5.129 Mr Keith Powney, Committee Member of SA Small Retailers, raised concerns about access to new product lines:

> One of the problems we have is that we cannot get to new lines. If you see something advertised on television there is a good chance that we will not be able to get it for three or four weeks after its release. I cannot bring any proof, but from speaking to representatives from the companies they say Coles have said, 'If you want us to stock that line then it won't be available to the independents until after say two or three weeks after the initial release.[134]

5.130 Mr John Brownsea, Executive Director, SA Small Retailers, made the comment that:

> From time to time Davids do make comments as to the unavailability of certain stock and it is a matter of concern to them, and from time to time I have seen them listing companies that they have trouble getting stock from. That is not to say it is deliberate, but why should some get it and not others? Obviously if there are not enough stocks, some have to miss out, I suppose, but certainly Davids do have that as a concern that in some cases they really cannot supply when there is high expectation.[135]

5.131 In addition to concerns over EFTPOS and electricity, Mrs Barbara Murdoch said that it is becoming increasingly difficult to find out about new products, as manufacturers' representatives no longer travel throughout the country displaying merchandise:

132 *Hansard*, Perth, 9 April 1999, p 247.

133 Foodland Associated Limited, Submission 190, p 20.

134 *Hansard*, Adelaide, 8 April 1999, p 182.

135 *Hansard*, Adelaide, 8 April 1999, p 190.

> Travelling salespeople used to come around in vans with a lot of stationary and odds and sods that we could not pick up in the warehouse. I cannot remember the last time I saw those. And the other van sales such as Dandy, which is our wholesale smallgoods salesman, who has just gone to phone sales. Theoretically, he has not lost a job yet, but how long is it going to be before he does? Peters ice-cream is the same. We had a man delivering Mrs Harrison's cakes but it is not worth it. The smaller businesses are getting smaller. Those sort of things are affecting small country towns because the bulk of it is going into the big three.[136]

5.132 Western Australian independent Mr Neville Gale noted that the failure rate of new products is around 80 per cent. He therefore sees access to new products as an issue to be determined by the manufacturers themselves:

> …if I were a manufacturer I would certainly be looking for the support of the chains initially because without it the product would certainly fail. Then sometimes the product is so popular that the off-take outstrips the ability of the company to produce it.

5.133 Mr Gale believes that, for most of the time, the manufacturers try to be fair. However, he believes that the chains do try to have sole distribution of the product:

> …but of course that is of no benefit to the companies, so really in the vast majority of cases that does not apply. But where it can apply, particularly at Easter for example, then this duck with a chook sitting on top of its head is only sold at Coles they have exclusivity of that particular product and they can have it too! We might on the other hand have a rabbit.[137]

Employment

5.134 The major chains claimed that they are leading the way with regard to wages and working conditions. Coles, Woolworths and Franklins all have industrial agreements with Australia's largest trade union – the Shop Distributive and Allied Employees' Association (SDA).

5.135 Mr Joe de Bruyn, National Secretary-Treasurer of the SDA, voiced strong support for the major chains. He told the Committee that these agreements provide for pay rates which are in the order of $40 to $50 in excess of the award rate, and that they also provide, in certain respects, better employment conditions.[138]

5.136 About six years ago, Coles met with the SDA and stated that it wanted to become the preferred employer in the supermarket section of the retail industry.

136 *Hansard*, Melbourne, 7 April 1999, p 159.

137 *Hansard*, Perth, 9 April 1999, p 266.

138 *Hansard*, Sydney, 15 April 1999, p 331.

Subsequent negotiations led to the first full nationwide industrial agreement between Coles and the SDA.[139]

5.137 The SDA maintains that Coles has displayed a commitment to convert a substantial proportion of its casual employees to part-time employment, leading to a consolidation of working hours and more substantial employment. In describing the effects of the industrial agreement, Mr de Bruyn said:

> Part-time employment is more secure than casual because you have the entitlement to a week's notice, rather than a casual where there is, under the terms of the agreements, no security at all, and also it had the effect, because of the greater security, of reducing the turnover of employees in the company. That agreement was put in place and in the period that followed there was a substantial conversion of casual jobs to part-time, which had a beneficial effect on employees and on employment, because it provided people generally with more hours and it provided people with greater security in their jobs.[140]

5.138 An example of this was seen in 1998, when Coles opened a new store at Langwarrin.[141]Rather than staffing it under its traditional structure, it decided to substantially increase the number of full-time employees. Table 5.1 compares how the store would have been staffed under the traditional staffing structure.

