

WOOLWORTHS LIMITED







Executive summary	i
Introduction to Woolworths	1
Part 1:	
Context of the Australian retail market	5
1.1 Evolution of the Australian retail market	8
1.2 The 2008 inquiry into the grocery sector	14
1.3 Competition since 2008 and the effect on prices	16
1.4 Our expectations for the future of retail: lower prices, better access and continued innovation	23
Part 2:	
Implications for the competition reform agenda	47
2.1 Setting priorities for a competition reform agenda	50
2.2 Removing impediments to competition	57
2.3 Recommendations to protect and improve the competition framework	71

What competition means for consumers

How they've benefited

\$17 billion

in real savings over the last 5 years

400+

new stores from ALDI, Coles, Costco, Metcash and Woolworths

38,000+

online businesses in Australia and many more overseas

\$445

in real savings per household per year over the last 5 years as a result of deflation in real food prices



What they do

88%

increase in the proportion of money spent online in the last four years

61%

of customers shop at both specialists and supermarkets within one month

8pm to 10pm

is the most popular time to shop online, when many physical stores are closed

One-third

of items at our supermarkets are purchased on promotion

3%

of customers are loyal to one supermarket in a given year

How we've responded

28 million

customers served each week providing Australia's best value, access and offer

Value

7% cheaper for a basket of goods in 2013 than in 2008

Access

3,000 stores in areas as remote as Weipa and Karratha

Offer

100% of fresh meat and 96% of fruit and vegetables sourced locally

What they think

87%

are satisfied with the range of stores and websites available for packaged groceries

85%

agree that technology allows them to find and compare prices more easily

83%

agree that grocery stores should be able to open when it is convenient

81%

want retailers to be able to trade on a Sunday

Executive summary

Competition between retailers in Australia has been delivering for consumers – it has led to lower prices, better access and rapid innovation. We expect this to continue without the need for regulatory change. Any reforms should focus on protecting and enhancing healthy, competitive markets for the benefit of consumers.

Part 1: Context of the Australian retail market

Evolution of the Australian retail market

The history of Australian retail shows that the industry is dynamic and that formats and participants are constantly changing to meet the needs of consumers.

Over the last half-century, Australian retail evolved from a fragmented market of specialty stores towards modern, large-format scale retailing. This produced enormous benefits for consumers. The market structure that emerged was similar to many other markets around the world. However, Australia has some unique characteristics such as our small and sparse population and relatively strong presence of specialist food retailers. Additionally, there is a concentrated grocery supplier market.

Competition since the 2008 inquiry

In 2008, the ACCC conducted a comprehensive inquiry into the grocery sector and concluded that it was ‘workably competitive’. It raised some concerns around limited incentives for price competition and high barriers to entry, both of which have not played out:

- The ACCC said that there would be ‘limited incentives for Coles and Woolworths to compete aggressively on price’. Since then, the whole industry (including Coles and Woolworths) has competed very aggressively on price. As a result, prices for food and non-alcoholic beverages have fallen in real terms. In the last 5 years, the fall in real terms translates into an average savings per household of over \$2,220 in total or \$445 per year
- The ACCC also said that there would be ‘high barriers to entry and expansion’. Since then, there have been more than 400 new supermarkets

opened just in the east coast of Australia, around one-third of which were opened by ALDI. In any case, technology and online retail (e.g., Amazon and eBay) are making physical barriers less relevant. More broadly in the retail market, Costco, Zara, H&M, Uniqlo, Topshop, Williams-Sonoma, Apple, Samsung and many others have since entered into Australia.

The period since 2008 has been marked by the emergence of the modern ‘anywhere, anytime’ consumer:

- Consumers shop at all times during the day. The most popular online shopping hours are between 8pm to 10pm, when many physical stores are closed. Eighty-three per cent of consumers agree that grocery stores should be able to open when it is convenient
- Consumers also shop on all days of the week, wherever they can. Sunday has become more popular in every state and territory in Australia, especially in Western Australia following partial deregulation of Sunday trading hour restrictions. Seventy-nine per cent of WA residents would not be opposed to further deregulation
- Consumers do most of their shopping outside of their suburb and are increasingly shopping online. In the last 4 years, the proportion of retail money spent online has increased by over 88 per cent. The residents of the trade area surrounding the Chatswood Precinct spend 14 per cent more online than they do at the nearby major shopping centres in Chatswood and 33 per cent more online than they do in the Sydney CBD.

The impact of this behaviour, combined with the pace of change, is that local bricks and mortar retailers are competing against a vast array of retailers from around the world and forced to rapidly innovate in order to survive.

What has unfolded since 2008 has been primarily due to the intensifying nature of competition between retailers, the impact of technology, and the entry and expansion of global retailers (both physical and digital) in the Australian market, not because of regulatory intervention or increased competition between suppliers.

Ten reasons why competition will intensify

In the future, we believe that competition will intensify – leading to lower prices, better access and continued innovation. There are ten reasons:

1. Consumers are in charge and switch retailers often – only 3 per cent shop at the same supermarket all year
2. Consumers are becoming more price conscious and will always demand great value – more than one-third of items at our supermarkets are purchased on promotion
3. Consumers will continue to check prices online, share information with the world through social media and publicly hold retailers to account
4. There will be an increasing number of options for consumers to split their purchases and trading hour restrictions will hold physical stores back as technology enables 24/7 shopping
5. Global retailers are fundamentally changing the Australian market – ALDI nearly doubled its stores in Australia between 2008 and 2014 and plans to double this again by 2020
6. Incumbents will continue to invest, expand, innovate and react to competition – for example, Metcash recently announced a major turnaround strategy to expand private label and compete aggressively on price
7. Retailers will continue to work with suppliers to bring consumers the best possible prices on branded products
8. More retailers will compete for the same share of the consumer wallet as niche players continue to diversify and broaden their offer
9. Online retail is making barriers to entry less relevant and will continue to bring further innovation and price pressure – 85 per cent of consumers agree that technology allows them to find and compare prices more easily
10. Retailers are driven to compete for every last consumer because of high fixed costs.

Part 2: Implications for the competition reform agenda

History has shown that competition in the retail sector has been working well and delivering for consumers. As such, we believe that only minor changes are needed to the policy framework.

Priorities for a competition reform agenda

The competition reform agenda should focus on protecting and enhancing healthy, competitive markets for the benefit of consumers. We see four specific priorities:

- Retail laws and regulations should be more consumer-centric and impediments to competition should be removed to drive more economic growth and productivity for the benefit of consumers
- Intervention should be restrained where consumers are benefiting from competitive conduct
- Market analysis needs to keep up with the rapid pace of change in business models and consumer expectations
- Laws and regulations should enable Australian businesses to be more internationally competitive and, where applicable, align with best practice.

Opportunities to remove impediments to competition

Rather than protecting individual competitors, Australia needs to ensure that its competition framework does not prevent Australian-owned retailers from remaining internationally competitive. In this respect, unnecessary regulatory restrictions reduce competitiveness and remove incentives for retailers to innovate and offer a high quality, broad range of products at low prices.

There are a number of opportunities to remove impediments to competition so that Australian businesses can drive more economic growth and productivity for the benefit of consumers.

To unlock that potential, we believe that the Government should:

- Encourage the national reform of trading hour restrictions
- Explore the root causes of price differences between countries
- Reduce the costs of doing business
- Harmonise inconsistent laws, regulations and licensing restrictions.

Recommendations to protect and improve the competition framework

We believe that only limited changes are required for the competition policy framework. For example:

- Predatory pricing provisions should be reviewed in light of criticism by the OECD
- Price signalling provisions should be repealed as they are out of step with international best practice.

Indeed, there are some areas where changes to the *Competition and Consumer Act 2010* (Cth) (CCA) would be counterproductive. For example:

- An 'effects test' for misuse of market power would not benefit consumers and has been rejected by numerous reviews over the last 35 years
- Changes to the CCA that protect particular sectors or market participants would be detrimental to competition and consumers
- The current unconscionable conduct provisions are already capable of addressing concerns raised by small business
- The existing section 50 merger provisions already operate effectively, although the informal merger review process itself could be improved.

In considering enforcement powers, penalties and remedies, and our experience dealing with regulators, we believe that the ACCC's powers are adequate. However, we believe that the changing digital business environment should be factored

into section 155 of the CCA and a transparent media policy or code of conduct is required.

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This submission is divided into three parts:

- Introduction to Woolworths
- Part 1: Context of the Australian retail market
- Part 2: Implications for the competition reform agenda

Introduction to Woolworths

Woolworths is a proud, home-grown Australian company which was founded in 1924 on the principle that 'Every man, woman and child needs a handy place where good things are cheap.'

Those words of founding CEO and Sydneysider Percy Christmas are just as important today as they were in 1924. Woolworths exists to offer the best possible value, access and offer shoppers can find, and we pride ourselves on working closely with suppliers to bring the best products at the best price to the 28 million customers we serve each week.

Woolworths is one of Australia's largest employers, employing over 180,000 Australians, including 60,000 employees in rural and regional areas. On average, every day, 144 Australians start a job with Woolworths, of which 87 are young people under the age of 25.

We have over 426,000 shareholders, the vast majority of whom are Australian, and a significant percentage of whom are mums and dads.

We are also a committed business partner to many thousands of local farmers, producers and manufacturers.

Today, we have over 3,000 stores located in Australia and New Zealand, which span food, liquor, petrol, general merchandise, home improvement and hotels. At Woolworths:

- We exist to provide our customers the best value, access and offer
- We significantly contribute to jobs and the economy
- We are proudly part of the local communities in which we operate
- We actively support local suppliers and source Australian grown and produced products
- We are a proud Australian company.

We exist to provide our customers the best value, access and offer

Woolworths is committed to providing our customers the best value, access and offer.

Every day we work hard to deliver value to our customers because we understand their concerns about the cost of living. Woolworths has consistently been delivering price deflation in our supermarkets. In real terms, a typical basket of goods at our supermarkets was 7 per cent cheaper in 2013 than in 2008. We are also helping our customers save money through our 'More Savings Every Day' promotions, which have cut the prices on over 1,000 essential items across our stores.

Woolworths is also delivering the best access to our customers. Our footprint extends to over 3,000 stores including 926 supermarkets, and in the year to date we have opened over 100 new stores. As Australia's biggest supermarket chain we operate 764 stores in rural and regional areas, including in remote areas such as Weipa and Karratha, giving our customers confidence in our unrivalled service. Our rural and regional customers benefit from our consistent pricing policy, meaning that they pay the same price for most products as customers from capital cities.

We are leaders in innovation and multi-option retailing, with our online supermarket sales growing 50 per cent in 2013 and home delivery now available to 90 per cent of Australian households. Our Click & Collect service is now available in all Big W, Masters and Dan Murphy's stores as well as in 202 Australian supermarkets. This gives customers greater convenience and flexibility in the transition of shopping from store to home.

Our applications (apps) for mobile devices have made customers' lives easier by providing support, inspiration and product information in the palm of their hands. Designed to put power in our customers' hands, our apps enable them to shop around the clock from any location. Woolworths' supermarket shopping app has been downloaded over 2.3 million times, and apps across our business have been downloaded more than 3.2 million times.

Woolworths is also committed to providing its customers with the best offer and we are Australia's first choice for fresh food. In 2013, we introduced a number of new products including sweet Solanato tomatoes, sweet crunch lettuce and perfectly ripe stone fruit (peaches and nectarines). We opened 11 meat serveries (targeting 150), 91 new bakeries, 38 new specialty cheese counters (targeting 250) and have 49 sushi counters (targeting 200), 19 fresh pizza bars (targeting 300) and we offer coffee freshly made by a barista.

Quality control has always been a major factor in our buying practices, particularly in fresh foods. In 1964, Woolworths opened its own NATA accredited Quality Assurance Laboratory – independent of the buying department – which is responsible for testing foodstuffs as well as checking samples of general merchandise against specifications to ensure that the quality is delivered.

In 2012, Woolworths became the first national supermarket to offer certified Meat Standards Australia (MSA) graded Australian beef to customers, which gave customers a guarantee on consistent eating quality. Our MSA beef continues to be a favourite with customers, with double digit volume growth in FY13. We remain the only supermarket to offer MSA certified lamb.

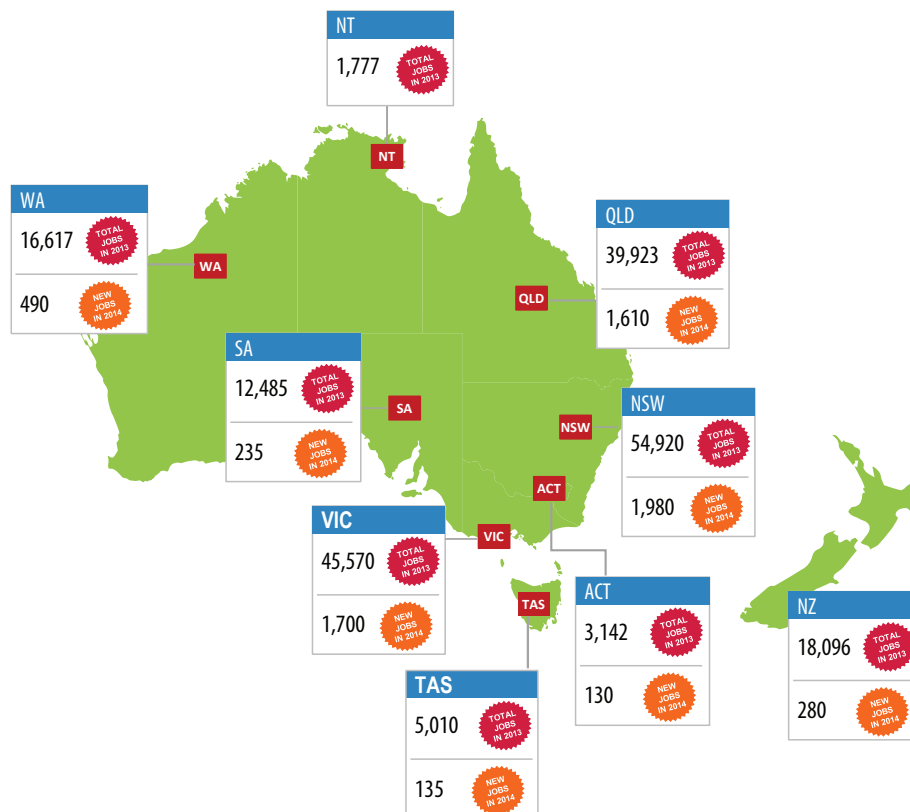
We significantly contribute to jobs and the economy

Woolworths has an unrivalled track record of employing and training hard working Australians. We are now one of Australia's largest employers, economic contributors and business partners.

We directly employ over 180,000 Australians from every state and territory, including more than 60,000 employees in rural and regional areas. On average, every day, 144 Australians start a job with Woolworths, of which 87 are young people under the age of 25. We are particularly proud of our tradition in giving so many young people their first start. This includes young people taking on apprenticeships, graduates fresh from university and students working after school for more pocket money.

We invest heavily in our employees' training and development. In 2013, over 660,000 individual training sessions were undertaken by our employees across 845 courses, representing an investment of \$32.2 million. We run academic programs through the Macquarie Graduate School of Management, while our Graduate Program offers career opportunities during the transition from university to full-time employment. Our FastTrack Program to Management and Leadership identifies and develops talent in our operations teams for future management and leadership roles.

Our track record helps grow the national economy. In 2013, Woolworths paid more than \$7 billion in wages, \$2.2 billion in taxes and \$1.6 billion to shareholders in dividends. Through sales and capital expenditure it is estimated we create more than 750,000 indirect jobs and contribute more than \$111 billion to the Australian economy.



We are proudly part of the local communities in which we operate

At Woolworths, we are committed to supporting the communities in which we operate.

Our community partnerships and investment are relevant to our core businesses, meet community expectations and are supported by our customers and employees. That is why we have set a target of the equivalent of 1 per cent of pre-tax profits going towards supporting these programs and initiatives.

In 2013, we invested the equivalent of \$63.6 million to support our community partners and programs, including:

- \$9.3 million in funds raised for children's hospitals through the Fresh Food Kids Hospital Appeal
- \$1.4 million to support the Salvation Army Disaster Appeal to help communities affected by floods and bushfires across the country
- \$1.2 million donated by BIG W to the Big Heart Appeal Respiratory Research Program
- \$720,000 to Legacy through store fundraising in our supermarkets, BWS, Dan Murphy's and ALH Hotels to support families of Australian deceased veterans
- \$650,000 provided to Taronga Zoo through our ongoing partnership
- Community sausage sizzle events at our Masters stores to assist local schools, sports teams, scout groups and children's centres.

We actively support local suppliers and source Australian grown and produced products

Woolworths takes great pride in supporting our local suppliers and farmers.

We understand that our business can't exist without small businesses. They are the life-blood that keeps our doors open.

Over 3,500 Australian farmers and producers supply Woolworths, and we have developed strong long-term direct relationships across the primary industries sector. For example, in fresh food the majority of our suppliers have been with us for more than 10 years, with a number working with us for more than 30 years.



Our supermarkets offer customers a large range of Australian grown and produced products. For example, 100 per cent of our fresh meat is sourced from Australia, along with 96 per cent of our fresh fruit and vegetables, and 96 per cent of our fresh bakery produce.

In February 2013, we announced our Local Sourcing strategy and have since introduced nine boutique jam brands from suppliers located in the Blue Mountains in NSW, Scottsdale in Tasmania and the Yarra Valley in Victoria.

We are a proud Australian company

Woolworths is a proud Australian company that has significantly contributed to the wealth of its many Australian shareholders.

Woolworths shares were floated in 1993 at \$2.45; on 30 May 2014 those shares closed trading at \$37.53. To put that in perspective, a typical mum-and-dad investor who purchased 1,000 shares during the float spent \$2,450. Those shares are now worth \$37,530, which represents a return of over 1,500 per cent not including dividends.

Every year, around 70 per cent of our profits are paid back to Australian mums and dads as well as other investors, with the remaining amount reinvested into our business.

For instance, in 2013, we made \$58.5 billion in sales from continuing operations, of which we earned \$2.35 billion (or 4 per cent of those sales) in net profit after tax from continuing operations. In the same year, we paid \$1.6 billion (or about 68 per cent of those profits) in dividends to our shareholders. Approximately \$1.2 billion was paid to Australian shareholders, the majority of whom were either retail (mum and dad) investors or superannuation funds holding Woolworths shares on behalf of Australians.

Part 1:
Context of
the Australian
retail market



Part 1:

Context of the Australian retail market

Key messages

Competition between retailers has been the driving force that has produced benefits for consumers. We expect competition to intensify leading to lower prices, better access and continued innovation without the need for regulatory change.

Evolution of the Australian retail market

The history of Australian retail shows that the industry is dynamic and that formats and participants are constantly changing to meet the needs of consumers.

Over the last half-century, Australian retail evolved from a fragmented market of specialty stores towards modern, large-format scale retailing. This produced enormous benefits for consumers. The market structure that emerged was similar to many other markets around the world. However, Australia has some unique characteristics such as our small and sparse population and relatively strong presence of specialist food retailers. Additionally, there is a concentrated grocery supplier market.

Competition since the 2008 inquiry

In 2008, the ACCC conducted a comprehensive inquiry into the grocery sector and concluded that it was 'workably competitive'. It raised some concerns around limited incentives for price competition and high barriers to entry, both of which have not played out:

- The ACCC said that there would be 'limited incentives for Coles and Woolworths to compete aggressively on price'. Since then, the whole industry (including Coles and Woolworths) has competed very aggressively on price. As a result, prices for food and non-alcoholic beverages have fallen in real terms. In the last 5 years, the fall in real terms translates into an average savings per household of over \$2,220 in total or \$445 per year
- The ACCC also said that there would be 'high barriers to entry and expansion'. Since then, there have been more than 400 new supermarkets opened just in the east coast of Australia, around one-third of which were opened by ALDI. In any case, technology and online retail (e.g., Amazon and eBay) are making physical barriers less relevant. More broadly in the retail market, Costco, Zara, H&M, Uniqlo, Topshop, Williams-Sonoma, Apple, Samsung and many others have since entered into Australia.