<u>Table 5.1</u>

Coles Employment Structure

Employees	**Traditional staffing structure**	**Langwarrin trial**
Full-timers	57	97
Part-timers	80	38
Casuals	113	10
Total	**250**	**145**

Source: SDA, Additional information 214A, p 4.

5.139 Mr de Bruyn believes that this initiative is a revolutionary change for the better in retailing employment:

> It was initiated by the company of its own volition. The union is absolutely delighted with this new employment structure because it puts into effect what we have been seeking for, I would say, the last 20 years or more:

139 *Hansard*, Sydney, 15 April 1999, p 333.

140 *Hansard*, Sydney, 15 April 1999, p 333.

141 Langwarrin is near Frankston, Victoria.

> greater full-time employment, more hours for part-timers, and the reduction of casual employment to the absolute minimum that can be achieved.[142]

5.140 Mr de Bruyn believes that an 80 per cent cap on the market share of the major chains would effectively place a limit on the number of higher paying jobs in the retail industry:

> We say that this is not in the public interest, it is not in the interests of the retail industry and it is not in the interests of the employees in the industry.[143]

5.141 Mr de Bruyn cites a number of regions across New South Wales as evidence that the independent sector is in good shape, and that independent stores can exist in regional areas with or without competition from the major chains. Mr de Bruyn provided the Committee with the following figures in support of his contentions:

Table 5.2

Western New South Wales

Town	Population	Supermarkets
Bourke	3,779	Bourke Riteway Welcome Mart
Cobar	5,437	Cobar Supermarket Burgess Tuckerbag Baldi’s Festival
Condobolin	7,379	Chamen & Co
Dubbo	37,030	Coles Woolworths Riverdale Woolworths Orana Mall Franklins No Frills Franklins Fresh Payless West Dubbo Foodtown
Forbes	10,300	Woolworths Bernadi’s IGA
Gilgandra	4,759	Gilgandra Department Store Johnson’s Family Store
Narromine	6,663	Bi-Lo (Coles Myer)
Nyngan	3,227	Khan’s Fitzalan’s Foodtown
Parkes	15,145	Woolworths Franklins No Frills Cunningham’s
Warren	3,374	Warren Festival 5 Star
Wellington	8,955	Payless

142 *Hansard*, Sydney, 15 April 1999, pp 333-334.

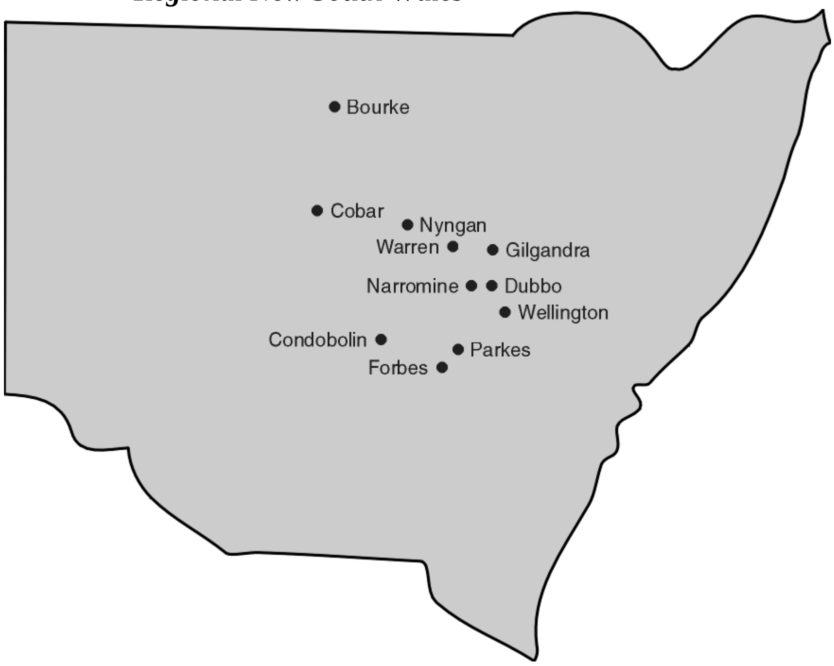
143 *Hansard*, Sydney, 15 April 1999, p 331.

		Clancy's Bi-Lo (Coles Myer)

Source: SDA, Additional information 214A, p 1.

<u>Figure 5.1</u>

Regional New South Wales



<u>Table 5.3</u>

Summary of Stores in Western New South Wales

Company	**Number of Stores**
Woolworths	4
Coles/Bi-Lo	3
Franklins	3
Independents	<u>18</u>
Total	**28**

Source: **SDA, Additional information 214A, p 2.**

5.142 Mr de Bruyn accepts that the number of stores is not the only consideration – obviously turnover is another – but believes that, nevertheless, the independents in this region are flourishing:

> There are a significant number of them. Eighteen of the 28 are independents. Obviously, because the majors have been in these towns for many years, these independents continue to exist and to flourish. If they were not

> flourishing they would be out of business and would have been out of business long ago.[144]

5.143 The major chains argue that scale economies allow them to offer a broader range of product to consumers at lower prices. The independent retailers say that this comes at a cost – employment.

5.144 According to the Council of Small Business Organisations of Australia (COSBOA), every job provided by a large supermarket would have provided 1.7 jobs in a small supermarket, based on the relative number of jobs provided per dollar turnover. This calculation suggests that, for each shift of one per cent of market share from small to large stores, there is a net loss of 1,800 jobs:[145]

> The turnover/employment ratios imply that every job provided by a large supermarket would have provided 1.7 jobs in a small supermarket. By some measures, this would be a sign of 'economic inefficiency' in small retailers. But in a country with persistent high rates of employment despite prolonged economic growth, it is a source of precious jobs too important to squander.[146]

5.145 COSBOA's figures reveal that large store turnover has been growing at around 7-8 per cent per year while small store turnover has been growing at 1-2 per cent per year. COSBOA has calculated that if small store turnover grew at the same rate as the large stores they would be employing an additional 6,350 people by the end of the 12 months – well above the 1,270 more they are employing when growing at the lower rate.[147]

5.146 By contrast, Access Economics argued that every job created in a smaller supermarket would replace 1.05 jobs in a larger one, and disputed the legitimacy of using jobs per dollar turnover as a measure. Access Economics concluded that:

> In the absence of clear evidence of market failure, intervening in the processes that determine the structure of retailing with the intention of increasing employment is most likely to reduce the efficiency of the industry, raising prices to consumers and reducing the contribution of the industry to national income.[148]

5.147 The Committee notes the ability of COSBOA and Access Economics to reach the opposite conclusion – on the basis of statistical evidence – regarding the relative employment effects of the major chains and independent retailers. The indecisiveness of their respective arguments makes the Committee reluctant to recommend measures purely with the aim of shifting employment from one size retailer to another.

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144 *Hansard*, Sydney, 15 April 1999, p 332.

145 Council of Small Business Organisations of Australia, Submission 140, p 8.

146 Council of Small Business Organisations of Australia, Submission 140, p 8.

147 Council of Small Business Organisations of Australia, Submission 140, p 8.

148 Coles, Submission 168, Part 4, Access Economics, pp 51-52.

5.148 Nevertheless, the Committee appreciates that there may be regional disparities in the employment effects of the major chains gaining market share at the expense of the smaller retailers. 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.

5.149 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. However, in accord with the view of Access Economics, the Committee is of the view that it does not necessarily follow that the economy as a whole would benefit from policies which assist small businesses at the expense of larger ones.

Social impacts

5.150 During the course of the inquiry, the Committee heard of the contributions made outside of the normal retailer-consumer relationship by the major chains and the independent retailers. This was of particular import in rural and regional communities.

5.151 According to Mr Alan Mackenzie, NARGA's national spokesman, small business underpins the infrastructure of local communities in that they buy, invest and employ, locally. As a result, they are a vital part of each of those local communities' infrastructure.