The period since 2008 has been marked by the emergence of the modern 'anywhere, anytime' consumer:

- Consumers shop at all times during the day. The most popular online shopping hours are between 8pm to 10pm, when many physical stores are closed. Eighty-three per cent of consumers agree that grocery stores should be able to open when it is convenient
- Consumers also shop on all days of the week, wherever they can. Sunday has become more popular in every state and territory in Australia, especially in Western Australia following partial deregulation of Sunday trading hour restrictions. Seventy-nine per cent of WA residents would not be opposed to further deregulation



- Consumers do most of their shopping outside of their suburb and are increasingly shopping online. In the last 4 years, the proportion of retail money spent online has increased by over 88 per cent. The residents of the trade area surrounding the Chatswood Precinct spend 14 per cent more online than they do at the nearby major shopping centres in Chatswood and 33 per cent more online than they do in the Sydney CBD.

The impact of this behaviour, combined with the pace of change, is that local bricks and mortar retailers are competing against a vast array of retailers from around the world and forced to rapidly innovate in order to survive.

What has unfolded since 2008 has been primarily due to the intensifying nature of competition between retailers, the impact of technology, and the entry and expansion of global retailers (both physical and digital) in the Australian market, not because of regulatory intervention or increased competition between suppliers.

Ten reasons why competition will intensify

In the future, we believe that competition will intensify – leading to lower prices, better access and continued innovation. There are ten reasons:

1. Consumers are in charge and switch retailers often – only 3 per cent shop at the same supermarket all year
2. Consumers are becoming more price conscious and will always demand great value – more than one-third of items at our supermarkets are purchased on promotion
3. Consumers will continue to check prices online, share information with the world through social media and publicly hold retailers to account
4. There will be an increasing number of options for consumers to split their purchases and trading hour restrictions will hold physical stores back as technology enables 24/7 shopping
5. Global retailers are fundamentally changing the Australian market – ALDI nearly doubled its stores in Australia between 2008 and 2014 and plans to double this again by 2020
6. Incumbents will continue to invest, expand, innovate and react to competition – for example, Metcash recently announced a major turnaround strategy to expand private label and compete aggressively on price
7. Retailers will continue to work with suppliers to bring consumers the best possible prices on branded products
8. More retailers will compete for the same share of the consumer wallet as niche players continue to diversify and broaden their offer
9. Online retail is making barriers to entry less relevant and will continue to bring further innovation and price pressure – 85 per cent of consumers agree that technology allows them to find and compare prices more easily
10. Retailers are driven to compete for every last consumer because of high fixed costs.

The Australian retail trade industry employs over 1.24 million Australians¹ and is a significant direct and indirect contributor to the Australian economy. We believe that the fierce competition among retailers (fuelled by increased competition from ALDI, emergence of new entrants and the impact of technology) will continue to increase to the benefit of consumers.

The scope of the Competition Review is, of course, much broader than the grocery sector, and Woolworths competes in many sectors beyond grocery. However, there has been a lot of focus on the grocery sector in recent years, and grocery continues to be a core part of our business. As such, we begin with observations on the evolution of the Australian retail market as it concerns grocery retailing, and use the 2008 inquiry into the grocery sector as a reference point from which to consider recent developments in the retail market. We conclude by providing some perspectives on how we expect the retail sector to evolve into the future.

This part of our submission is divided into the following sections:

- 1.1 Evolution of the Australian retail market
- 1.2 The 2008 inquiry into the grocery sector
- 1.3 Competition since 2008 and the effect on prices
- 1.4 Our expectations for the future of retail: lower prices, better access and continued innovation

1.1 Evolution of the Australian retail market

The history of Australian retail shows that the industry is dynamic, and that formats are constantly changing to meet the needs of consumers. Over the last half-century, Australian retail evolved from a fragmented market of specialty and corner stores towards modern, large-format scale retailing – with enormous benefits in value, choice and convenience being passed on to consumers as a result. The key driving force behind these changes has been the evolving needs and expectations of Australian consumers as their lifestyles changed, new technologies were developed and an increasing variety of products became available.

In this section, we make observations on the following:

- 1.1.1 Emergence of modern, scale retail and benefits for consumers
- 1.1.2 Comparison of Australia's grocery market structure with other countries

¹ ABS, 1301.0 - Year Book Australia, 2012

1.1.1 Emergence of modern, scale retail and benefits for consumers

Before the 1950s, the market was characterised by a fragmented collection of specialty and corner stores. Each small player focused on delivering different grocery products including fruit and vegetables, dried goods and fresh meat.

The 1950s to 1970s saw the rise of the basic supermarket, which largely focused on packaged foods while specialists remained focused on fresh food. At that time, cheaper products were becoming available as a result of economies of scale in purchasing, and select retailers started to offer some basic private label 'no frills' products. Also at the time, Franklins was one of the leading supermarkets in NSW, and its recent decline serves as an example of the fragility of retail market leadership in a competitive market.

The 1980s to the 2000s saw the emergence of modern large-format retail in Australia. Larger players emerged and used their scale to offer cheaper prices and modernise their supply chains to drive down costs (which was particularly important given the large geographical distances the Australian retail market spans). The professionalisation of supply chains put these players in the position to bring the best of their consistently high quality, low cost offer across Australia, including to rural and remote regions. Larger scale formats also began offering a wider range of products, including expanding into fresh foods. With the rise of convenience as a strong driver of consumer behaviour, larger retailers became a 'one stop shop' for consumers' weekly shop and top-ups.

This period saw the increased concentration of retailers in many countries, including Australia (which was 'roughly in the middle of the range'² in terms of concentration). However, the Australian context was, and to some extent remains, unique – with a small and sparse population that was relatively isolated from other markets. These unique challenges drove up logistics complexity and costs for retailers and presented challenges for many retailers to achieve scale in distribution.

The improved productivity of the sector and the benefits of scale and modernisation contributed greatly to delivering benefits to consumers. The relative prices for standard groceries decreased, reflecting lower costs of doing business. Supermarkets increased choice by providing access to international suppliers and products that consumers could not previously purchase, and increased convenience by providing the range of products that consumers needed in one place, rather than requiring visits to multiple retailers for specific goods or services.

In more recent times, the retail market has undergone yet further changes. The period since 2008 has been marked by:

- Intense price competition to the benefit of consumers, driven by a series of major actions that retailers have taken to offer the best possible value to consumers (see section 1.3)
- The rise of the modern, 'anywhere, anytime' consumer who is shopping at more places, on all days of the week, at all times of the day and during public holidays; spending most of their money outside of their suburb; and rapidly moving online (see 'Box 3: The modern 'anywhere, anytime' consumer')
- The rapid growth of ALDI, which doubled its store footprint to 340 stores (with aspirations to expand to 700 across Australia) (see section 1.4.5), and the entrance of Costco, Zara, H&M, Uniqlo, Topshop, Williams-Sonoma, Apple and Samsung among others (see section 1.4.5)

2 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, p38, (citing ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008)

- The lines between retail formats blurring as pharmacies started selling baby food, discount and 'dollar' stores started selling groceries and department stores started selling fresh produce (see section 1.4.8)
- The impact of technology disrupting the retail market by making barriers to entry less relevant and bringing further innovation and price pressure to bear (see section 1.4.9).

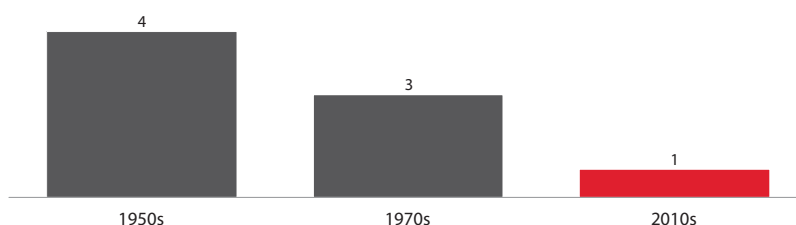
Looking back over the last 60 years, groceries have become more affordable as they have imposed less of a burden on people's income. For example, Exhibit 1³ shows that a kilogram of bacon cost approximately four per cent of a weekly wage in the 1950s, three per cent in the 1970s and less than 1 per cent of a weekly wage in the 2010s. This was due in large part to retail productivity (as well as improvements in farming methods and rising wages).

EXHIBIT 1

The evolution of retail formats



What a kilogram of bacon cost over time
Percentage of average weekly wage



1.1.2 Comparison of Australia's grocery market structure with other countries

As noted in the Productivity Commission's 2011 inquiry into the Australian retail industry,⁴ the evolution of Australia's retail industry has been closely linked with the evolution of retail markets abroad, and the market structure that emerged in Australia by the mid-2000s was similar to other markets internationally (albeit with a number of unique characteristics).

3 Victorian Yearbook 1950-1951, ABS 6403.0 and 6403.0.55.001 - Average Retail Prices of Selected Items 1971 and 2011, RBA Occasional paper No. 8 Table 4.17 (citing ABS weekly earnings data 1951), ABS 6302.0 - Average Weekly Earnings 1971 and 2011

4 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, p10

For example, what has emerged overseas is a consistent theme of two to three large retailers leading the relevant market. The Productivity Commission noted that the market share for the top two and top four retailers in Australia (54 per cent and 73 per cent, respectively) was 'roughly in the middle of the range'⁵ compared to the UK, Canada, New Zealand, Ireland and the Netherlands. It also noted the limitation of measures of market concentration, which depend on the definition of market used and the scope of market under consideration, and which do not alone provide much guidance as to the competitiveness of a market.⁶

Additionally, in large countries, market share measures can be misleading when viewed in aggregate since market structures for retail tend to be based at a city or regional level. For example, it is often cited that the share of major retailers in the US is much lower than in Australia, but this view fails to take into consideration the US market structure at the regional level, which more closely mirrors the Australian market (e.g., the population of Texas, at 26 million, is similar to Australia's population). This is because economies of scale for retailers are determined around distribution centres and logistics networks, and the markets across different geographical regions in a large country like the US do not necessarily interconnect. For example, a retailer on the west coast of the US is not competing with all retailers on the east coast, and we see this play out in the fact that the market shares of the top three players in different regions of the US range from approximately 55 to 70 per cent,⁷ broadly consistent with the position in Australia.

We note that any market share estimate should be approached with caution, and needs to take into account the ways that consumers spend (see 'Box 1: Market share estimates should be approached with caution').

The Australian retail market also presents a number of important challenges to retailers:

- **Small and sparse population in an isolated continent.** Australia is the world's 51st most populous nation, but has the 6th largest land mass – this small but sparse population drives up logistics complexity and cost
- **A high concentration of large suppliers.** Australia's isolation and long distances have contributed to a highly concentrated supplier base, comprised of multiple large companies. For example, Exhibit 2⁸ shows that, across the Australian retail industry, top suppliers are mostly highly concentrated multinational companies. The largest three suppliers within nine major categories account for between 66 and 98 per cent of sales

5 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, p38, (citing ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008)

6 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, p38

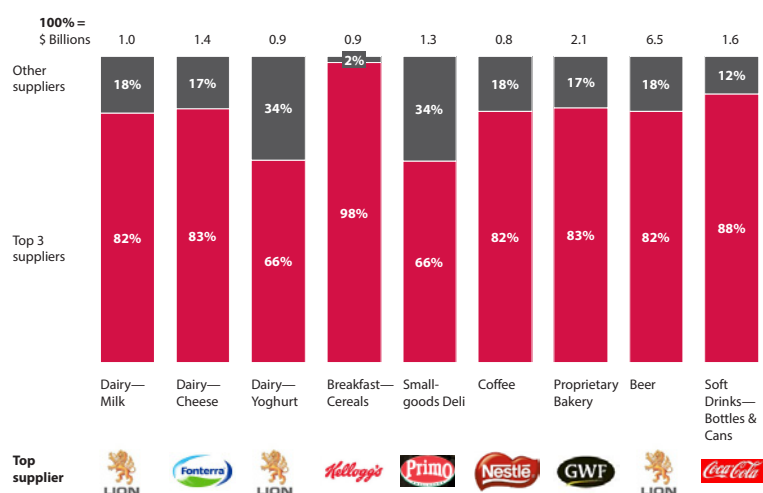
7 Metro Market Studies (analysis of 2011 median market shares of top 3 players for metro areas in US regions)

8 Aztec data (For all categories excluding beer, supplier shares as of 16 September 2012 moving annual total), Woolworths and Morgan Stanley data (For beer, supplier share as of 10 June 2012 moving annual total)

EXHIBIT 2

The level of supplier concentration in Australia

Australian retail: supplier share of 9 major categories by sales—branded products only



- **High prevalence of shopping centres leading to greater competition between supermarkets and specialists.** Another unique characteristic of the Australian market is the high prevalence of shopping centres that contain multiple competing supermarkets as well as specialists. More than half of Australian supermarkets are located in major shopping centres, compared to only 11 per cent in the UK for example.⁹ This means that most supermarkets are closely competing with a variety of specialty stores across a wide range of categories (e.g., fruit and vegetable, meat, bakery and general merchandise retailers are located within the forecourt area of a typical shopping centre). As a result:
 - Australia's share of specialists is relatively higher than in other countries. For example, it is estimated that sales from food, drink and tobacco specialists in Australia are two to three times the proportion of grocery sales compared to other countries like Japan, the US, Germany and the UK¹⁰
 - Sales from specialists continue to grow in Australia. From 2008 to 2013, sales revenue of food, drink and tobacco specialists in Australia increased by 18 per cent. Over the same period, sales of food, drink and tobacco specialists in the UK fell by 5 per cent¹¹
- **'Food bowl' status means that domestic retailers source locally and we do not control farm gate prices.** Australia's status as a 'food bowl' drives two outcomes for domestic retailers. First, we tend to source locally – at Woolworths, 100 per cent of fresh meat, 96 per cent of fresh fruit and vegetables and 96 per cent of bakery products are sourced locally. This compares to Loblaws and Safeway in North America, which both source around 30 per cent of their produce locally, and Waitrose

⁹ MacroPlanDimasi (Australia data, 2012), Retail Locations (UK data, 2011)

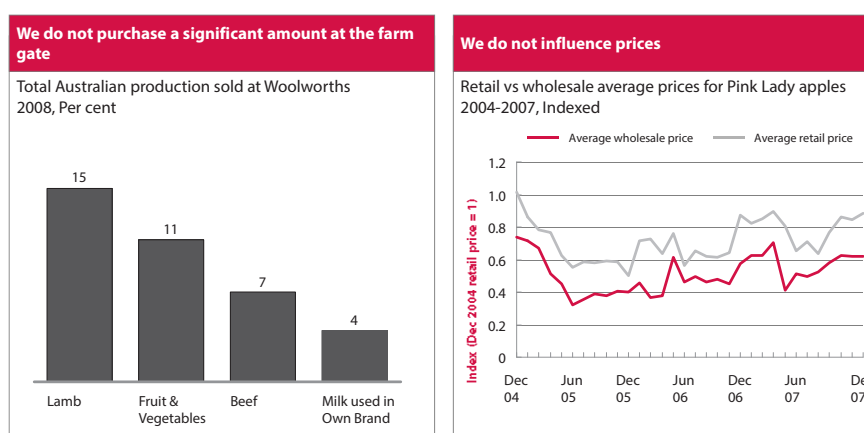
¹⁰ Euromonitor International, Share of Food/Drink/Tobacco Specialists as per cent of Grocery Retail Value, 2013

¹¹ Euromonitor International, Sales of Food/Drink/Tobacco Specialists 2008, 2013

in the UK, which sources 70 per cent of its vegetables locally.¹² Secondly, as Exhibit 3¹³ shows, we do not control farm gate prices because we do not purchase a significant amount at the farm gate. The ACCC recognised this in 2008 when it said that *‘retailers do not set farm gate prices, but rather these prices mirror supply and demand factors in the relevant market.’*¹⁴ In the case of pink lady apples, Exhibit 3 also shows that retail prices closely track wholesale prices.

EXHIBIT 3

Facts about the farm gate



Box 1: Market share estimates should be approached with caution

It is often cited in the popular media that the market share or market concentration of supermarkets in Australia is high, and that this implies the industry is not competitive.

For instance, some commentators have referred to an ‘80 per cent’ combined market share figure for Coles and Woolworths.¹⁵ While it is not always clear how these figures are calculated, one thing is clear: both Woolworths and the ACCC agree that it is incorrect. In 2008, the ACCC said that *‘to say that the [major supermarket chains] enjoy an 80 per cent share of grocery sales exaggerates the position of the retailers.’*¹⁶ Nevertheless, these exaggerated figures are still referred to.

- 12 Loblaw 2012 Corporate Social Responsibility Report (31% of Loblaw’s produce purchases were Canadian in 2012), Safeway website <http://www.safeway.ca/community/product.html> (roughly 30% of the produce sold by Safeway annually is local), Supermarkets challenged to do more to support British farmers, CPRE (70 per cent of the vegetables Waitrose sold in 2012 were British)
- 13 Woolworths Corporate Responsibility Report 2011; The facts about grocery retailing at Woolworths, 2008; Woolworths; ABS, DAFF, ACNielsen, Meat & Livestock Australia, Dairy Australia (left), ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, ACCC assessment, p255 (right)
- 14 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p220
- 15 Sydney Morning Herald, *Independent MPs join forces to take on Woolworths, Coles over high market share*, June 2013, Ferriers Focus, *Supermarket shootout: Will the independents survive?* 2011
- 16 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p48

There are a number of reasons why market share figures are misrepresented in the media. Often the reason is due to incorrect approaches in measuring and defining the 'market'.

Mistakes in measuring the market

One of the common mistakes in measuring the market is to take the sales of a particular supermarket and divide by the sales of all supermarkets to find the 'market share' of groceries. The underlying assumption is that supermarkets only compete with, and sell products that can only be found in, other supermarkets. This assumption is flawed as supermarkets compete with any other retailer who sells substitutable or competing products in respect of those products. For instance:

- Supermarkets compete with specialists over meat, fruit and vegetables and bakery products
- Supermarkets compete with general merchandise stores, department stores and newsagencies over general merchandise and 'front of store' products
- Supermarkets compete with pharmacies and department stores over health and beauty products.

The implication of taking a format-specific approach to calculating market share is that:

- The grocery sales of supermarkets are exaggerated because reported supermarket sales figures include general merchandise and health and beauty products, among other things
- The 'size of the market' is understated because it ignores all other channels that sell substitutable or competing products.

This has the combined effect of significantly overestimating the 'market share' of supermarket chains. Other mistakes that can be made are to compare total supermarket sales to food sales in Australia, or to use the share of a supermarket in one category (e.g., packaged groceries) as a proxy for its overall market share in all categories. Again, these would tend to overestimate market share and use the wrong definition of a 'market'.

1.2 The 2008 inquiry into the grocery sector

In 2008, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs called for the ACCC to review the state of the grocery sector. As noted in the ACCC report, there had been a build-up of public concerns over the competitiveness of grocery retail prices and the fact that grocery food prices had increased at a significantly higher rate than the headline inflation rate in preceding years.¹⁷ While this was true, our view was that grocery food prices had increased due to strong inflationary pressures in underlying costs such as fuel and grain (as an input and livestock feed), exacerbated by local weather-related shocks.¹⁸

Nevertheless, the ACCC conducted a comprehensive and broad-ranging review into the grocery sector. The scope of the inquiry included the nature of competition at the supply, wholesale and retail levels of the industry and involved 250 submissions from a

¹⁷ ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p1

¹⁸ Woolworths, Submission to the ACCC grocery price inquiry, 2008

range of industry participants, associations and private individuals, 22 public hearings in every capital city in Australia and selected regional towns, along with a number of confidential hearings and the release of a 516-page report.¹⁹

At the end of the process, the ACCC's main conclusion was that 'grocery retailing is workably competitive.' Although the ACCC was right that the industry was workably competitive, it also raised concerns around price competition and barriers to entry, neither of which have played out. Indeed since 2008, competition has intensified. For instance:

- The ACCC noted that *'there are a number of factors that currently limit the level of price competition, including... limited incentives for Coles and Woolworths to compete aggressively on price.'* However, since then:
 - **The whole industry (including Coles and Woolworths) has competed aggressively on price.** This has taken the form of major price campaigns (most notably Coles' 'Down Down' campaign and Woolworths' 'More Savings Every Day' campaign) as well as 'everyday low prices' offers (most notably from ALDI) and IGA's 'Locked Down Low Prices' campaign
 - **As a result, prices have fallen.** Despite concerns around incentives for price competition, in the last 5 years, food and non-alcoholic beverage prices have tracked at 1.3 per cent compared to inflation at 2.6 per cent. This means that real food prices have fallen. In dollar terms, the fall has been worth over \$17 billion in total and counting using the methodology that the ACCC accepted in 2008 (i.e., comparing the food price index to the inflation index)²⁰
- The ACCC noted that there were *'high barriers to entry and expansion, particularly in relation to difficulties in finding new sites for development.'* However:
 - **Barriers have not limited expansion and are, in any case, less relevant.** Despite concerns around high barriers to entry and expansion, we estimate that over 400²¹ new supermarkets ('greenfields') have been opened between 2008 and 2014 in the east coast of Australia (Exhibit 4²²). Since 2008, ALDI has nearly doubled its store footprint on the east coast of Australia. This was around the total number of Woolworths and Coles net store additions combined in all of Australia.²³ In any case, the Productivity Commission noted that the previous barriers were becoming less and less relevant with the impact of technology:

*'With the embrace of the internet and digital technology, the industry is becoming increasingly part of an integrated global marketplace. Further, a number of innovative global retailers are arriving to set up and compete physically in the domestic market.'*²⁴

19 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p2

20 ABS, 6401.0 - Consumer Price Index Mar 2014, Table 7. CPI: Group, Sub-group and Expenditure Class, Weighted Average of Eight Capital Cities

21 MacroPlanDimasi and Woolworths estimates. ALDI, Woolworths and Coles opened an estimated 343 new 'greenfield' supermarkets combined between 2008 and 2014 on the east coast of Australia. Metcash opened 222 stores overall (IGA and Supa IGAs). For the purposes of the Metcash greenfields estimate, we have assumed around 30% of Metcash's 222 stores, or 67 stores, were greenfield (based on the estimated ratio of greenfield/brownfield store openings in Australia from 2012-2014)

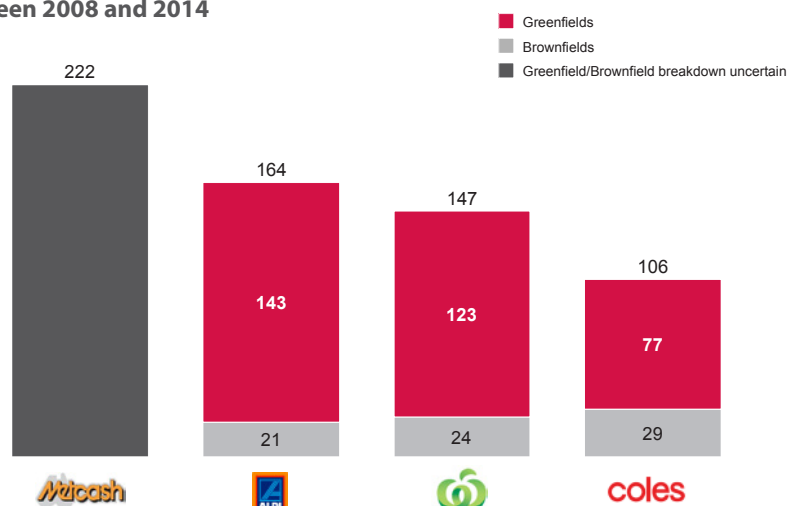
22 MacroplanDimasi, Woolworths

23 Based on estimates of net store growth (i.e., store openings less store closings) from 2008-2014. Over this period, ALDI grew its footprint by an estimated 164 stores, and Woolworths and Coles grew their combined footprint by an estimated 162 stores

24 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, p7

EXHIBIT 4

Estimated store openings on East Coast (QLD, NSW, VIC, ACT) between 2008 and 2014



1.3 Competition since 2008 and the effect on prices

Since 2008, there has been an era of fierce competition in the Australian retail market. This section describes:

1.3.1 How consumers have benefited from price competition:

- Real prices have come down across the retail industry
- Real price decreases have translated into meaningful savings for Australians
- In a typical basket of goods, prices have come down for both 'mainstream' and 'value-conscious' customers.

1.3.2 What actions retailers have taken in order to drive prices down:

- Retailers have acted as the agent of the consumer
- Retailers have expanded private label to compete and to meet unmet consumer needs
- Retailers have scoured the world to source the lowest possible prices for consumers on branded products
- Retailers have backed small suppliers to enter the market and challenge incumbents.

1.3.1 How consumers have benefited from competition

Real prices have come down across the retail industry

In the last 5 years (March 2009 to March 2014), food and non-alcoholic beverage prices have tracked at 1.3 per cent compared to inflation at 2.6 per cent. In other words, the real price for food and non-alcoholic beverages has fallen by approximately 1.3 per cent each year on average.

The clear winners from this intensifying competition are consumers, who are seeing the savings through lower prices. In dollar terms, the difference between inflation and food and non-alcoholic beverage prices over the last 5 years is equivalent to over \$17 billion using the methodology that the ACCC accepted in 2008 (i.e., comparing the food price index to the inflation index).²⁵ That is, it would have cost consumers over \$17 billion more over the last 5 years, had food and non-alcoholic beverage prices tracked at the same level as inflation instead of falling in real terms.

Competition leading to falling prices has not just been limited to the grocery sector – over the last 5 years, the price of non-durable household products, clothing and footwear, and household appliances fell even further than food, demonstrating that price competition is taking place at a fierce pace in the broader retail market.

The key market force that has driven the decline in real prices is the intensifying nature of competition between retailers (e.g., the impact of global models such as ALDI and Costco; the response by incumbents; the entrance of niche players continuing to attack; and the growth of online). Prices fell because of competition between retailers – not because of intervention by regulators or competition between suppliers.

The timeline in the following excerpt illustrates the events that have unfolded over the last 5 years (between March 2009 and March 2014). The highlights are:

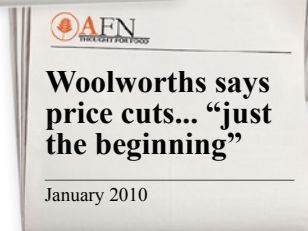
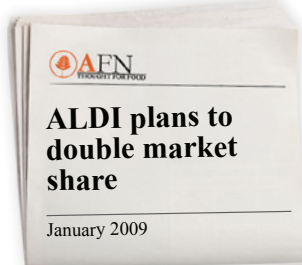
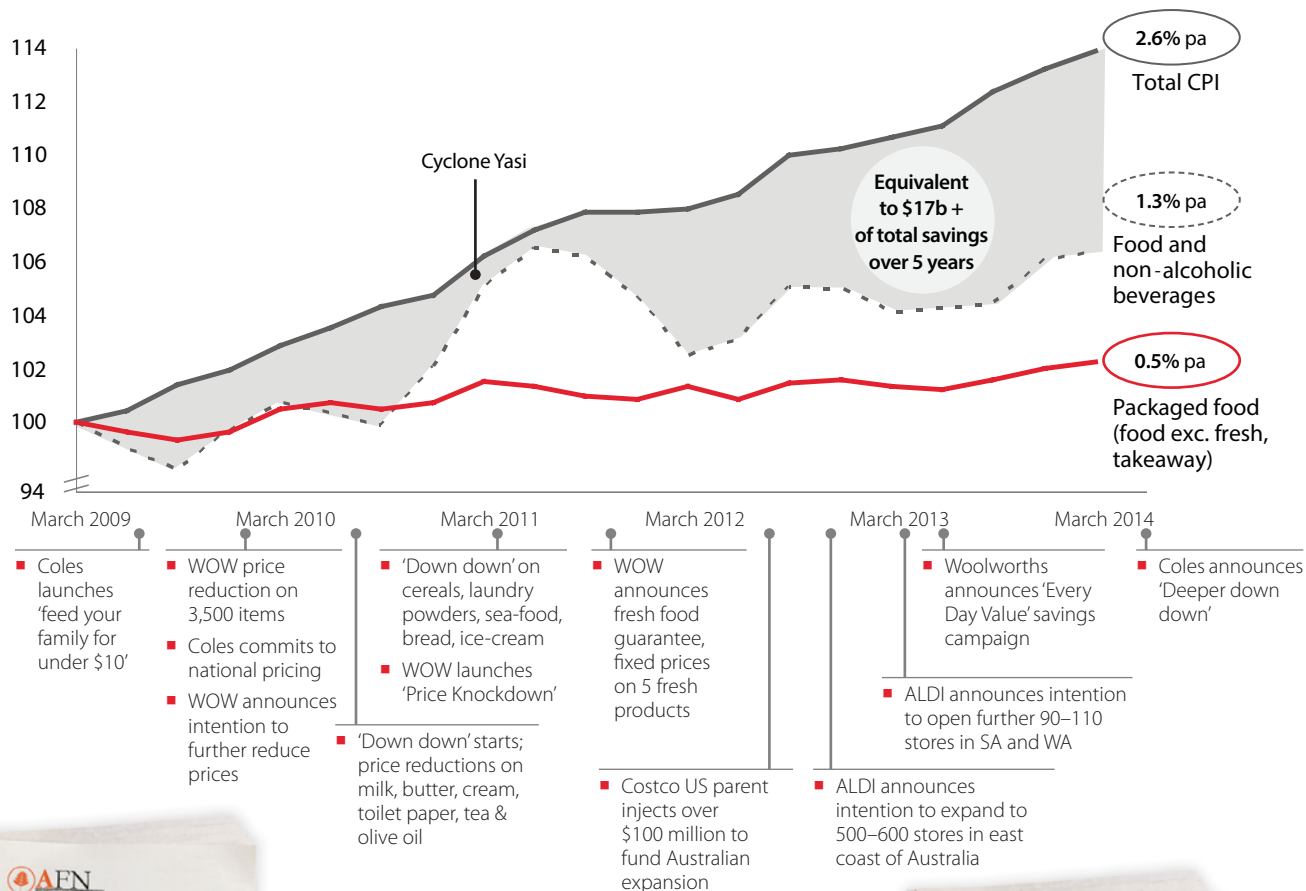
- There was an ongoing series of major price campaigns launched by Coles and Woolworths (among others), demonstrating that the ACCC's concerns about limited incentives for price competition between Coles and Woolworths were unfounded
- ALDI expanded rapidly and made announcements about their intention to expand to 500 to 600 stores in the east coast of Australia, as well as to open 90 to 110 stores in SA and WA. Costco has opened six warehouses (with the average Costco warehouse equivalent to over 5 typical supermarkets), announced its intention to open another two by the end of this year²⁶ and may expand to around twenty across Australia. These developments suggest that the ACCC's concerns about high barriers to entry and difficulties in finding sites were unfounded
- The 'packaged food'²⁷ segment has been a particular area of focus for regulators, but prices have tracked at only 0.5 per cent per annum. This is lower than fruit and vegetables (where the large retailers compete with thousands of fruit and vegetable specialists) and takeaway/ready meals (where the large retailers compete with thousands of takeaway outlets), suggesting that market conduct does not necessarily flow on from market structure.

25 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, p20

26 Sydney Morning Herald, *Victoria shows the way for ALDI attack*, 6 September 2012, Watch out Woolies: ALDI's rapid growth could open the door for others, 12 February 2014, ALDI press release, *More Australians to experience smarter shopping*, February 2013, The Australian, *More retail competition as discounter Costco opens stores*, 11 October 2013

27 'Packaged food' refers to food and non-alcoholic beverages excluding fruit and vegetables and takeaway/ready meals

Real food prices and price competition



Source: ABS CPI Mar 2014 report, Table 7: Group, Sub-group and Expenditure Class, Weighted Average of Eight Capital Cities

We are dropping prices across the range

Prices you'll love talking about

more SAVINGS every day

feed your family for under \$10

PRICE MATCH
ON THOUSANDS OF EVERYDAY PRODUCTS

PRICE KNOCKDOWN
and staying down!

LOCKED DOWN
Look for the lock and save even more

At IGA we've locked down prices on thousands of products across the store. They're not just weekly specials, but locked in low prices. It's all just part of helping you save even more at IGA.

DOWN AND STAYING DOWN

Real price decreases have translated into meaningful savings for Australians

The food and non-alcoholic beverages sector has been delivering significant savings to Australians. The fall in the real price of food and non-alcoholic beverages over the last 5 years translates into a saving per household of over \$2,200 in total, which is:

- An average household saving of approximately \$445 per year (which is equivalent to about 20 basis points off a typical Australian mortgage)²⁸ or
- An average household saving of approximately \$8.50 per week.

**Equivalent to a
20bps decrease
in the average
family mortgage**

The table below illustrates the year-by-year savings.²⁹

Weekly spend on food and non-alcoholic beverages per household	Mar 09 – Feb 10	Mar 10 – Feb 11	Mar 11 – Feb 12	Mar 12 – Feb 13	Mar 13 – Feb 14	Average over the period
Scenario 1: According to movements in food and non-alcoholic beverages index	\$204*	\$209	\$216	\$214	\$216	\$212
Scenario 2: Assuming food and non-alcoholic beverage prices tracked with inflation	\$209	\$215	\$221	\$226	\$231	\$220
Real weekly savings per household	\$4.6	\$5.9	\$5.7	\$11.4	\$15.1	\$8.5

*ABS, 6530.0 - Household Expenditure Survey 2009-2010.

Woolworths has been playing its role. It has consistently been delivering real price deflation to our customers. In FY13:

- 'More Savings Every Day' cut prices on essential items consumers buy most often, with more than 1,000 products undergoing a long-term reduction in price
- We also launched 'Extra Special' offers, providing savings of up to 50 per cent on more than 1,000 lines to our Everyday Rewards loyalty program customers.

As a result, our customers are increasingly satisfied with the value that we deliver. Between November 2011 and November 2013, the proportion of customers that agreed we provided good value overall increased by nearly one-fifth.³⁰

²⁸ Assuming \$315,700 mortgage (average loan size for all owner occupied dwellings was \$315,700 in February 2014 according to ABS Housing Finance 5609.0, February 2014, Table 9), and 5.45%, 25 year loan with monthly repayments

²⁹ Note: Subject to rounding

³⁰ Woolworths Supermarket Brand Tracker

In a typical basket of goods, prices have come down for both 'mainstream' and 'value-conscious' customers

Looking at a basket of goods, it's easy to see how all this has occurred. In real terms, a typical basket of goods at our supermarkets was around 7 per cent cheaper in 2013 than in 2008.

We selected 50 types of products across a broad range of categories, including fresh and packaged food products (e.g., apples, orange juice and spaghetti) and common household and personal care products (e.g., toilet tissue and soap).

We then created two baskets:

- A 'value' basket consisting of low-priced product lines
- A 'mainstream' basket with high-selling product lines.

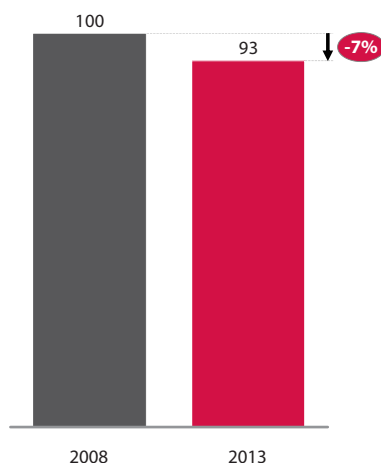
We compared the costs of the baskets over time using the average price paid in 2008 and 2013, respectively. Adjusting for inflation, we found that the baskets cost around 7 per cent less in real terms in 2013 than in 2008 (Exhibit 5).

As an example, the average price for a 500g block of Homebrand cheese was \$4.18 in 2008, or \$4.74 when adjusted for inflation. The average price in 2013 was \$3.91, representing an over 80 cent saving in real terms.

EXHIBIT 5

Change in basket prices from 2008 to 2013

Indexed to 100, adjusted for inflation



1.3.2 What actions retailers have taken in order to drive prices down

Since 2008, competition has intensified between retailers to the enormous benefit of consumers. It is important to recognise that what has unfolded in the last 5 years is primarily due to the intensifying nature of competition between retailers, the impact of technology and the entry and expansion of global retailers (both physical and digital) in the Australian market, not because of regulatory intervention or increased competition between suppliers.

Retailers have acted as the agent of the consumer

Retailers have always played the role of intermediary between suppliers and consumers. However, in recent years, retailers have actively played the role of agent of the consumer as they compete to win share of the consumer wallet. As a result of negotiations between retailers and suppliers, consumers have benefited from falling prices.

Retailers have expanded private label to compete and to meet unmet consumer needs

While Woolworths' Own Brand penetration is still low compared to the trend overseas (see Exhibit 6³¹), retailers have generally expanded private label in response to:

- Global retailers that have entered Australia. For example, ALDI rapidly expanded in Australia on the basis of an almost exclusively private label offering
- Changing consumer needs. For example, Woolworths' customer research showed an unmet need in Gluten-free products for customers affected by Coeliac disease. In response, our Macro offering was expanded in this category.

It is important to recognise that, outside of supermarkets, private label is embedded in Australian retail. For instance, Zara and IKEA are exclusively private label retailers. Myer's share of private label is around 20 per cent of sales, Target's share is 90 per cent excluding electronics, toys and music³² and K-Mart is targeting 90 per cent private label share.³³ Woolworths South Africa (not affiliated with Woolworths), which recently made a takeover offer for David Jones, plans to 'transform' the iconic Australian retailer into a 30 per cent private label store.³⁴ As a result, it is not surprising that almost four in ten Australians say they buy more private label products than products from well-known brands.³⁵

31 Woolworths Corporate Responsibility Report 2013 pg 17 (Homebrand, Macro, Select and Gold sales comprise 15% of grocery sales), Private Label Buyer Top 35 Private Label Retailers 2012 (for the Walmart, Safeway, Costco, Trader Joe's, ALDI figures), Nielson State of the Nations 12 w/e 5 Jan 2013 (for the Tesco, Sainsbury's, ASDA figures)

32 The Australian, *Retailers take private labels upmarket*, 19 January 2013

33 Planet Retail

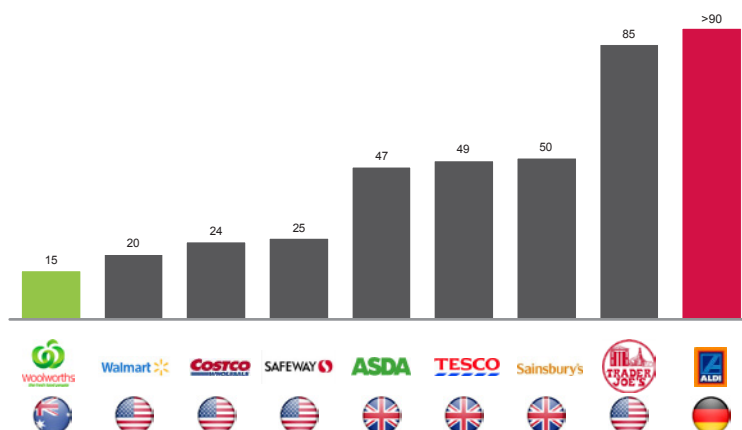
34 The Guardian, *We will transform David Jones, say South Africans after \$2.15bn offer*, 9 April 2014

35 Roy Morgan, *Private label could be the 'new black'*, 30 May 2014

EXHIBIT 6

Private label sales as a proportion of grocery sales

Per cent



Retailers have scoured the world to source the lowest possible prices for consumers on branded products

'Price discrimination' is a situation where consumers pay more for the same product than others in comparable economies. There are a variety of reasons why this is the case (see section 2.2.2). Australian retailers have become increasingly aware of such cost price anomalies, and have responded by setting up direct sourcing centres in lower cost countries to find better value for consumers and actively finding vendors that can supply genuine products at lower prices.