> We believe that at the end of the day, that [major chain dominance] is bad news for the consumer, because it will affect the provision of services in country towns where we have the elderly, the disadvantaged and low income earners who often do not have the mobility to travel to major centres. In some cases they will lose their local shopping and the convenience that that local shopping provides.[149]

5.152 Mrs Barbara Murdoch, Proprietor of Chiltern Supermarket in north-east Victoria, said that small retailers in small towns are committed to the community:

> My children have gone to school in the town. They have gone to Brownies. I have lived in other small country towns. I have been in Lions. I have been on the kinder communities and the school councils. Often I help if they have got a stall on. We often refrigerate their drinks for them, put their cakes in the fridge and all of that sort of stuff. It is all helping the community to survive. It is a small pie and we have all got to take a piece of it.[150]
>
> We give what we can. We usually give in kind a box of vegetables for the raffles. I mostly sell them soft drink at cost price, so that they cannot get it out of town any cheaper.[151]

149 *Hansard*, Canberra, 6 April 1999, pp 57-58.

150 *Hansard*, Melbourne, 7 April 1999, p 158.

151 *Hansard*, Melbourne, 7 April 1999, p 164.

5.153 Others told of the service to the elderly and the infirm in small communities:

> [I] go down once a week to the old people's home in town and drop off the groceries. That is a necessary thing in these small country towns and it is something that we will continue to do.[152]

5.154 Mr Grant Sommerville, General Manager, Foodlink Ltd said:

> We provide service for young people in terms of providing them jobs. We provide a service for the older people, people that cannot get to the large supermarkets; they ring and we drop round the litre of milk because they cannot get to the store…So basically, we need the fabric of the smaller operators to maintain the services to the community.[153]

5.155 Mrs Joanne Antcliff, Director, of Retail Enterprises Ltd, told the Committee of her husband's excuse when he arrived home late one night:

> His reason was that he had to drop one one-litre carton of milk to one of our regular customers who is housebound; she had forgotten on her phone-up order that week to add milk to her list. So he did this and when he got to her door she asked him to change a light bulb. In fact he changed three light bulbs for her. And there is no way that a major chain is going to go to the customer's house for one litre of milk, charge no delivery fee – just the cost of the milk – and change her light bulbs for her.[154]

5.156 Mr David Wilkes, Managing Director of IGA Supermarket, Beaconsfield said:

> We are more than the products we sell. We help the elderly. A visit to our store represents a social outing as much as a chore – catching up with friends and news is important. Consequently we never rush them. Our staff assist them with their purchases to the car or transport. We make free deliveries to elderly citizens in the Beaconsfield area.[155]

5.157 Mr Bryan Randall, a partner of Randall's Supermarket, Bendigo, said that his store offers a delivery service to any of those who want it – the sick, the elderly, the young mothers:

> We put their stuff in their fridge for them if need be. My sister, who also works in the business, has often put their light globes in and tied up their shoelaces. We carry their parcels to the car. We know most of our customers by name. The deregulation [of shopping hours] has just about destroyed our business.[156]

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152 Mr Richard Dymond, Owner / Proprietor, Toodyay Supermarket, *Hansard*, Perth, 9 April 1999, p 238.

153 *Hansard,* Brisbane, 16 April 1999, pp 450-51.

154 *Hansard,* Brisbane, 16 April 1999, pp 463-64.

155 *Hansard,* Launceston, 5 July 1999, p 523.

156 *Hansard,* Bendigo, 6 July 1999, p 630.

5.158 Mr Peter Creigh, Owner of Creigh's Kingaroy Foodstore, said that stores like his are expected to provide a number of facilities that the chains do not, and these are vital to the community. The most notable of these is account facilities for government institutions such as hospitals and schools, and community groups such as Meals on Wheels and Respite, and welfare organisations such as St Vincent de Paul and the Salvation Army. Mr Creigh said that this is costly and time consuming:

> But it is to the benefit to the institution – not so much for the business – because they need the paperwork for the way they operate. But we provide the facility and try to remain price competitive at the same time.[157]

5.159 Small retailer, Mr Dennis Scott, believes that, unlike the major chains, small supermarkets and stores play an integral part in the running of the town, whether they donate to or sponsor sporting clubs or service clubs. Mr Scott said that the locals see small business as part of the town:

> We are there to help those clubs and to support them. We get support back from them, but we really play that integral part in the town, which cannot be said for the major chains.
>
> Our business supports other businesses in the town, and that certainly cannot be said for the major chains. When they build the buildings, a lot of the contracts are done by external people and a lot of the materials are brought in by external people. When we do something in the town, we are actually benefiting the town because we are spending in the town, and that money goes around.
>
> We are an ear for elderly or sick people and for mothers who cannot get down with their babies. We play a human part in the community, which I do not think the larger chains can.[158]

5.160 Country shoppers are increasingly travelling to nearby regional centres to buy their groceries. This is seen as having a negative effect on smaller outlying towns:

> As people move out of town to where there is a larger range of commodities available, so the footy club can only field a senior team for want of players; then the cricket club loses its identity by having to merge with another town – that is the start of the slide because they lose their identity; they lose their parochial support – and then the combined club folds. I was in a town where that happened. The churches are cut back to only a visiting minister on Sundays or they rely on lay preachers to conduct the services – and then they have combined denomination services; then the CFA cannot get a crew for the truck in case of a fire. The town is dead.[159]

157 *Hansard,* Kingaroy, 8 July 1999, p 943.