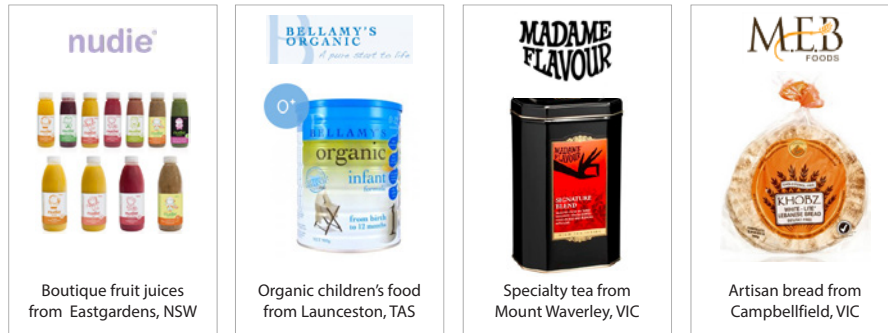
Retailers have backed small suppliers to enter the market and challenge incumbents

As a result of evolving consumer needs, retailers have backed a number of small suppliers to enter the market and challenge incumbents (Exhibit 7). Our small suppliers have always been critical trading partners as they provide almost two-thirds of our range. For example:

- We were the first retailer to nationally stock Nudie beverages. Through growing popularity and expansion, Nudie became one of our top 200 suppliers by sales in 2012
- We worked with Bellamy's, a Tasmanian producer of organic baby food, to identify an initial set of stores from which they could build a base of customers. We developed a promotional program that was within the supplier's means and subsequently increased distribution and positioning on the shelf
- Madame Flavour approached us with a unique proposition to range a specialty tea. We co-developed a launch plan and supported them with broad distribution in our stores and have continued to work with them to establish their brand
- We have had a 40+ year relationship with MEB Foods, a family owned company specialising in wraps, pita breads, and other specialty breads. Their growth has been fuelled through our increased range of international breads.

EXHIBIT 7

Growth of small suppliers



Sales through Woolworths grew on average between 50 to 75% per year from 2010 to 2013

1.4 Our expectations for the future of retail: lower prices, better access and continued innovation

For some, it is difficult to comprehend the scale of change in just the last 6 years. Since 2008, retailers have engaged in intense price competition to the benefit of consumers, ALDI has doubled its footprint to 340 stores in the east coast of Australia, Costco has plans to expand to 8 warehouses by the end of the year, social media influences where parents buy their nappies and smartphones have changed the way consumers shop.

However, one thing has always been a 'constant': the history of Australian retail shows that the industry is dynamic, and that formats are constantly changing to meet the needs of consumers. As such, our expectations, and indeed the assumptions driving our business strategy, are that competition will continue to intensify leading to lower prices, better access and continued innovation.

In this section we outline our ten beliefs for the future of retail (from both the consumer and retailer perspective) which explain why competition will continue to intensify.

Ten reasons why competition will intensify in the future

From a consumer lens...



- 1 Consumers are in charge and switch retailers often
- 2 Consumers are becoming more price conscious and will always demand great value
- 3 Consumers will continue to check prices online, share information with the world through social media and publicly hold retailers to account
- 4 There will be an increasing number of options for consumers to split their purchases and trading hour restrictions will hold physical stores back as technology enables 24/7 shopping

From a retailer lens...



- 5 Global retailers are fundamentally changing the Australian market
- 6 Incumbents will continue to invest, expand and react to the competition
- 7 Retailers will continue to work with suppliers to bring consumers the best possible prices on branded products
- 8 More retailers will compete for the same share of the consumer wallet as niche players continue to diversify and broaden their offer
- 9 Online retail is making barriers to entry less relevant and will continue to bring further innovation and price pressure
- 10 Retailers are driven to compete for every last consumer because of high fixed costs

The Consumer Lens

1.4.1 Consumers are in charge and switch retailers often

Ninety-seven per cent of Australian consumers that shop on average at least once a month switch supermarkets over the course of a year.³⁶ Even in the course of just one month, 92 per cent of our customers shop at other supermarkets.³⁷ In other words, retailers have to compete hard for their customers every day (unlike in other industries such as retail banking and private health insurance).

Similarly, over 90 per cent of consumers switch providers across retail goods stores such as core apparel (98 per cent switch), fuel (93 per cent switch) and discount department stores (92 per cent switch).³⁸

Exhibit 8³⁹ demonstrates how retail stores compare to the low rates of switching in retail banking (5 per cent), private health insurance (7 per cent), telco (16 per cent) and electricity and gas (27 per cent) and 'Box 2: Why consumers switch more in retail vs other industries' explains why there is such a stark difference between retail and other industries.

There are three reasons why retail consumers show such little loyalty:

- **It's easy to switch.** There are no 'lock in' mechanisms and the design of Australian shopping centres means that switching between a supermarket and a specialist is as easy as walking next door (see section 1.4.4)
- **Consumers care deeply about value.** Consumers have an incentive to care about value (as 17 cents in every retail dollar they spend goes to food), and they do – as over half would switch for a 5 per cent reduction in price (see section 1.4.2)
- **Prices are transparent.** Australian consumers already check and track prices, and price transparency is increasing over time (see section 1.4.3).

36 Quantum

37 Nielsen Homescan (2014)

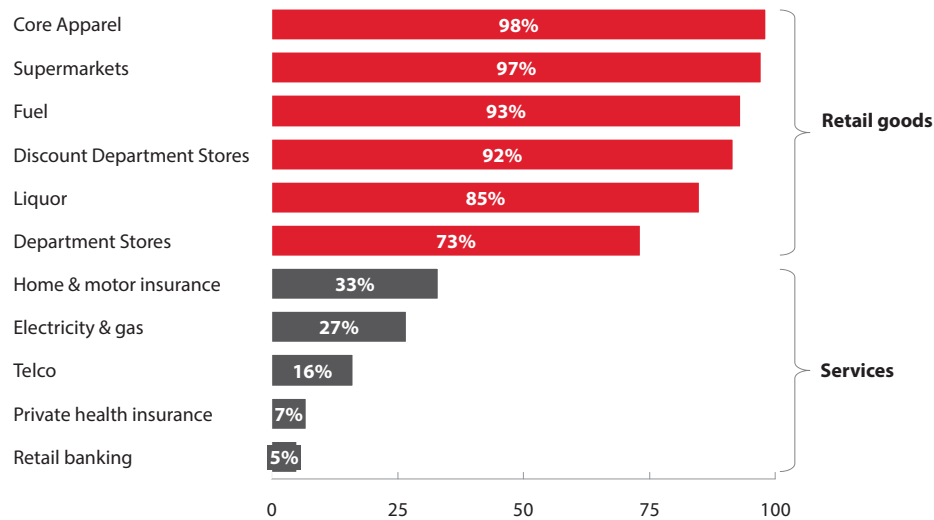
38 Quantum

39 Quantum for all industries other than retail banking; Canstar Blue market research for retail banking

EXHIBIT 8

Australian customers who switch provider in a given year

Per cent










Box 2: Why consumers switch more in retail vs other industries

There are three main reasons why consumers switch more in retail as compared with other industries:

- **It's easier to switch in retail.** In retail, switching is easy because there are no 'lock in' mechanisms. In comparison, many telco consumers are on contracts, and retail banking clients have multiple facilities set up with one financial institution which makes it more time consuming and difficult to switch. As discussed above, more than half of Australian supermarkets are located in shopping centres where there are multiple competing retailers as well as a range of specialty stores.
- **Retail consumers are highly price sensitive.** In comparison, in electricity and telecommunications, other factors such as service reliability are just as (if not more) important than price.
- **Price transparency is higher in retail than in other industries.** Retail prices are labelled (and, in the case of groceries, need to conform to standard measurements), consumers engage multiple times a week with grocery prices, and prices for staple products (such as milk) attract much attention. In comparison, price transparency is lower in electricity (as consumers only find out what they need to pay after the relevant monthly/quarterly bill cycle) and retail banking (where, although headline rates are published, the full costs involved in a basic product such as a mortgage are difficult to compartmentalise on a weekly basis).

In the following diagram, we have summarised three industries that are often cited as having similar market structures to retail. However, each industry has different levels of competitive intensity based on differences in price sensitivity, price transparency and ease of switching.

Different levels of price sensitivity, price transparency and ease of switching across industries

	Retail 	Electricity 	Telco 	Retail banking 
Importance of price 	High	Medium	Medium	High
Price transparency 	High	Low	Medium	Medium
Ease of switching 	High	Medium	Low	Low

1.4.2 Consumers are becoming more price conscious and will always demand great value

From a consumer point of view, 17 cents in every retail dollar they spend goes to food.⁴⁰ As such, consumers have an incentive to care about prices, and they do – the ACCC found in its 2008 review that over half would be willing to switch supermarkets for a 5 per cent reduction in price.⁴¹

Price is also the biggest driver of store choice for consumers, after convenience of store location.⁴² This plays out at our supermarkets, where more than a third of items are purchased on promotion, and one in four customers purchase nearly half of the food and drinks in their trolley on special.⁴³ In the future, we expect that consumers will continue to care deeply about value.



1.4.3 Consumers will continue to check prices online, share information with the world through social media and publicly hold retailers to account

Technology is allowing consumers to check prices, share information with their extended networks (and the world) and publicly hold retailers to account through retailer websites and social media accounts – all at the touch of their fingertips 24 hours a day, 7 days a week. In this respect, store trading hour restrictions are damaging 'bricks and mortar' businesses as consumers simply migrate online as an easy and convenient alternative to

⁴⁰ ABS, 6530.0 - Household Expenditure Survey 2009-2010, Proportion of household expenditure on food and non-alcoholic beverages

⁴¹ ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008 (Chart 5.3)

⁴² Woolworths Consumer Survey, February 2014 (n=2640)

⁴³ Quantum - Everyday Rewards analysis

physical stores (which are forced to close due to outdated trading hour restrictions – see section 2.2.1 for detailed discussion).

Australian consumers already check and track prices and price transparency is increasing over time. From 2010 to 2013, the proportion of grocery shoppers who know prices and notice changes increased by 13 percentage points (from 49 per cent to 62 per cent).⁴⁴ This is perhaps unsurprising as consumers engage with prices regularly – the average consumer makes 2.5 grocery transactions a week.⁴⁵ Further, our consumer survey on purchasing trends in 2014 found that over 80 per cent of consumers who researched products online used a website to compare prices before purchasing.⁴⁶

The level of information at consumers' fingertips is continuing to increase. Technology is bringing an unprecedented level of price transparency through the rapid proliferation of price comparison apps, websites and use of social media to compare retailers. Exhibit 9⁴⁷ shows how the growth of the internet/technology has changed consumer behaviour, with 82 per cent of consumers stating that it has helped them make more informed choices. In the future, consumers will be armed with even more information on prices, products and innovative new offers due to this technology trend:

- Technology is giving consumers an unparalleled ability to compare and evaluate options from a variety of providers, and consumers are researching and buying online across all categories. Eighty-five per cent of consumers state that the growth of internet/technology has allowed them to find and compare prices more easily. Consumers are demanding greater transparency around the products they purchase, and transparency in delivery charges and after sales service.
- Technology is being developed that could use geo-locating social media to offer deals to consumers located in nearby neighbourhoods (e.g., TheFind). The integration of online shopping with social networks could see the development of online shopping malls with access to multiple retailers, particularly as consumers turn to social media for advice from friends. In a recent survey, 48 per cent of consumers who conducted research online stated they had checked with friends on a social network before purchasing.⁴⁸



44 Nielsen Shopper Trends

45 Nielsen Homescan

46 Woolworths Consumer Survey, May 2014 (n = 1100)

47 Woolworths Consumer Survey, May 2014 (n = 1100)

48 Woolworths Consumer Survey, May 2014 (n = 1100)

EXHIBIT 9

The growth of the internet / technology has....

Percent of consumers who strongly or somewhat agree



1.4.4 There will be an increasing number of options for consumers to split their purchases and trading hour restrictions will hold physical stores back as technology enables 24/7 shopping

Consumers already have a lot of choice, and every area of the supermarket competes with a large range of other retailers. Exhibit 10⁴⁹ shows that there are thousands of competitors for every category in which we compete (e.g., Woolworths' meat department competes with the independent butcher located in the shopping centre forecourt). Besides other supermarkets like ALDI (around 340 stores), we are in competition with specialty retailers that are often large chains like Bakers Delight (590 stores), 7Eleven (600 stores), Newpower (>750 stores) and Priceline (330 stores), as well as thousands of independent stores. For example, consumers have access to over 5,000 butchers and seafood and poultry stores beyond Woolworths.

EXHIBIT 10

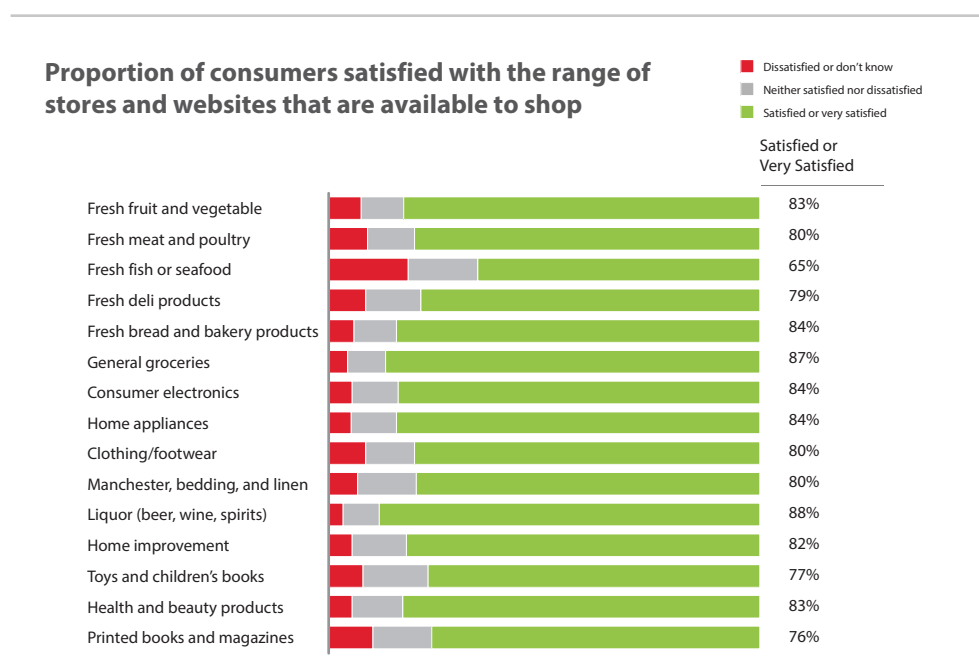
Approximate number of competitor stores by area of the supermarket



Also, as described in section 1.1, one of the unique characteristics of the Australian retail market is the high prevalence of shopping centres that contain multiple competing supermarkets as well as specialists (as opposed to standalone buildings as is the case in the UK and the US). More than half of Australian supermarkets are located in major shopping centres, compared to only 11 per cent in the UK.⁵⁰ This means that most supermarkets need to compete with the variety of specialty stores nearby, as switching to a competitor is as easy as walking next door. As a result, over the course of a month, more than 61 per cent of consumers shop at both specialists and supermarkets.⁵¹

Overall, people are overwhelmingly satisfied with the range of stores available to buy groceries and fresh products. Exhibit 11⁵² shows that, across a broad range of categories, consumers are satisfied with the range of available stores and websites. Eighty-seven per cent of consumers were satisfied with the range of stores and websites available for general packaged groceries and 88 per cent were satisfied with the range of liquor stores – indicating that consumers appreciate the diversity of formats from which to purchase goods.

EXHIBIT 11



In the future, there will be virtually unlimited options for consumers to split their purchases and trading hour restrictions will only hold physical stores back as technology enables 24/7 shopping (see section 2.2.1 for detailed discussion of trading hour restrictions).

50 MacroPlanDimasi (Australia data, 2012), Retail Locations (UK data, 2011)

51 Nielsen Homescan (2014)

52 Woolworths Consumer Survey, May 2014 (n =1100)

Consumers' ability to switch and split their spend across retailers will increase as more stores open (ALDI has plans for 500 to 600 stores in the eastern seaboard, and between 90 to 110 in SA and WA; Costco could expand to 20 warehouses; and Coles has recently announced plans for 70 new stores). The trend is not limited to physical retailers – technology is changing the way consumers shop by not only providing an unprecedented level of transparency (discussed in section 1.4.3), but also giving consumers more options to switch retailers and more opportunities to split their purchases:

- Domestic electronic retailers (e.g., Dick Smith) are competing head-to-head with domestic online retailers (e.g., Kogan.com) and international giants (e.g., Amazon), and price transparency is facilitated through the proliferation of online and app-based price comparison tools (Exhibit 12)
- Consumer demand is also fuelling a rapid increase in the number of online businesses and stores, new value-added business models and an increasing role for online market places. Since 2008, multiple online food-related sites and online general merchandise sites have entered the market.

EXHIBIT 12

Online and app-based price comparison tools



Box 3: The modern 'anywhere, anytime' consumer

Consumers are increasingly splitting their purchases

In grocery, the 'once a week' shop is gone – the average consumer now makes 2.5 grocery transactions per week and more than 75 per cent of baskets are small 'top up' shops.⁵³

Consumers are also splitting their money between more supermarkets. An example from the residents of Castle Hill, NSW shows that:⁵⁴

- In 2010, Castle Hill residents spread 80 per cent of their supermarket money across 14 different supermarkets

53 Nielson Homescan, Woolworths

54 Quantum

- In 2013, Castle Hill residents spread the same proportion of money over 19 different supermarkets.

Consumers spend most of their money outside of their neighbouring suburbs, and are rapidly moving online⁵⁵

In the retail market, consumers only spend 16 per cent of their money in their suburb. A similar situation applies for supermarkets, where 26 per cent of such spending takes place in the their suburb.

These overall figures have remained steady over the last 4 years, which is to be somewhat expected given the continued growth of physical outlets driving further convenience for consumers. However, over the same time period, the proportion of retail money spent online has increased by over 88 per cent, and the proportion of supermarket money spent online has more than doubled.

Consumers want to, and actually do, shop at all times of the day

Our consumer surveys find that 83 per cent⁵⁶ of consumers agree that grocery stores should be able to open when it is convenient.

Shopping at physical stores is obviously limited to the hours during which stores are open. Given this, it is no surprise that over 80 per cent of physical retail transactions occur between the 9-hour period starting 10am and ending at 7pm, with the most popular shopping hours (in terms of transactions) being between 12pm to 1pm and 4pm to 5pm.⁵⁷

In contrast, consumers are actively shopping online over a longer period of time – 80 per cent of online retail transactions occur between the 14-hour period starting at 9am and ending at 11pm, and the most popular shopping hours (in terms of transactions) are between 8pm to 10pm.⁵⁸

This shows that consumers both want to, and actually do, shop at all times of the day.

Consumers shop on all days of the week, and Sunday is increasingly popular

Consumers shop every day of the week, with Saturday traditionally being the most popular across retail (including in supermarkets) at physical stores. Over the last 4 years, Saturday has become less popular overall, although it is still the most popular shopping day. Over the same period, Sunday has grown significantly in popularity in every state and territory in Australia.⁵⁹

The trend is particularly pronounced in Western Australia, which experienced partial deregulation of Sunday trading hours in 2012. Between February 2010 and February 2014, the proportion of money spent in WA supermarkets on a Sunday shot up by 90 per cent, although it still remains the lowest value day of the week.⁶⁰ This is in contrast to Victoria, which has had deregulated trading hours for some time, where Sunday is the second most valuable day of the week for supermarket spend.⁶¹

55 Quantum

56 Woolworths Consumer Survey, May 2014 (n =1100)

57 Quantum

58 Quantum

59 Quantum

60 Quantum

61 Quantum

The differences between Sunday spending in WA and Victoria suggest:

- Trading hour restrictions in WA were previously artificially holding back consumer spend on Sundays
- WA's remaining regulation on Sunday trading may still be restricting consumer spend.

Consumers continue to shop on public holidays⁶²

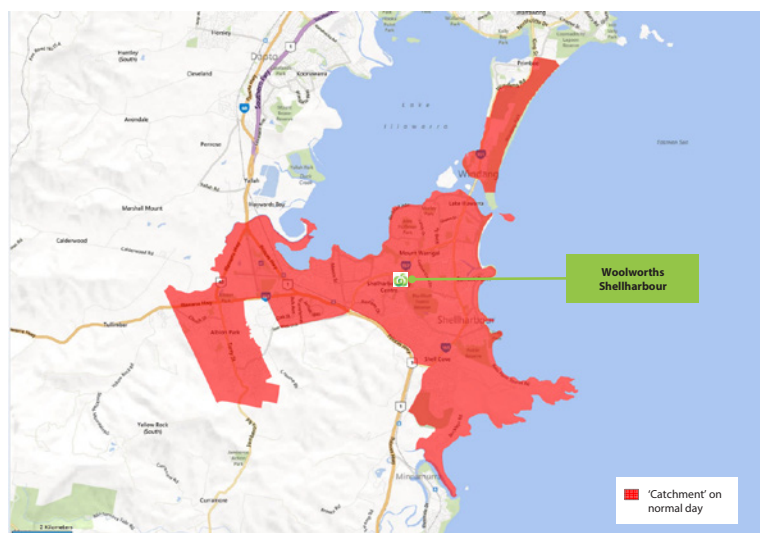
Consumers also continue to shop on public holidays. Although there is a reduction in spend on public holidays overall, trading hour restrictions disproportionately affect physical stores.

The proportional reduction in spending at physical retailers on Good Friday is around 4.7 times greater than with online spending. Likewise for Boxing Day, the proportional reduction in spending at physical retailers is around twice as large as the reduction in online spending.

Case study – Shellharbour Woolworths⁶³

Many consumers continue to shop at physical stores on public holidays (such as Boxing Day). For those consumers, trading hour restrictions are inconvenient and mean that they have to travel further distances to shop.

For instance, Shellharbour Woolworths is exempt from trading hour restrictions on Boxing Day and can therefore continue to open while other supermarkets (for example, those in Wollongong) are closed.



In terms of where the Shellharbour Woolworths' revenue comes from:

- On a typical day, around 80 per cent of the store's revenue comes from residents living in the red shaded area above (known as the 'catchment'), and around 20 per cent of the revenue comes from outside of the 'catchment'

62 Quantum

63 Quantum

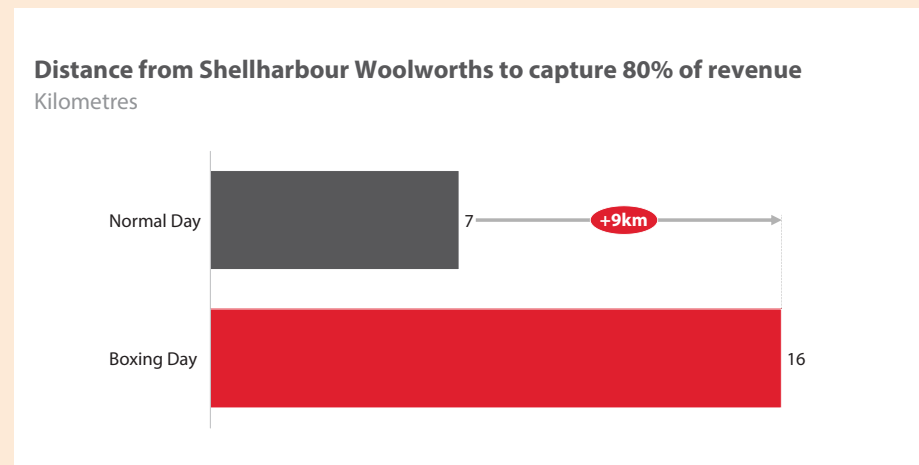
- On Boxing Day, the revenue from residents outside the red shaded area above (the 'catchment') rises from 20 to 40 per cent – meaning that local residents from further afield are travelling to Shellharbour Woolworths to buy their groceries on Boxing Day.

In terms of distances travelled by residents, Exhibit 13 shows:

- On a typical day, 80 per cent of the store's revenue comes from customers who live within a travelling distance of around 6.8 km of the store
- On Boxing Day, the travelling distance required to draw in 80 per cent of the store's revenue rises to around 15.6 km of the store – almost 9km further than on a typical day.

For customers that live in nearby areas where shops cannot open on Boxing Day (for example, Wollongong residents), trading hour restrictions are not achieving social hours, but rather longer commutes.

EXHIBIT 13



The Retailer Lens

1.4.5 Global retailers are fundamentally changing the Australian market

Global retailers have fundamentally changed the Australian retail market and will continue to do so in the future. Several global models have thrived in Australia and quickly gained market share, the most notable examples of which are ALDI and Costco.

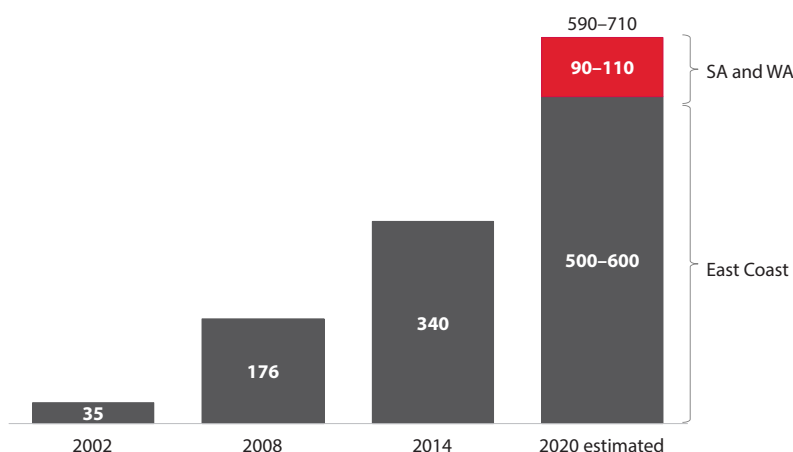
ALDI is a privately-held German company which operates more than 7,000 supermarkets across the world.⁶⁴ It features an almost exclusively private label offering and holds a more limited collection of product lines (with around 1,500 lines) than traditional supermarkets (which hold tens of thousands of lines). Since 2008, ALDI has nearly doubled its store footprint (adding over 160 stores) on the east coast of Australia. This was around the total number of Woolworths and Coles net store additions combined in all of Australia.⁶⁵ Today, ALDI has around 340 stores and has plans to grow to 600 to 700 across Australia. Exhibit 14 shows the rapid expansion of ALDI over time.

⁶⁴ The Australian, *ALDI eyes \$2bn expansion as chain outperforms rivals*, 30 March 2013

⁶⁵ Based on estimates of net store growth (i.e., store openings less store closings) from 2008-2014. Over this period, ALDI grew its footprint by 164 stores, and Woolworths and Coles grew their combined footprint by approximately 162 stores

EXHIBIT 14

Growth of ALDI stores in Australia



Of course, ALDI is not the only global format that has successfully penetrated the Australian market. Costco is an American-owned multinational retail company with 640 warehouses across the world and reported sales in excess of \$105 billion.⁶⁶ It has a membership-based model which gives customers access to low prices and also holds a much lower number of product lines than do traditional supermarkets. In 2009, Costco entered the Australian market and has since been growing its business and customer base rapidly.⁶⁷ It now has six warehouses, and has plans to expand to twenty. Globally, Costco warehouses draw approximately \$130 to \$170 million in annual sales per warehouse.⁶⁸ Assuming that Costco expands to twenty warehouses in Australia, this would be equivalent to between 110 to 150 typical supermarkets.⁶⁹

"US discount retailer Costco has funnelled another \$110 million to its Australian operations to help fund its rollout of big-box warehouse stores as the world's eighth-largest retailer intensifies the competitive battle with Woolworths and Coles"

Sydney Morning Herald
December 2013

The success of global formats in Australia has not been limited to the grocery retailing format:

- The clothing category has rapidly evolved, with the entrance of international players Zara, H&M, Uniqlo and Topshop all driving increased competition. Over the last 5 years, the real price of clothing has fallen even faster than the real price of food⁷⁰
- In homewares, consumer retail company Williams-Sonoma entered and has recently announced that it will open another eight stores in Australia over the next year⁷¹

⁶⁶ Costco, Form 10-K, Annual Report, Filing Date Oct 19, 2012

⁶⁷ Sydney Morning Herald, *Costco gets another \$110 million from US parent for Australian expansion*, 30 December 2013

⁶⁸ Costco website (<https://www.costco.com.au/About/History.shtml>) and estimate based on total sales over number of warehouses

⁶⁹ Assuming the average supermarket in Australia has revenues of approximately \$23m per year (Planet Retail)

⁷⁰ ABS, 6401.0 - Consumer Price Index Mar 2014

⁷¹ Sydney Morning Herald, *US homewares giant to open more stores in Australia*, 7 May 2014

- In consumer electronics, Apple opened its first retail store in Australia in 2008 and has plans to reach 30 stores in the medium term. Samsung also entered the market in 2012.⁷²

Global retailers are fundamentally changing the Australian retail market. This is because:

- **They challenge incumbent formats to innovate, and as a result consumers' expectations about choice and private label have been reset.**⁷³

For example, ALDI's almost exclusively private label offering features discounted prices at a quality that competes with branded products. Incumbents have responded by expanding the range of their private label products at ALDI's lower price point while at the same time increasing quality. Likewise, Costco's subscription model encourages members to purchase all of their needs on a selection of basic products with Costco. Once the membership fee is paid, other retailers are effectively 'locked out' of a portion of that consumer's spend. The effect of this challenge is that consumers are exposed to innovative business models, and their expectations about choice and private label have been reset. For example, over the last 2 years in the UK there has been a significant rise in quality perception of discounters, and this perception is rising toward the same levels of traditional supermarkets such as Tesco and Asda.⁷⁴

"Aldi's popularity also suggests that there are opportunities for other international supermarket giants to successfully enter the Australian grocery market"

Roy Morgan
February 2014

- **They bring their global bargaining power to bear and drive hard on prices, and as a result consumers' expectations about value are changed.**⁷⁵

Companies like ALDI and Costco are global retailers with strong bargaining power. Two factors make their bargaining power especially potent. The first factor is that they exercise their purchasing power over a much smaller number of product lines than traditional supermarkets. ALDI offers around 1,500 product lines (most of which are private label), and Costco is said to offer around 4,000 product lines⁷⁶ – this compares to many tens of thousands of product lines that typical supermarkets offer.

The effect is that ALDI and Costco can exercise a much higher degree of bargaining power on each product line than a traditional supermarket. The second factor is that, as global companies, neither ALDI nor Costco are subject to the same level of local sourcing pressure or local regulatory scrutiny as 'national' retailers such as Woolworths (which actively and proudly supports its local suppliers). The effect of these two factors is that global retailers are able to deliver low prices to consumers, whose expectations about value are then changed.

"From the moment Aldi opened its first stores in 2001, we have changed the way Australians view supermarket shopping"

Aldi Australia
January 2014

72 Colliers International, *International Retailers - Australia is Hot Property*, 2013

73 Roy Morgan, *Market share narrows between Coles and Woolworths, while ALDI makes important gains*, 12 February 2014

74 Quality perception = percentage of respondents agreeing with statement 'has great quality food'; Milward Brown, as cited in Morrisons Preliminary Results Presentation, Feb 2014

75 The Weekly Times, *Technology changes grocery market*, 8 January 2014

76 ALDI, *Feedback on proposed changes to the plan making process*, 4 May 2012 (<http://www.planning.nsw.gov.au/Portals/0/DevelopmentAssessments/OnExhibition/Submissions/ALDI%20Stores.pdf>); Frozen and Dairy Buyer, *Costco makes SKU rationalization a fine art*, 22 March 2012

■ **Discounters are having an enduring impact on grocery markets globally.⁷⁷**

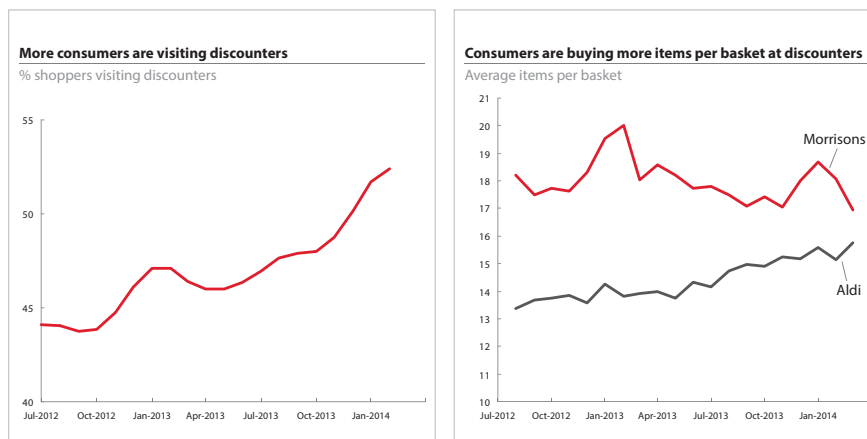
Even in a market like the UK where discounters have been present for 25 years, they are still gaining share and forcing incumbents to match prices. Exhibit 15⁷⁸ shows how over 50 per cent of consumers in the UK visit discounters, a significant increase from just 2 years ago, and consumers are now using discounters for similar shopping missions as traditional supermarkets. ALDI has grown its share by over 70 per cent in the past 2 years⁷⁹ and, combined with the force of other discounters like Lidl, this has eroded the share of traditional supermarkets. Incumbents are being forced to respond. For example, earlier this year Morrisons announced that it would slash prices on 1,200 product lines as part of a £1 billion plan to reduce prices to compete against discounters.⁸⁰ Tesco announced £200 million in price cuts this year and has plans to invest another £1 billion in store refurbishments, and Asda pledged to invest £1 billion into price over the next 5 years to close the gap with discounters.

"The growth of Aldi and Lidl looks to be a permanent change in the way Britain shops, rather than a blip"

The Telegraph (UK)
February 2014

EXHIBIT 15

Change in consumer behaviour with discounters in the UK



⁷⁷ The Telegraph (UK), *Is ALDI doing to Tesco what Ryanair did to British Airways*, 13 February 2014

⁷⁸ Millward Brown, Kantar Worldpanel, as cited in Morrisons Preliminary Results Presentation, February 2014

⁷⁹ Kantar UK monthly grocery market share (4.6% in 12 weeks ended March 2014, 2.6% March 2012)

⁸⁰ The Daily Mail (UK), *Morrisons in £1bn price war: Supermarket slashes cost of 1,200 basic products as it tries to see off challenge of ALDI and Lidl*, 30 April 2014

The impact of ALDI is flowing through to its market share figures in Australia. According to Roy Morgan, from 2005 to 2013 ALDI increased from 2.9 per cent to 10.3 per cent market share, surpassing IGA. Over the same period, IGA/Other supermarkets combined decreased from 20 per cent to 17.2 per cent.⁸¹ While we should approach measures of market share with caution (see 'Box 1: Market share estimates should be approached with caution'), the sheer scale of change over time is undeniable.

The decline of IGA/Other supermarkets is not surprising. As noted by the ACCC in 2008, 'a key factor inhibiting price competition from the independent retailers is the wholesale prices of packaged groceries supplied by Metcash'.⁸² This wholesale model has continued to restrict the ability of the independents from providing a compelling value proposition to consumers.

Looking forward, we see ALDI as a mainstream competitor that is continuing to broaden its offer.⁸³ This is demonstrated by their move into fresh, branded products, general merchandise and liquor. In markets where it is more mature, ALDI has moved into premium/branded segments and is experimenting with new store formats.

"The German behemoths have changed the face of Irish retail forever... Now they are very much part of the mainstream"

Checkout (Ireland)
May 2014

1.4.6 Incumbents will continue to invest, expand and react to the competition

Domestic players have not stood idle in the face of increasing competition. Rather, many of them have continued to invest and pursue aggressive expansion plans. For example:

- From 2008 to 2013, Metcash/IGA was the only brand to have grown its store footprint by more than ALDI – and the net growth was larger than that of Coles, Costco, Foodworks and Woolworths combined.⁸⁴ This was partially driven by an increase in independent grocery stores joining the Metcash network, as well as Metcash's acquisition of Franklins.⁸⁵ In March 2014, Metcash unveiled a transformation plan which acknowledged the 'limited delivery of [a] compelling offer'. The first two major levers of Metcash's transformation strategy are:⁸⁶
 - Offering 'compelling own brands', including a tiered offering that covers the 'premium', 'everyday' and 'discount' segments of the market
 - Offering 'competitive pricing', including price matching and 'aggressive promotions'.
- Coles underwent a period of focusing on efficiency and same-store growth, and has recently announced plans to invest \$1.1 billion over the next 3 years to build a further 70 supermarkets⁸⁷

81 Roy Morgan, *Market share narrows between Coles and Woolworths, while ALDI makes important gains*, 12 February 2014

82 ACCC, *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, 2008, pxiv

83 Irish Independent, *Changing how Irish customers shop ... Lidl by Lidl*, 17 May 2014

84 Based on estimates of net store growth (i.e., store openings less store closings) from 2008-2013. Over this period, Metcash grew its footprint by an estimated 144 stores, ALDI grew by an estimated 135 stores and Coles, Costco, Foodworks and Woolworths grew their combined footprint by an estimated 133 stores

85 MacroPlanDimasi, *Company Annual Reports, Company Websites*

86 Metcash, *ASX announcement: Metcash announces transformation plan*, 21 March 2014

87 Sydney Morning Herald, *Coles unveils massive \$1.1b expansion plan*, 5 March 2014

■ Woolworths has also undergone a number of changes:

- We have invested in our online and multi-option offering, with online sales increasing by more than 50 per cent in FY13 and Click & Collect sales increasing by more than 100 per cent. Our Click & Collect service is now available in all Big W, Masters and Dan Murphy's stores as well as in 202 Australian supermarkets. Our home delivery service covers more than 90 per cent of Australian households
- We have enhanced our capabilities in customer insights and are using them to better understand and meet the needs of our customers
- We have continued to innovate our in-store experience. We offer fresh handmade sushi in stores across the country, and customers can enjoy a coffee while shopping in our in-store cafes with fresh products made on the premises. We opened our first 'beauty bar' with professional beauty consultants in our Town Hall supermarket, where customers can shop for their favourite beauty brands. We have also developed concept stores to improve and innovate the customer experience, featuring customer-focused design and wide ranges of specialty foods. Our concept stores offer high levels of customer service and gourmet food as well as express breakfasts, lunches and dinners for busy customers.

1.4.7 Retailers will continue to work with suppliers to bring consumers the best possible prices on branded products

As discussed in section 1.3.2, Australian consumers sometimes pay more for the same product than others in comparable economies. For example:

- In 2013, Coles publicly singled out Coca-Cola as a product that is available at a significantly lower price in Asia⁸⁸
- A recent parliamentary inquiry⁸⁹ found that Australian consumers and businesses often pay much more for their IT products (such as digitally downloaded software, computer games, music, movies and e-books) than their counterparts in comparable economies, in some cases paying 50 to 100 per cent more for the same product.

"When it's 60 per cent cheaper then you start to question why it should be so much more in Australia."

Coles
May 2013

Sometimes, there are valid reasons for the price difference. As described in section 1.1.2, Australia's small and sparse population, relative isolation from the rest of the world and local compliance regulations have traditionally imposed higher costs of doing business. However, as noted by the Productivity Commission in 2011, 'these arguments, in most cases, are not persuasive, especially in the case, for example, of downloaded music, software and videos – where the costs of delivery to the customer are practically zero and uniform around the world.'⁹⁰

In response, retailers have been working with suppliers to scour the world and bring consumers the best possible prices on branded products. We expect this trend to continue.

⁸⁸ Australian Financial Review, *Coles chief hits out at Coke*, 6 May 2013

⁸⁹ Parliament of Australia, House Standing Committee on Infrastructure and Communications 2013, *Inquiry into IT Pricing*

⁹⁰ Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, pxxiii

1.4.8 More retailers will compete for the same share of the consumer wallet as niche players continue to diversify and broaden their offer

Competition is driving innovation in how products are delivered to consumers, and niche players continue to attack with innovative offers. This will increase competition between formats to the point that the lines will be significantly blurred. For example:

- Cafes and restaurants not only sell sit-down meals, but combine these with the sale of fresh ingredients. Fratelli Fresh in Sydney combines restaurant dining with sales of fresh produce (including meat, fruit and vegetables), other food and household items that can be ordered online and home-delivered
- Pharmacies have moved from selling only prescription medicine into a wide range of baby care and health and beauty products including baby food and formula. The Chemist Warehouse allows consumers to order from a range of over 9,000 products online across eight categories
- Discount and 'dollar' stores have moved to sell a wide range of groceries online and offline. The Reject Shop, which grew its sales by 70 per cent from 2008 to 2013, sells bargain consumer goods, including toiletries, cleaning products and snack foods⁹¹
- Department stores sell fresh produce. David Jones sells fresh produce and food from Australia and around the world to its shoppers
- Petrol stations and convenience stores have increased their ranges to stock hot meals, more groceries and some fresh produce.