158 Mr Dennis Scott, Owner / Manager, Scotty and Spanas IGA Everyday, *Hansard*, Melbourne, 7 April 1999, pp 97-98.

159 Mr Ray Veal, Owner/Manager, Stratford Licensed Grocery, *Hansard*, Melbourne, 7 April 1999, p 100.

5.161 The major chains argued that their size can lead to major benefits for smaller towns. Woolworths believes that its stores underpin the commercial component in many country towns, and act as a major employer and anchor tenant.

> There are many country towns in Australia where I would suggest there would be no retail heart if there was not a Woolworths or a Coles or a Franklins or a Bi-Lo supermarket anchoring that community where they provide the range, the choice, and the price that keeps the shopping in that community and they provide an opportunity for other shops to trade very effectively off the volume and traffic that they create.
>
> My experience is that, in most of those country towns, those stores have maintained that spending in that town, the retail wages are retained in the town and the jobs are retained in the town.[160]

5.162 A useful point was made by Mr Lionel Richardson, a Director of NARGA:

> I was sitting here today listening to other people putting their submission, and their definitive view of a country town is certainly not mine. I am talking about real grassroots rural and regional towns, not large population centres that these people are only interested in.[161]

5.163 The Committee believes that the major chains could be more pro-active in implementing measures that complement the social environments in which they operate their stores. The Committee notes the independents' valuable contributions to their communities, something from which the major chains could indeed take heed.

Corporate benevolence

5.164 There is a general perception that the major chains are not good corporate citizens within the communities in which operate. Many small business operators believe that they contribute a disproportionate amount of sponsorship dollars compared to the major chains. In their view, the major chains also have a community responsibility and can afford to give more, particularly when they are generally taking a significant proportion of the town's trade.

5.165 Mr Neville Gale, Managing Director, Advantage Supermarkets WA, who estimated his contributions to the community to be about $30,000 a year, said:

> In terms of supporting the community, there is no doubt that I think the independent does much more for his local community than does the chain. We certainly make sure that sporting groups and organisations and individuals are assisted to a large degree.[162]

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160 Mr Roger Corbett, Chief Executive Officer, Woolworths, *Hansard*, Canberra, 6 April 1999, pp 11 and 18.

161 *Hansard*, Canberra, 6 April 1999, p 61.

162 *Hansard*, Perth, 9 April 1999, p 265.

5.166 When asked whether corporate philanthropy was important to the consumer, Mr Gale responded:

> No. When the consumer goes to do their shopping, they will look at where they are getting the best deal, not who was the good bloke who supplied the rugby club with a set of jumpers.[163]

5.167 Mrs Jennifer Cameron, Member, Catholic Social Welfare Committee, Dubbo, told the Committee of a fundraising night in Dubbo:

> …I was involved with a function here at the Civic Centre last night – a major function for the city of Dubbo – and we sought donations from the business sector of Dubbo. The big three were all approached. Two of them did come forward with small donations, which we gratefully acknowledged. The third one responded that they had to send the application off to head office…It has been my experience in the past when this has happened that it goes on for so long that you just do not bother any more. But the smaller business operators were extremely generous, and I believe that they are hounded every day of the week for donations.[164]

5.168 Mr David Bernardi, an independent supermarket proprietor in Forbes, was highly critical of the major chains:

> ...In our town I cannot think of a cent that our chain store has contributed to the local community. There are a lot of other things that we do: we sponsor three junior soccer teams – we pay for their shirts; we have donated a spa bath to the local hospital; we sponsor junior rugby league, senior rugby league, junior netball and softball; we donate to the Forbes Cancer Assistance Society, school fetes, hospital fetes, Camp Quality; there was a carpathon; sportsperson of the year. I did not go through and list them all out; they were just some of the things that came to mind.[165]