1.4.9 Online retail is making barriers to entry less relevant and will continue to bring further innovation and price pressure

In 2011, the Productivity Commission found that the impact of technology was making barriers to entry less relevant:

'With the embrace of the internet and digital technology, the industry is becoming increasingly part of an integrated global marketplace. Further, a number of innovative global retailers are arriving to set up and compete physically in the domestic market.'⁹²

We believe that the inevitable growth of online retail will bring further innovation. Driven by consumer demand, the rise in online businesses will increase the range of products and services available for consumers and heighten competition. Finally, online retailers will compete hard and continue to innovate, putting further pressure on prices.

Online retail will continue to grow

Australian online shopping expenditure is predicted to be worth \$26.9 billion by 2016, with a compound annual growth rate of 14.1 per cent.⁹³ Since 2010, online retail sales have nearly doubled from 3.8 per cent of total retail sales to 6.6 per cent in 2013.⁹⁴ Every category has since increased growth in the proportion of total spend online, with the largest increases within the music, movie, and book retailing; department and variety stores; and toys, games, and hobbies.⁹⁵

88%

of online shoppers in Australia expect to increase or at least maintain their online spending

91 Planet Retail estimate

92 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, p7

93 PwC, *Australian online shopping market and digital insights*, July 2012, p3

94 Quantum

95 Quantum

There are now more ways to buy a nappy than ever before

An example of how the lines between formats are blurring and choice is expanding for consumers is that there are now more ways to buy a nappy than ever before – from traditional supermarkets and specialist stores, to membership services and online.

Not only are there multiple formats to buy from, but parents are seeking advice and information from a variety of channels. Access to forums online and delivery services have changed the entire consumer decision process. Parents are reading product reviews, can visit the websites of brands like Huggies for parenting tips and advice on other products, and are posting on forums like the Bub Hub to get advice on price specials across stores. Forums in the US and UK have become relevant to Australian consumers, and reflect global shoppers' views on the products of international retailers like ALDI and Costco. The illustration below shows just how many ways nappies can be purchased by an Australian parent.



Niche players have entered with innovative offers



Discount deal sites – Grocery Run

The founders of Catch of the Day online daily deal site expanded into grocery in 2011 with Grocery Run, the grocery arm of a business group with over \$350 million in revenue. The site started after Catch of the Day experimented with selling groceries on its online clearance site, and saw the popularity of discount deal groceries – at one stage selling 330,000 Ferrero Rocher chocolates in just 48 hours.

The business states that it puts as many as 200 products on offer, from name branded packaged foods like snacks and pasta, to household and personal hygiene products like toothpaste and nappies. Products are refreshed every day and bargain hunters scour the site for deals where products are often sold at 50 to 80 per cent discount. These are delivered across Australia with a flat delivery fee. Products are sourced from suppliers with excess stock, providing an alternative channel for suppliers outside traditional supermarkets, and helping clear large amounts of stock in short time frames.

This and other similar models compete with bricks and mortar stores and provide yet another option for grocery shopping for consumers.

Tailored meals – Hello Fresh

Combining traditional at-home cooking and busy consumer lifestyles, Hello Fresh is offering a completely different approach to grocery shopping for consumers. The business couples fresh ingredients with tailored recipes and meal plans, which are ordered online and delivered to the home. Founded in 2012 in Berlin, the model has taken off worldwide, and now operates in the UK, the Netherlands, Australia and the US. In 2013 the company raised US\$7.5 million for its expansion into the US.

The company states that it provides easy-to-prepare recipes (typically taking less than 30 minutes to prepare) each week along with the exact ingredients needed to prepare each meal. Customers choose from a range of plans with recipes like 'pork fajitas with corn salsa' to 'Vietnamese beef with nuoc cham and Asian greens'. Hello Fresh works with independent suppliers to source ingredients, and their claim is that by providing exact quantities of ingredients used in each dish, they can minimise waste and reduce costs to consumers.



Stimulating this growth is an increase in the number of online retailers, an increase in the number of manufacturers going direct to consumer, and the continual growth in consumers using mobile devices to browse and purchase products anywhere, anytime.

Grocery and liquor sales account for 13.1 per cent⁹⁶ of goods sold online and have grown as a share of online revenue over the past 5 years. Busy lifestyles and time constraints mean that more consumers are going online to do their grocery shopping.

As discussed in section 1.4.6, at Woolworths' Australian supermarkets alone, online sales increased by more than 50 per cent in FY13, and Click & Collect sales increased by more than 100 per cent as we built stronger platforms to give customers additional choice in how they shop with us.

This multi-option growth extends to the rest of our business. In New Zealand, our online sales grew 32 per cent and Click & Collect is being rolled out progressively – it is now offered at 43 stores. Our Click & Collect service is now available in all BIG W, Masters and Dan Murphy's stores. We also offer other 'direct to consumer' businesses such as Cellarmasters, Langton's and winemarket.com.au. Woolworths' supermarket shopping app has been downloaded over 2.3 million times, and apps across our business have been downloaded more than 3.2 million times.

Consumer demand is fuelling an increase in the number of businesses trading online and driving innovation

Consumer demand is also fuelling a rapid increase in the number of specialist online businesses (e.g., Aussie Farmers Direct), new value-added business models (e.g., Hello Fresh), an increasing role for online market places (e.g., eBay), and traditional bricks and mortar retailers are improving their online offerings. In this respect, it is predicted that supermarkets will be the next to face disruption by online retailers.⁹⁷

**"Supermarkets [are the]
next to face disruption by
online retailers"**

BRW
May 2014

Today, there are around 38,000 to 40,000 online businesses in Australia, and over the next 5 years enterprise numbers are expected to grow to over 55,000, with a large number of new online start-ups and pre-existing retailers selling online for the first time.⁹⁸ One of the drivers underpinning the forecasted growth is the low cost of entry at the bottom end of the market where a wide range of internet service providers offer template e-commerce platforms for as low as \$20 per month, enabling even the smallest of stores to migrate online.⁹⁹ For example, Kogan rapidly disrupted the local electronics market by offering products such as LCD and Plasma TVs at deep discounts, putting pressure on traditional retailers such as Harvey Norman and Dick Smith.¹⁰⁰

These online retailers do not face any trading hour restrictions meaning that customers are free to shop with them whenever it is convenient. With the projected growth in online retail, trading hour restrictions will increasingly impact on 'bricks and mortar' retail businesses.

96 Ibisworld, *Online Shopping in Australia*, January 2014, p13

97 BRW, *Supermarkets next to face disruption by online retailers*, 28 May 2014

98 Ibisworld, *Online Shopping in Australia*, January 2014, p32

99 Ibisworld, *Online Shopping in Australia*, January 2014, p7

100 Kogan website

Putting pressure on prices

Australian consumers have indicated that the most important reason they shop online is to achieve a lower price.¹⁰¹ This has significant price pressure implications for physical retailers who are competing with the lowest cost retailer of the 38,000 to 40,000 Australian online businesses (and many more overseas online players) that the consumer can access from their smartphone while in their store.

1.4.10 Retailers are driven to compete for every last consumer because of high fixed costs

Retailers will always have a strong incentive to compete for sales. It is the nature of the industry, where high fixed costs (including overheads, property costs and supply chain costs) create pressure to compete for sales volume. Changes in volume are a key driver of profitability, and small reductions in sales volume can completely erode the profitability of retailers.

This is exacerbated by the threat of online players extracting volumes out of stores. For instance, the residents of the Chatswood Precinct total trade area spend more online than they do at the nearest major shopping centre complex (see 'Box 4: Chatswood Precinct').

This aspect of market dynamics, combined with the sensitivity of consumers to price, means that retailers will always try to compete for sales volume. When under threat on volumes, retailers will typically compete aggressively on price.

¹⁰¹ 55 per cent of Australian consumers indicated that the most important reason for shopping online is to achieve a lower price than in a store: PwC Digital Media Research, 2012.

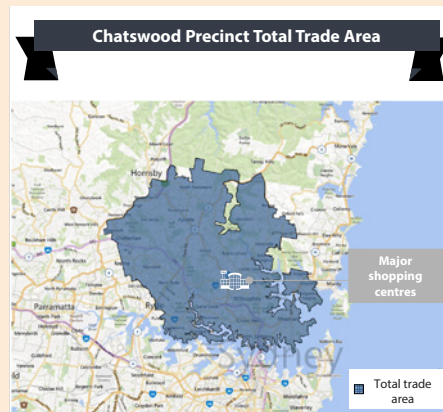
Box 4: Chatswood Precinct¹⁰²

The Chatswood Precinct is located within Sydney's Willoughby local government area. It features a number of major shopping centres, including the large 60,000m² Chatswood Chase.

The Chatswood Precinct 'total trade area' is shaded in the map.

Exhibit 16 below shows that consumers who live within the Chatswood Precinct total trade area spend ~\$9.0 billion per year on retail, of which:

- \$800 million is spent online (\$600 million to domestic online players, and \$200 million on overseas online players)
- \$4.5 billion is spent within the total trade area (and of which \$700 million is spent at the nearby major shopping centres in Chatswood).

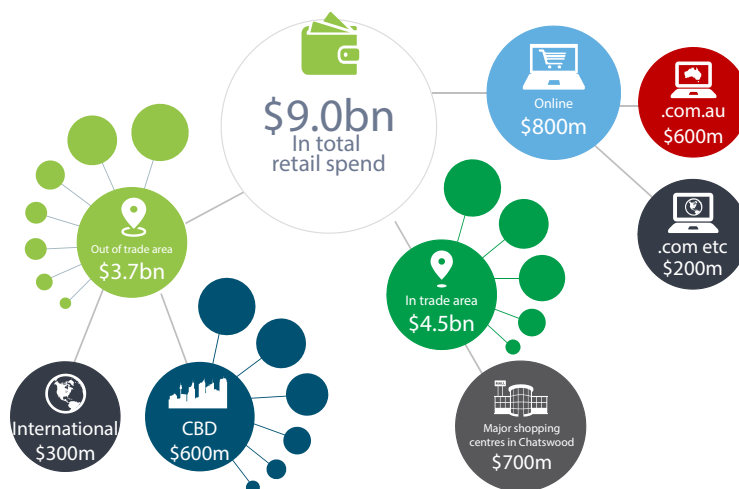


In other words, residents of the Chatswood total trade area:

- Spend 14 per cent **more** online than they do at the nearby major shopping centres
- Spend 33 per cent **more** online than they do in the Sydney CBD.

Exhibit 16

Breakdown of annual retail spend by residents of the Chatswood Precinct total trade area





The history of retail in Australia shows that competitive forces have delivered lower prices, more convenience and innovative new offers for consumers. It is important to recognise that this unfolded primarily due to the intensifying nature of competition between retailers, the impact of technology and the entry and expansion of global retailers (both physical and digital) in the Australian market, not because of regulatory invention or increased competition between suppliers.

We anticipate that consumers will remain focused on value, as they are armed with more information and transparency, and as they have increasing options of places and channels from which to buy. At the same time, retailers will always have an incentive to respond to market dynamics and changing consumer preferences.

As such, we expect competition between retailers to continue to intensify. Competitors will continue to enter, grow and invest, and retailers will continue to respond to consumer needs and bring the best value to consumers. In this respect:

- Australian retailers in particular will continue to need to respond to the global scale and sophistication of larger players
- Restrictive legal frameworks that target Australian retailers (e.g., increased scrutiny around private label penetration while ignoring ALDI, focus on Australian retailers' ability to negotiate fairly but robustly with suppliers, and intervening on selective petrol business models and not others) are not helpful and will ultimately result in those businesses being less internationally competitive or forced to move further operations offshore.

In the following part of our submission, we set out our responses to the questions raised by the Issues Paper.

Part 2:
Implications for
the competition
reform agenda



Part 2:

Implications for the competition reform agenda

Key messages

History has shown that competition in the retail sector has been working well and delivering for consumers. As such, we believe that only minor changes are needed to the policy framework.

Priorities for a competition reform agenda

The competition reform agenda should focus on protecting and enhancing healthy, competitive markets for the benefit of consumers. We see four specific priorities:

- Retail laws and regulations should be more consumer-centric and impediments to competition should be removed to drive more economic growth and productivity for the benefit of consumers
- Intervention should be restrained where consumers are benefiting from competitive conduct
- Market analysis needs to keep up with the rapid pace of change in business models and consumer expectations
- Laws and regulations should enable Australian businesses to be more internationally competitive and, where applicable, align with best practice.

Opportunities to remove impediments to competition

Rather than protecting individual competitors, Australia needs to ensure that its competition framework does not prevent Australian-owned retailers from remaining internationally competitive. In this respect, unnecessary regulatory restrictions reduce competitiveness and remove incentives for retailers to innovate and offer a high quality, broad range of products at low prices.

There are a number of opportunities to remove impediments to competition so that Australian businesses can drive more economic growth and productivity for the benefit of consumers.

To unlock that potential, we believe that the Government should:

- Encourage the national reform of trading hour restrictions
- Explore the root causes of price differences between countries
- Reduce the costs of doing business
- Harmonise inconsistent laws, regulations and licensing restrictions.



Recommendations to protect and improve the competition framework

We believe that only limited changes are required for the competition policy framework. For example:

- Predatory pricing provisions should be reviewed in light of criticism by the OECD
- Price signalling provisions should be repealed as they are out of step with international best practice.

Indeed, there are some areas where changes to the *Competition and Consumer Act 2010* (Cth) (CCA) would be counterproductive. For example:

- An 'effects test' for misuse of market power would not benefit consumers and has been rejected by numerous reviews over the last 35 years
- Changes to the CCA that protect particular sectors or market participants would be detrimental to competition and consumers
- The current unconscionable conduct provisions are already capable of addressing concerns raised by small business
- The existing section 50 merger provisions already operate effectively, although the informal merger review process itself could be improved.

In considering enforcement powers, penalties and remedies, and our experience dealing with regulators, we believe that the ACCC's powers are adequate. However, we believe that the changing digital business environment should be factored into section 155 of the CCA and a transparent media policy or code of conduct is required.

The retail sector in Australia has been reviewed as part of a number of Federal Parliamentary and Australian Competition and Consumer Commission (ACCC) inquiries over the past 35 years,¹⁰³ the most notable of which was the ACCC's 2008 inquiry into the grocery sector (which found the sector to be workably competitive).

As discussed in Part 1, since 2008, competition has increased due to the intensifying nature of global and local competition between retailers in response to consumer needs, and not because of regulatory intervention. Our expectations are that competition will further intensify leading to lower prices, more convenience and continued innovation.

Accordingly, Woolworths considers that only limited changes are needed to the competition policy framework to ensure the ongoing protection and enhancement of healthy, competitive retail markets for the benefit of consumers.

This part of our submission is divided into the following sections, which are broadly grouped into the corresponding chapters of the Issues Paper:

2.1 Setting priorities for a competition reform agenda

2.2 Removing impediments to competition

2.3 Recommendations to protect and improve the competition framework

2.1 Setting priorities for a competition reform agenda

This section responds to the questions raised in Chapter 1 of the Issues Paper.

Question 1



What should be the priorities for a competition policy reform agenda to ensure that efficient businesses, large or small, can compete effectively and drive growth in productivity and living standards?

Competition policy and competition laws should protect and enhance healthy, competitive markets for the benefit of consumers. It is underpinned by lower prices and driven by dynamic competition that ensures security and growth in all of the industries with which retail does business. Regulatory constraints that drive increased retail prices and less competition will adversely impact on consumers and the economy.

This is a fundamental principle of the competition framework, and aligns with the stated objective of the *Competition and Consumer Act 2010* (Cth) (CCA) to 'enhance the welfare of Australians through the promotion of competition and fair trading and provision of consumer protection'.¹⁰⁴

We see four priorities for a competition policy reform agenda, which are covered in the following sections:

2.1.1 Retail laws and regulations should be more consumer-centric and impediments to competition should be removed to drive more economic growth and productivity for the benefit of consumers

2.1.2 Intervention should be restrained where consumers are benefiting from

¹⁰³ Most recently:

- the Independent Review of the competition provisions of the Trade Practices Act 1974 and their administration (the Dawson Committee) 2003
- the ACCC's Unleaded Petrol Price Inquiry 2007 (and subsequent annual monitoring reports)
- the ACCC's Grocery Inquiry 2008

¹⁰⁴ Section 2 of the Competition and Consumer Act 2010 (Cth)

competitive conduct – intervention which protects inefficient businesses would be to the detriment of competition and consumers

2.1.3 Market analysis needs to keep up with the rapid pace of change in business models and consumer expectations – failure to do so will stifle investment to the detriment of consumers

2.1.4 Laws and regulations should enable Australian businesses to be more internationally competitive and, where applicable, align with best practice – the continued drive for increased efficiency by domestic retailers should not be restrained by regulatory controls which inhibit investment and innovation (which in turn result in lower costs and lower retail prices).

2.1.1 Retail laws and regulations should be more consumer-centric and impediments to competition should be removed

The first and overarching priority for a competition policy reform agenda in the retail sector is that retail laws and regulations should be more consumer-centric. This should be a common thread as the Review Panel provides recommendations on removing impediments to competition in the retail sector and improving the operation and effectiveness of the overall legal, policy and administrative framework.

Approaching the competition reform agenda in this way means taking the view that:

- Consumers should have the option to shop at a time that is convenient for them, and consumer demand (not regulations) should determine trading hours for retailers (see section 2.2.1)
- There are a number of opportunities to remove impediments to competition in the retail sector so that Australian businesses can drive more economic growth and productivity for the benefit of consumers (see section 2.2).

2.1.2 Intervention should be restrained where consumers are benefiting from competitive conduct

We recognise and support a robust regulatory environment which effectively enables intervention in certain situations. For example, where conduct has an anti-competitive intent (e.g., cartel conduct, price fixing or third line forcing), regulators should have a clear mandate and the necessary powers to stop such conduct and pursue action through the courts to hold the perpetrators responsible. Similarly, where major structural changes to markets (e.g., through mergers or acquisitions) are likely to significantly reduce competition and harm consumers, it is appropriate for regulators to take a view on potential long-term consequences before making a ruling.

However, we are concerned about intervention in situations where markets are robustly competitive and clearly benefiting consumers (see 'Case study 1: Petrol shopper dockets'). Intervention in these cases should be restrained for a number of reasons.

Firstly, there is a real risk of unintended consequences. Intervention which focuses on the impact of conduct on particular market participants can leave consumers caught in the middle 'paying the price' because it can prevent or stop fierce competition from continuing. Further, the process of competition brings benefits that are broader than a legislative change or regulatory intervention that targets an outcome.

Secondly, the retail industry is dynamic. For example, since the ACCC's 2008 inquiry, retailers have engaged in 5 years of intense price competition, ALDI has expanded to over 340 stores on the east coast of Australia, and technology now plays a large role in

consumer purchasing and business model innovation. There is a real risk that regulatory intervention can stifle this innovation and chill the dynamism that benefits consumers.

Thirdly, there is a low risk in allowing the market to continue evolve and day-to-day competitive conduct to continue. Unlike some other industries, retail does not possess the necessary characteristics to achieve durable competitive advantages. For example:

- There is no special access to scarce valuable resources (e.g., in the way DeBeers influences the supply of diamonds)
- There are low switching costs (as discussed in Part 1)
- Fixed costs are in store parcel size amounts (as compared to opening a mine)
- There is no exclusive network effect.

As such, there is ample opportunity for the regulator to unwind any conduct if it actually starts to have harmful consequences, and there is little risk in allowing the market to play out.

Looking forward, we believe that there should be a high threshold to intervention into competitive conduct that is benefiting consumers.

Case study 1: Petrol shopper dockets

The ACCC's inquiries in 2004 and 2007

Two previous regulatory inquiries, conducted in 2004 and 2007 respectively, concluded that petrol discounting had a net beneficial impact for consumers.

In 2004, the ACCC concluded that 'Shopper docket schemes in themselves cannot be said to be responsible for many of the effects on smaller independent businesses... The ACCC considers that the shopper docket schemes are likely to result in an overall benefit to the public.'¹⁰⁵ In 2007, the ACCC concluded that '[Shopper dockets have] not had an anti-competitive effect but [have] delivered discounts to the benefit of consumers and promoted competition from other retailers.'¹⁰⁶

Intervention in 2012-2013 and 2013 petrol monitoring report

On 11 December 2013, the ACCC released its 2013 petrol monitoring report, which observed that:

- **Share held by independents increased.** Over the 5 year period from 2008/09 to 2012/13, the share of volume of retail petrol sales of the independents (i.e., excluding BP, Caltex, Mobil, Shell, Coles and Woolworths) increased from 9 per cent to 18 per cent nationally¹⁰⁷
- **Independents expanded their networks.** Independents significantly expanded their networks. For example, United opened 14 new sites in 2013, including acquiring two high volume sites in Melbourne. PUMA/Trafigura expanded, with the acquisition of three complementary businesses in 2013, including Queensland's Central Combined Group (trading as Fuel Central and Lube

105 ACCC, *Assessing shopper docket petrol discounts and acquisitions in the petrol and grocery sectors*, February 2004, pp3-4

106 ACCC, *Petrol prices and Australian consumers: Report of the ACCC inquiry into the price of unleaded petrol*, December 2007, p198

107 ACCC, *Monitoring of the Australian Petroleum Industry*, December 2013, p lv

Central), Ausfuel and Nuemann Petroleum. These acquisitions will increase PUMA's national service station footprint, with the most recent acquisition of Central Combined Group adding 18 service stations and five fuel depots throughout Mackay, Gladstone and Emerald to PUMA's portfolio

- **Woolworths' share remained flat.** During the same period, Woolworths' market share remained flat, reported by the ACCC to have been 23 per cent nationally in 2008/09, 2009/10 and 2010/11 and 24 per cent nationally in 2011/12 and 2012/13¹⁰⁸
- **Prices are driven by international factors.** The ACCC's 2013 petrol monitoring report also found that '[i]n the medium to long term, retail petrol prices are primarily driven by the level of and changes in international prices of refined petrol' and that 'Australian retail petrol prices largely reflect international factors and domestic taxes.'¹⁰⁹

2013 intervention

On 6 December 2013, the ACCC accepted undertakings from Coles and Woolworths that, among other things, they would limit fuel discounts which are linked to supermarket purchases to a maximum of 4 cents per litre. The ACCC's inquiry had focused on shopper docket discounts of 8 cents per litre and higher fuel savings.

In accepting the undertakings, the ACCC noted that it was 'concerned that those offers could have longer-term effects on the structure of the retail fuel markets'. Its media release stated that 'some fuel retailers had complained that they could not afford to match the supermarkets' fuel discounts', and that the effect of the undertaking was that 'other fuel retailers will be able to compete on a more even playing field'.¹¹⁰

This intervention came at a time when the ACCC's own petrol monitoring report (published 5 days later) showed that fuel markets in Australia were becoming more competitive, not less competitive.

Further, the regulator was very selective in targeting only one type of petrol retailing business model (i.e., petrol outlets that are linked with Coles and Woolworths). In doing so, the regulator did not consider the other diverse range of business models in fuel retailing:

- BP and Caltex are vertically integrated refiner-marketers¹¹¹
- 7 Eleven is a specialist convenience store retailer with petrol added to its offering.¹¹² It offers a broad range of goods and services, including ready to eat snacks, ATM services, phone cards etc.¹¹³ It offers a 7 Eleven fuel card which entitles the holder to a range of fuel discounts
- On The Run operates a number of third party brands at the petrol outlet including Subway, Brumby's, Oporto and other franchises.¹¹⁴ It offers discounts of up to 8 cents per litre to customers who make qualifying purchases from any of these brands at On The Run¹¹⁵

108 ACCC, *Monitoring of the Australian Petroleum Industry*, December 2013, p lv

109 ACCC, *Monitoring of the Australian Petroleum Industry*, December 2013, Key Findings

110 ACCC media release, *Coles and Woolworths undertake to cease supermarket subsidised fuel discounts*, 6 December 2013

111 ACCC, *Monitoring of the Australian Petroleum Industry*, December 2013, p33

112 ACCC, *Monitoring of the Australian Petroleum Industry*, December 2013, p372

113 See <http://www.7eleven.com.au/products>

114 See <http://www.ontherun.com.au/>

115 See <http://www.ontherun.com.au/>

- Some fuel retailers have arrangements with third parties under which the third party makes a payment to the petrol retailer in consideration for the petrol retailer providing fuel discounts to the third party's customers, for example Drakes Supermarkets and BP
- US retailer Costco has also entered into fuel retailing, opening petrol outlets in Crossroads, NSW and in North Parks, Queensland. This is part of a wider strategy to expand Costco's presence in the Australian retail sector.¹¹⁶ Costco requires customers to pay a \$60 joining fee to enable them to shop with Costco and purchase heavily discounted petrol. Costco Australia's CEO has been reported as stating that '...prices would be competitive with the street price of petrol!'.¹¹⁷

Retail petrol markets are undergoing significant change with the increasing share of independents and the introduction and expansion of new business models. Further, retail petrol markets are competitive and deliver benefits to consumers. Focusing on only one business model ignores the competition between different models and the resulting benefits for consumers.

2.1.3 Market analysis needs to keep up with the rapid pace of change in business models and consumer expectations

The market definition provisions of the CCA, and their interpretation by Courts, is broad and flexible enough to take into account the dynamic characteristics of retail markets.

However, in practice, there has been a tendency for the definition to be applied to retail markets in a way that is formalistic, static and narrow (in terms of technology, geography, products, customers and/or suppliers). The consequence is that competition analysis has tended to be similarly static and narrow, too focused on concentration levels and individual competitors and failing to have sufficient regard to the broader dynamics that represent commercial reality including changing consumer behaviour.

This approach has led to some unrealistic concerns, for example, that national retailers will engage in local price discrimination.¹¹⁸ Such concerns do not take into account the competitive and operational restrictions that effectively compel national retailers to maintain a largely consistent offering (see 'Case study 2: Why concerns about local price discrimination are unfounded', and section 2.3.1 for a more detailed discussion of market definition and analysis).

The effect of taking a static and narrow approach to market analysis is that investment in acquiring existing businesses or developing new stores ('greenfields') may be blocked because the regulator has adopted such a lens. New Woolworths stores introduce a range of benefits for consumers, including investment in new supermarket capacity and the price and range benefits of such investment.

For example, following the introduction of the ACT Government's Supermarket Competition Policy Implementation Plan, it was difficult for Woolworths to bid for new supermarket sites. Exhibit 17¹¹⁹ shows ACT Treasury data on average basket costs across IGA, Supabarn, Coles and Woolworths in the Australian Capital Territory. According to ACT Treasury data, the cheapest 20 baskets came from Woolworths and

116 Sydney Morning Herald, *Australia stars as Costco fuels discount plan*, 14 October 2013

117 Sydney Morning Herald, *Costco Casula opening: Shoppers cornucopia opens to the masses*, 16 November 2013

118 See, for example, ALH Group Pty Ltd (75 per cent owned by Woolworths Limited) - proposed acquisition of hotels and takeaway liquor stores in NSW, Statement of Issues dated 8 March 2012.

119 ACT Treasury data sourced from Kretowicz, E., 2010, *It pays to shop around for groceries*, Canberra Times, Canberra, Australia

Coles stores, the next two were from Supabarn, and all of the most expensive baskets were from IGA stores. The average IGA basket was more than \$19 or around 23 per cent more expensive than the average Woolworths basket.

When a regulator or government body opposes the opening or acquisition of an individual store, the practical option for the retailer in most cases is to live with the intervention, as vendors and purchasers have limited incentives to contest such intervention in court (this is due to cost, time, reputation and management distraction implications).

EXHIBIT 17

Average supermarket basket prices in the Australian Capital Territory
Dollars



Case study 2: Why concerns about local price discrimination are unfounded

Woolworths has consistent price policies. In 2011 for instance, Woolworths dropped the price of its Homebrand honey to be more competitive with ALDI. Woolworths did this consistently across its supermarkets, even if a particular store did not have a nearby ALDI. From a consumer's point of view, this means that when we compete with ALDI in Maroubra, the benefits are felt in Moree (where the nearest ALDI is more than 200 kilometres away). Exhibit 18 shows the consistency of our offer across our stores.

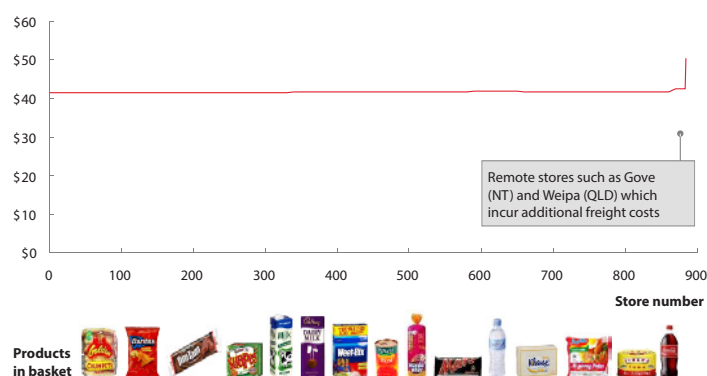
There are several important competitive and operational reasons why Woolworths has, and will continue to, maintain a consistent offer:

- We have to compete for customers that other stores are competing for. Because customers shop around, shop often and switch between stores, in effect the majority of our stores are 'linked' to a wide network of competition with other stores
- Operationally, the efficiencies of running a scale business (and, for example, implementing statewide marketing campaigns) further drive us to standardise our offer

- Intense media scrutiny over prices keeps the pressure up to maintain consistency
- High smartphone penetration combined with the prevalence of online price comparison websites and applications mean that consumers can find out immediately if one shop starts charging different prices.

EXHIBIT 18

Prices by store across Australia for a basket of 15 of our highest selling branded products,¹ dollars



¹ Basket includes the top 15 branded products by sales volume (only one product per fine department included in the basket)
Source: Woolworths

2.1.4 Laws and regulations should enable Australian businesses to be more internationally competitive and, where applicable, align with best practice

Consumers should have the benefit of shopping in an internationally competitive retail environment with a best practice competition law framework.

In this respect, there are many opportunities to remove impediments so that Australian businesses can drive more economic growth and productivity for the benefit of consumers. For example, the root causes of price discrimination should be investigated so that consumers can have the benefit of truly internationally competitive prices (see section 2.2.2). The costs of doing business should be reduced so that businesses can reinvest more and pass savings to consumers (see section 2.2.3). Inconsistent laws, regulations and licensing restrictions should be harmonised to reduce complexity and burden on business (see section 2.2.4).

Similarly, the competition law framework should be in accordance with best practice where the context is applicable. For example, a misuse of market power effects test would be detrimental to consumers (and has been rejected on every occasion that it has been reviewed in the last 35 years) and predatory pricing provisions should be reviewed in light of criticism from the OECD (see section 2.3.2). Price signalling provisions should be repealed as they are out of step with best practice (see section 2.3.4). Finally, the informal merger review process could be streamlined and impose less of a burden on businesses (see section 2.3.6).

2.2 Removing impediments to competition

This section responds to the questions raised in Chapter 2 of the Issues Paper.



Question 2

Are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?

There are a number of opportunities to remove impediments to competition so that Australian retail businesses can drive more economic growth and productivity for the benefit of consumers. To unlock the potential, we believe that the Government should:

2.2.1 Encourage the national reform of trading hour restrictions

2.2.2 Explore the root causes of price differences between countries

2.2.3 Reduce the costs of doing business

2.2.4 Harmonise inconsistent laws, regulations and licensing restrictions.

2.2.1 Encourage the national reform of trading hour restrictions

The inconsistent and complex maze of different trading hour restrictions across Australia is at odds with both consumer desire and behaviour, and the restrictions are imposing a regulatory burden as well as damaging domestic 'bricks and mortar' businesses, given that they are competing against online retailers (often international) from which consumers can purchase products at any time and from anywhere.

Indeed, the Government's focus on building out a national broadband network will increase access and connectivity across Australia and stimulate 24/7 online commerce, while at the same time outdated trading hour restrictions continue to hold physical retailers back from serving consumers at a time that is convenient to them.

In this section, we make observations on:

- Current restrictions and previous reviews
- Benefits of reform and potential options
- State-specific observations on Western Australia, Queensland and South Australia.

Current restrictions and previous reviews

While Victoria, Tasmania, the NT and the ACT have all deregulated trading hours, other states such as WA, Queensland and SA persist with extensive restrictions. New South Wales is less restrictive than some states, but it still maintains an inconsistent patchwork of restrictions in some parts of the state relating to Boxing Day and Easter Sunday.

Restrictions on trading not only differ by state, but also between certain regions and local government areas within a state. Exhibit 19 shows the broad range of public holiday trading restrictions, and highlights the opportunities for harmonisation.

EXHIBIT 19

Public holiday trading restrictions by state

	Christmas Day	Good Friday	Easter Sunday	Anzac Day	Labour Day		Boxing Day	New Year's Day	Easter Monday	Queen's Birthday	Australia Day
ACT	Open ¹	Open ¹	Open	Open ¹	Open		Open	Open	Open	Open	Open
NT	Open ¹	Open ¹	Open	Open ¹	Open		Open	Open	Open	Open	Open
TAS	Closed	Closed	Open	Closed ²	Open		Open	Open	Open	Open	Open
VIC	Closed	Closed	Open	Closed ²	Open		Open	Open	Open	Open	Open
NSW	Closed	Closed	Closed ⁴	Closed ²	Open		Closed ³	Open	Open	Open	Open
South-East QLD	Closed	Closed	Closed	Closed	Closed		Open	Open	Open	Open	Open
WA	Closed	Closed	Limited ⁷	Closed	Limited ⁷		Limited ⁵	Limited ⁷	Limited ⁷	Limited ⁷	Limited ⁷
SA	Closed	Closed	Closed ⁶	Closed ⁶	Closed ⁶		Closed ⁶	Closed ⁶	Closed ⁶	Closed ⁶	Closed ⁶

1 Trading hours are not regulated in the Territories but large retailers close voluntarily on these days and on the morning of Anzac Day. 2 Trading permitted on the afternoon of Anzac Day. 3 Except for Sydney CBD, Bondi Junction and exempted areas. 4 Except for a small number of retailers with 'grandfathered' exemption certificates. Shops in other areas can apply for exemptions but these are rarely granted. 5 WA Government permitted trading on this day in 2013. 6 Proclamation Day in SA. 7 General Sunday trading hours apply in Perth metro area. 8 Limited trading permitted in Adelaide CBD only

The regulation of retail trading hours has been exhaustively reviewed in recent years. The Productivity Commission considered the issue in its 2011 inquiry into the Australian retail industry and recommended that trading hours be fully deregulated. It found that the regime imposed significant costs for consumers, retailers and employees:¹²⁰

- The costs on consumers included opportunity costs created by inconvenience and congestion costs (as all shoppers are forced to shop during the same restricted hours)
- The costs on retailers included efficiency costs arising from investments not being fully utilised, the need to manage stocks of perishable goods such as flowers and fruit, compliance costs across jurisdictions and sales lost to competitors – including international online retailers that are not restricted by trading hour regulations
- The costs on employees included the limitation placed on earning potential for those employees who would prefer to work during the hours that are prohibited by regulation.

The Productivity Commission's view is that deregulating trading hours would bring about significant microeconomic reform that would benefit consumers and promote economic growth. The work of the Productivity Commission has been supported by two other recent economic reviews conducted in Queensland and WA:

- In 2013, the Queensland Competition Authority recommended the full deregulation of retail trading hours. It found that the net potential benefit to Queensland of removing the current restrictions was as much as \$200 million per annum and noted that the 'potential benefits of reform include an increase in retail productivity, more shopping convenience for the broader community and lower prices.'¹²¹ To date, the Queensland Government has not acted on this recommendation

120 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, pXLII and p278-279

121 Queensland Competition Authority, *Measuring and Reducing the Burden of Regulation*, February 2013, p33 and 39

- In April 2014, the WA Economic Regulation Authority issued a draft report that recommended the full deregulation of trading hours across the state.¹²²

Benefits of reform and potential options

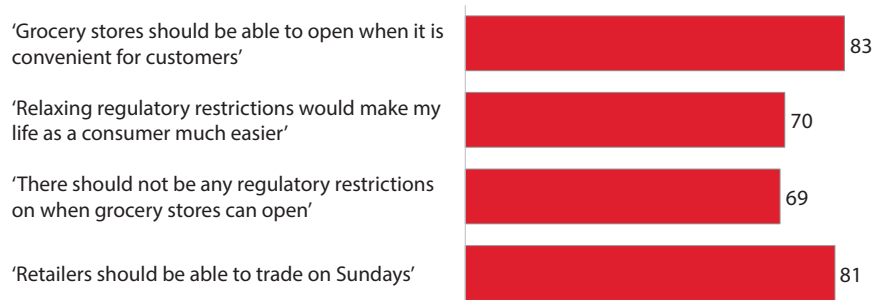
The benefits of allowing consumers (not regulations) to decide when to shop are well established. Deregulation enables retailers to provide the widest choice and convenience, and encourages innovation. Importantly, reforms would offer large potential economic benefits, which are easy to implement (at no cost to taxpayers) and which could be secured immediately.

In WA, Queensland and SA, consumers are faced with a complex set of trading hour restrictions throughout their shopping week. These restrictions are inconvenient, confusing and only serve to limit consumer choice. In our modern retailing environment, consumers clearly want to be able to shop at a range of different times during the week. According to a recent survey of 1,100 consumers across Australia, there is considerable support for deregulating trading hours (Exhibit 20).¹²³

EXHIBIT 20

Consumer sentiment towards retail trading hours

Percent of consumers who strongly or somewhat agree



Consumers not only 'want' to be able to shop over extended hours, they actually do:

- Over 80 per cent of physical retail transactions occur between the 9-hour period starting at 10am and ending at 7pm. The most popular shopping hours (in terms of transactions) are between 12pm to 1pm and 4pm to 5pm¹²⁴
- In contrast, consumers are actively shopping online over a longer period of time – 80 per cent of online retail transactions occur between the 14-hour period starting at 9am and ending at 11pm. The most popular shopping hours (in terms of transactions) are between 8pm to 10pm¹²⁵ (see 'Box 3: The modern 'anywhere, anytime' consumer').

Reform of trading hours would also serve to enhance productivity across the retail sector and generate additional employment. This is particularly important as the retail sector is currently responding to the permanent structural changes brought about by online retailing. These reforms would allow the Australian retail sector to better meet the competitive challenge posed by online retailers (who are often based overseas).

122 WA Economic Regulation Authority, Inquiry into microeconomic reform in Western Australia, 11 April 2014, p4

123 Woolworths Consumer Survey, May 2014 (n = 1100)

124 Quantum

125 Quantum

The additional jobs created across the country would also represent millions of dollars in increased wages flowing, every week, into local communities. As a consequence, there would be a corresponding increase in the amount of payroll tax paid to the relevant State Government and income tax paid to the Federal Government.

While we recognise that the regulation of retail trading hours is a State Government responsibility, the Federal Government should take a leading role in encouraging those jurisdictions with highly regulated regimes to pursue deregulation and create a nationally harmonised trading hour framework.

A nationally harmonised regime that delivers unrestricted trading on all days (with the exception of Good Friday, ANZAC Day morning and Christmas Day) would reduce compliance costs and deliver significant benefits for consumers. By re-instituting a form of National Competition Policy, the Federal Government could incentivise the remaining states to pursue deregulation.

In the absence of national deregulation, individual jurisdictions should be encouraged to pursue their own reforms. This is discussed below.

State-specific observations

Western Australia

Consumers in WA have to contend with a complex set of trading hour regulations that differ on the basis of region and type of store. For example, north of the 26th parallel of south latitude, trading hours are wholly deregulated. However, south of this line, consumers have to navigate a range of restrictions.