5.169 In a similar vein, Mrs Roslyn Creigh, owner of Creigh's Kingaroy Foodstore, said that her store tries to do their part for the community:

> We have between six and ten people knock on our door every day asking for donations. We are to the point now where we are saying, 'Go and ask [the Manager of Woolworths]. If he will give you something, I will give you something too,' because they do not give a bloody cent to this town – nothing. We are the ones that are expected to do it.[166]

5.170 Adelaide small retailer, Mr John Symons, told of Foodtown's support for Kids with Cancer:

163 *Hansard*, Perth, 9 April 1999, p 265.

164 *Hansard*, Dubbo, 7 July 1999, pp 726-27.

165 *Hansard*, Dubbo, 7 July 1999, p 743.

166 *Hansard*, Kingaroy, 8 July 1999, p 953.

> We have donated at this stage, I believe $20,000 but we have collected that by selling products for the charity itself within stores and also donating, through our promotions, a certain percentage of what we sell.[167]

5.171 Woolworths argued that it plays an important anchor role in the support of local community activities. It donates significant sums of money to the various children's and regional hospitals every year, which are Woolworths' main focus for charitable donations. It also donates to the Smith Family Appeal, the Guide Dogs for the Blind, and assists many other smaller charities. From 1995-1998 Woolworths has donated over $10 million to needy organisations.[168]

5.172 In its supplementary submission, Woolworths stated that it has made donations across both country and metropolitan Australia, to various rural fire services, Lions clubs, Rotary clubs, Chambers of Commerce, schools, hospitals and Country Women's Associations[169]. It states that in NSW alone, donations ranging from $25 to $1,000 have been made to 328 separate associations, schools and charities over the past 6 months.[170]

5.173 Coles pointed out in its supplementary submission that it has not publicised its philanthropic activities widely. Last year, its philanthropic and fund raising activities generated $7 million which was distributed to such organisations as WA Flying Doctor Service, Peter McCallum Cancer Institute, Camp Quality, Brisbane Children's Hospital, local hospitals, fire brigades, school fairs, football teams, Country Women's Associations, the Salvation Army and many others.[171]

5.174 Franklins also provided additional information regarding its corporate philanthropy program. It maintains that it gives generously to charitable and sporting bodies using three broad methods:

- a nationally structured program and policy for donations;
- a less structured policy and program operated by the Corporate Division; and
- less structured policies and programs operated by individual retail stores.[172]

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167 *Hansard*, Adelaide, 8 April 1999, p 195.

168 Woolworths, Submission 229A, p 85.

169 The Committee received a letter from Mrs Margaret Smith, National President of the Country Women's Association of Australia, dated 11 July 1999, stating how the majors were not meeting their corporate/community responsibility in terms of sponsorships in smaller, rural towns. As an example, she pointed out that Woolworths did not support the local town of Cootamundra when it conducted celebrations for Sir Donald Bradman's 90th birthday.

170 Woolworths, Additional Information 229C, p 13.

171 Coles, Additional Information 168B, pp 5-6.

172 Franklins, Additional Information 200A.

5.175 In response to the criticisms that had been levelled against the major chains in relation to donations to local communities, Mr Roger Corbett, Chief Executive Officer of Woolworths, conceded that it was a valid point:

> I think we have not made as much public about what we have done, as we should have done…I think we might not be as sensitive as we could be in some of those country towns. That is an issue we have taken from this committee and we intend to redress.[173]

5.176 Similarly, Mr Alan Williams, Managing Director of Coles Supermarkets, responded by saying :

> …Last year Coles Myer donated in excess of $7 million to the community. I accept the criticism that that is not widely publicised, and I also accept the criticism that there is a bureaucracy in place that ensures that the donations are properly accounted for, et cetera. We have already got a process in place that will alleviate that and the store managers will be given significantly more autonomy to respond to the local communities.[174]

5.177 The Committee commends the generosity of small and independent retailers throughout Australia in supporting their local communities. The Committee also notes the generosity displayed by the major chains in implementing their particular benevolence programs. However, the Committee is of the view that the major chains could enhance their corporate image at local level, and notes their assurances in this regard.

173 *Hansard*, Canberra, 12 July 1999, p 1090.

174 *Hansard*, Canberra, 12 July 1999, p 1103.