Within the Perth metropolitan area, trading hours for 'General Retail Shops' are restricted to 8am to 9pm on weekdays, 8am to 5pm on Saturdays and 11am to 5pm on Sundays. We note that there have been some recent reforms that have delivered great benefits for consumers.

In late 2012, the WA Government allowed limited Sunday trading between 11am and 5pm for all retail stores in the Perth metropolitan area. As a result of the partial deregulation, we hired 700 additional staff across the Woolworths group (including at our supermarkets, BIG W discount department stores, and Masters Home Improvement stores).

There is still scope for much greater reform to amplify these existing benefits:

- In some parts of WA, Sunday trading is still completely prohibited. Woolworths has eight supermarkets that, by law, must remain closed on Sunday, including stores in major regional centres such as Albany, Esperance, Geraldton and Kalgoorlie.
- As discussed in Part 1, between February 2010 and February 2014, the proportion of money spent in WA supermarkets on a Sunday shot up by 90 per cent, although it still remains the lowest value day of the week.¹²⁶ While this is promising, it suggests that further deregulation on Sunday could bring even more benefits. In Victoria, where Sunday trading has been deregulated for some time, Sunday is now the second most valuable day of the week for supermarkets.¹²⁷

Our survey also indicates that WA consumers would support extended trading hours. Seventy-nine per cent of WA residents would not be opposed to supermarkets opening between 8am and 5pm on a Sunday, and 66 per cent would certainly or probably use

126 Quantum

127 Quantum

the extended time to shop.¹²⁸ Allowing stores to trade on Sundays would immediately create new employment opportunities in regional towns and extend the convenience of Sunday trading currently being enjoyed elsewhere.

Another significant impediment for consumers and competition in WA is the outdated framework of regulations covering hardware stores and petrol stations. This is a major issue impacting our Masters Home Improvement stores across the regulated part of the state, as they are prevented from trading in line with the hours enjoyed by other hardware stores. To be eligible to trade as a 'domestic development shop', Masters must only sell goods which are prescribed by the *Retail Trading Hours Regulations 1988*. The regulations give rise to all sorts of inconsistencies and anomalies. For example, the regulation:

- Allows the sale of light bulbs but prohibits the sale of light fittings
- Allows the sale of outdoor lighting but prohibits the sale of indoor lighting
- Allows the sale of kitchen sinks but prohibits the sale of dishwashers
- Allows the sale of wood-fire heaters but prohibits the sale of gas heaters
- Allows the sale of indoor television antennae but prohibits the sale of outdoor television aerials.













Selected examples are illustrated in Exhibit 21.

Because Masters stores sell both light bulbs and light fittings, they are considered 'general retail shops' instead of 'domestic development shops'. The practical effect is that Masters stores have their trading hours limited (i.e., cannot open before 8am on a weekday). Competitors who stock a smaller range of products and who are considered 'domestic development shops' are able to open for extended hours - thereby placing Masters at a competitive disadvantage. The situation is inconvenient for our customers, limits the retail choices available to customers and represents an anti-competitive restriction on our business.

EXHIBIT 21

Trading restrictions at Masters Home Improvement

Selected examples

Yes...			...But		
Yes...			...But		
Yes...			...But		

128 Woolworths Consumer Survey, May 2014 (n=1100)

Similar problems impact our petrol station businesses. While our petrol stations are not themselves restricted from opening, the *Retail Trading Hours Regulation 1988* places limits on when certain goods can be sold. The original point of these restrictions is lost:

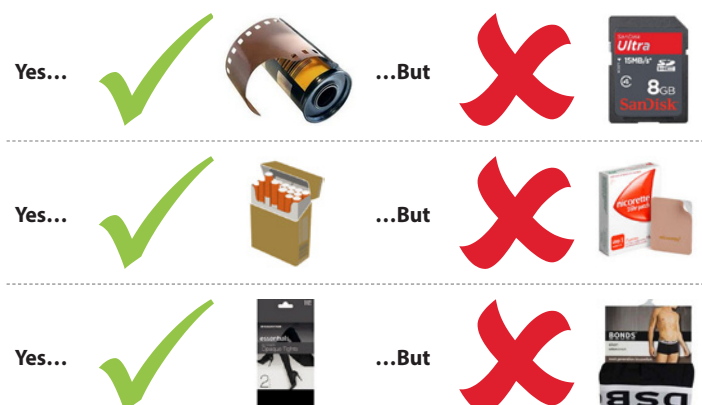
- We can sell film and flash bulbs on Sundays before 11.00am – but can't sell digital camera memory cards at this time
- We can sell cigarettes before 8.00am on Mondays – but can't sell nicotine patches at this time
- We can sell pantyhose after 9.00pm on Thursdays – but can't sell underpants at this time
- We can sell needles before 8.00am on Tuesdays – but can't sell wool at this time.

Selected examples are illustrated in Exhibit 22.

EXHIBIT 22

Trading restrictions at Woolworths petrol stations

Selected examples



Queensland

Trading hours in Queensland are regulated under the *Trading (Allowable Hours) Act 1990*, which runs to over 57 pages, plus eight pages of regulations. There are therefore 65 pages of legalese governing which types of physical stores can open in specific regions, creating a complex and inconsistent regulatory environment.

For example, in South-East Queensland there is a general set of trading hours set by day:

- Monday to Friday 8am to 9pm
- Saturday 8am to 5pm
- Sunday 9am to 6pm.

These restrictions are compounded by a patchwork of complications and exemptions. For example, on Saturdays, shops in South-East Queensland must close by 5.00pm, but in inner city Brisbane by 5.30pm, in the 'City Heart' of inner city Brisbane by 7.00pm, in New Farm by 9.00pm and in the Gold Coast tourist area by 10.00pm. This means that stores are not able to vary their trading hours in response to customer demand arising from local conditions such as seasonal variations, weather events and community festivals.

There is significant support for extended Saturday trading hours from Queensland consumers, with our survey showing that 77 per cent of residents would not be opposed to grocery stores being able to open until 10pm on a Saturday, and 56 per cent would be likely to use the extra time to shop.¹²⁹

The law also prevents Sunday trading in many regional towns. Woolworths is unable to open its stores at twenty regional towns across Queensland including major centres such as Kingaroy, Charters Towers, Mission Beach and Mount Isa. Allowing these stores to trade on Sundays would immediately create new employment opportunities in these towns and extend the convenience of Sunday trading currently being enjoyed elsewhere.

There is also an urgent need to reform the Queensland trading hours system, which requires applications for exemptions from general trading hour restrictions to be obtained through a highly complex, expensive and adversarial process adjudicated by the Queensland Industrial Relations Commission. The difficult and costly nature of pursuing these exemptions deters retailers from trying to do so, and only harms consumers and prevents the creation of a competitively neutral retail environment across Queensland.

South Australia

The SA trading hour regime is set out in a maze of 26 pages of legislation and 15 pages of regulation, which creates a highly restrictive and complex operating environment for physical retailers. The legislation creates different trading hour regimes for areas that have been defined as being in the CBD Tourist Precinct, the Glenelg Tourist Precinct and the Metropolitan Shopping Area. There are a further 34 Proclaimed Shopping Districts. Those parts of the state that are not covered by any of these precincts, areas or districts are not subject to regulation.

On days that are not public holidays, stores in the CBD Tourist Precinct, Glenelg Tourist Precinct and Metropolitan Shopping Area must not trade:

- after 9pm on a weekday
- after 5pm on a Saturday or
- before 11am or after 5pm on a Sunday.

On days that are not public holidays, stores in a Proclaimed Shopping District must not trade:

- after 6pm on a weekday other than Thursday
- after 9pm on a Thursday
- after 5pm on a Saturday
- on a Sunday.

Lifting these restrictions and allowing retailers to choose their opening hours would provide the widest amount of choice and convenience for consumers across the state. Our survey indicates that 65 per cent of SA residents are in favour of stores being able to trade on a Sunday, with 63 per cent saying they would certainly or probably use the opportunity to shop.¹³⁰

129 Woolworths Consumer Survey, May 2014 (n=1100)

130 Woolworths Consumer Survey, May 2014 (n=1100)

The extended trading hours would also immediately create additional employment opportunities in SA. Woolworths alone would create hundreds of additional jobs if we had more discretion to open outside the currently regulated trading hours. As a whole, such reform could create thousands of additional employment opportunities across the wider retail sector.

2.2.2 Explore the root causes of price differences between countries

'Price discrimination' is a situation where consumers pay more for products than others in comparable economies. Australian retailers have become increasingly aware of such retail price anomalies and associated cost price anomalies and have responded by setting up direct sourcing centres in lower cost countries and investing in teams to find vendors that can supply genuine products at lower prices.

Despite these efforts, price discrimination continues to be an issue that affects Australian consumers and businesses. As noted in the Productivity Commission's 2011 report into the retail trade sector: *'Addressing such regional price discrimination is one of the main challenges for local retailers. If retailers cannot purchase the goods that they resell at competitive prices, more business exits and loss of employment will occur.'*¹³¹

There have been calls to introduce legislation to regulate the practice of price discrimination (either by making it illegal to prevent customers from sourcing offshore, or reforming copyright and trademark laws where they have the effect of preventing parallel imports). We also note the Canadian Government's intention to introduce regulation to address country-specific price discrimination.

We do not believe that Government should attempt to regulate an outcome in this area. Legislation might be too broad-based/complex, which would drive up costs of doing business even further. Further, there is a risk of unintended consequences as suppliers might respond by changing products in different markets (losing scale advantages) or underinvesting in our market, and as a result prices may rise and choice could be restricted.

The reality is that there are many reasons why prices are different between different regions, including:

- Differences in the costs of doing business (taxes, labour and transport costs)
- Specific legal restrictions, both direct and indirect, which prevent consumers and businesses from parallel importing (e.g., IP laws and other specific legal restrictions such as s 105A of the *Customs Act 1901* which requires importers to obtain an 'age certification' to sell brandy, rum or whiskey into Australia)
- More or less onerous consumer protection laws that drive up importing costs generally (e.g., labelling requirements).

Accordingly, instead of seeking to regulate an outcome, the better approach would be to carefully address each of the root causes that are driving the price differences.

2.2.3 Reduce the costs of doing business

Reducing the costs of doing business in the retail industry will allow retailers to continue to innovate and provide the best value products and services to consumers. A key opportunity in this review is to recommend ways to reduce costs, especially in relation to a range of regulatory-imposed costs such as taxes, council rates and utility charges that differ across jurisdictions.

131 Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, pXXIII

Consumers ultimately bear higher costs as these feed through in higher prices for goods and services (or alternatively, companies are forced to accept lower profits, creating a competitive disadvantage for local businesses).

In the course of developing its store network, Woolworths has acquired significant experience in the different costs of business faced in various jurisdictions. Our experience is that these costs combine to create significant relative cost differences between Australian states and territories. For a national business such as Woolworths, these costs create localised disincentives to investment that are ultimately detrimental to consumers, employment and economic growth.

For example, our experience has been that some of the costs of doing business in South Australia, such as land tax, council rates and utility charges are high compared to other jurisdictions (see 'Case study 3: Costs of doing business in South Australia').

Case study 3: Costs of doing business in South Australia

Land tax

Land tax in SA is based on the unimproved land value as calculated by the Valuer-General. The main disparity between SA and other jurisdictions is the applicable tax rate, particularly on land valued in excess of \$1 million.

For a parcel of land valued at \$20 million, the tax payable in South Australia is over \$700,000 per annum. Victoria would levy just over \$400,000 while WA would levy less than \$300,000.

The land tax for SA is almost double the rate payable on similar projects in NSW. For example, a property in Adelaide with a \$12 million land value has a land tax assessment of \$435,000 per annum. In NSW, the same property would be liable for only \$225,000.

For commercial property, this is a significant and ongoing addition to the costs of doing business in SA, creating a disincentive to investment. It makes the state an uncompetitive jurisdiction and acts as a serious impediment to economic growth.

Council rates

Rates in SA are based on the capital improved value of the property as determined by the Valuer-General but, under the *Local Government Act 1999*, councils also have flexibility over the rating system.

Individual councils are able to determine their own policy on the applicable rate they apply to property categories. The applicable rate can differ significantly from council to council for a property of similar value, and the rate applied to any one property can fluctuate significantly. These fluctuations and disparities between councils add uncertainty for investors.

For example, during development of Woolworths' Murray Bridge Marketplace, the council rates liability upon completion was about 30 per cent higher than the estimated liability during planning. The use of capital improved value, rather than unimproved capital value, also serves as a disincentive to high-quality development and urban outcomes as high-value capital improvements create greater council rate liabilities for investors.

Utility charges

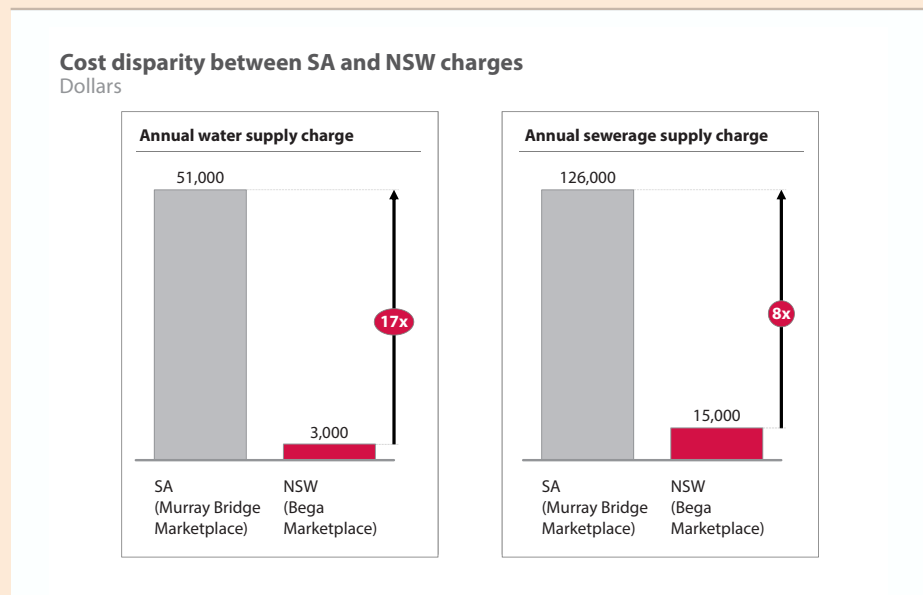
In SA, water pricing for commercial customers comprises a supply charge, based

on the capital value of the relevant property and a usage charge on a per kilolitre basis.

Woolworths believes that charges should be based on the recovery of efficient costs. The linkage of water charges to capital values creates significantly higher charges than in other states and acts as a disincentive to investment in environmentally sustainable infrastructure.

Exhibit 23 sets out the approximate cost differences in water and sewerage supply charges between Woolworths' Murray Bridge Marketplace in regional South Australia and a comparably sized development in Bega in regional NSW.

EXHIBIT 23



2.2.4 Harmonise inconsistent laws, regulations and licensing restrictions

There is scope to reduce the significant compliance burden imposed on retailers by a range of inconsistent laws and unnecessary regulations, often at a state or territory level. This red tape imposes significant costs on national retailers that operate across multiple state and territory jurisdictions.

There is a significant opportunity to boost productivity and enhance the competitiveness of the retail sector through the creation of a nationally harmonised and best practice regulatory framework. This can be achieved through the development of an enhanced COAG process, involving co-operation between the Federal Government and state and territory governments to develop nationally consistent regulation and policy. In addition, this could be an ideal mechanism to help identify unnecessary regulation and suggested reforms.

As with the previous National Competition Policy, a system of reform payments should be put in place to encourage states and territories to pursue economic reform. The payments would incentivise jurisdictions to sign up to nationally consistent policies and eliminate unnecessary regulation.

Below we provide an insight into some regulatory examples that are increasing costs for

retailers and adversely impacting upon consumers:

- Development and planning regulations
- Regulations on the sale of plastic knives
- Liquor industry regulation.

Development and planning regulations

The retail industry operates under several broad development and planning regulations, including those that determine where retailers can locate, the nature and format of the stores that can be established, when they can open for business and their workplace arrangements. In this respect, there are a number of planning, zoning and other land development regulatory restrictions that exert an adverse impact on competition and restrict the ability of retailers to provide convenience and choice for consumers. Accordingly, there is a clear need for a more modern, best practice and efficient planning system that both promotes competition and delivers benefits to consumers.

These concerns have been well examined and documented. The Productivity Commission's 2011 report on the *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* noted that 'planning guidelines regarding where retailers can locate are extremely complicated and often prescriptive and exclusionary'.

The Productivity Commission's review identified a number of restrictions on competition, and made the following recommendations in respect of them in its 2011 report on the *Economic Structure and Performance of the Australian Retail Industry*.¹³²

- **Narrow and highly prescriptive business zoning**, which led to the recommendation that governments should broaden business zoning and significantly reduce prescriptive planning requirements to allow the location of all retail formats in existing business zones to ensure that competition is not needlessly restricted
- **Adverse impact tests on existing businesses or activity centres**, which led to the recommendation that governments should not consider the viability of existing businesses at any stage of planning, rezoning or development assessment processes
- **Lack of 'as-of-right' developments**, which led to the recommendation that governments should facilitate more as-of-right development processes to reduce business uncertainty and remove the scope for gaming by competitors
- **Business gaming of planning systems and appeal processes**, which led to the recommendation that Governments should ensure third party appeal processes within planning systems include clear identification of appellants and their grounds for appeal and allow courts and tribunals to award costs against parties found to be appealing for purposes other than planning concerns.

The issues raised by the Productivity Commission in its 2011 report are still applicable and should be considered by this review.

Regulations on the sale of plastic knives

The Victorian regulation of the sale of disposable plastic knives represents an example of unnecessary regulation that only serves to impose costs on retailers with no discernible justification or public policy rationale.

¹³² Productivity Commission, *Economic Structure and Performance of the Australian Retail Industry*, No. 56, 4 November 2011, Section 8.4

Disposable plastic picnic knives are harmless and innocuous items that represent no real threat to public safety and are not used to commit crimes. *The Victorian Control of Weapons Act 1990* defines any knife – including a plastic picnic knife – as a ‘controlled weapon’ and prohibits the sale to people under the age of 18.

Every year, hundreds of thousands of packets of plastic picnic knives are sold in Victoria. Every one of these sales requires the shop assistant to ensure that the customer is over 18. This can mean that the transaction has to stop while the customer produces the relevant proof of age. At self-service check-outs, the transaction is suspended while a customer service officer attends and allows the transaction to continue. The process wastes time and does not assist in making the community any safer.

Woolworths estimates that this regulation adds costs of \$128,000 per year to the operations of its supermarkets. This estimate does not include costs incurred in other stores (e.g., BIG W) or the wider retail sector.

Earlier this year, Woolworths welcomed the announcement of the Victorian Government’s intention to amend these regulations, and exempt retailers from these onerous obligations.

Liquor industry regulation

Woolworths is committed to being a responsible retailer of alcoholic beverages and we go beyond regulatory compliance to help protect individuals and society from harm caused by excessive alcohol consumption. We abide by a strict buying charter which governs all aspects of our liquor operations. Our aim is to lead the industry beyond legal compliance to a position of best practice self-regulation and to ensure that our business adds value to communities rather than adding harm.

We therefore fully support appropriate liquor regulation that controls the availability, marketing and price of alcohol. Further, we have implemented a wide range of voluntary product and service control initiatives across our stores which are focused on the responsible supply and promotion of alcohol.

While Woolworths believes that the current liquor regulatory regime operates effectively for the most part, this review presents an opportunity to review the red tape that currently limits choice and convenience for consumers and imposes unnecessary costs. Although the competitive barriers that exist within the liquor industry have been a common topic of inquiry in previous competition reviews, consumers still stand to benefit from further national reform in liquor legislation and regulation.

The liquor licensing application process in many Australian jurisdictions is confusing, inconsistent and lacks clarity as to the role of both complainants (i.e., which can be other government agencies) and the various consent authorities. The process also differs within each jurisdiction, which compounds the difficulty for liquor retailers that operate across multiple jurisdictions. The ultimate impact of this situation is a system that is inordinately time consuming, results in significant financial disadvantage to applicants, discourages investment and inconveniences consumers.

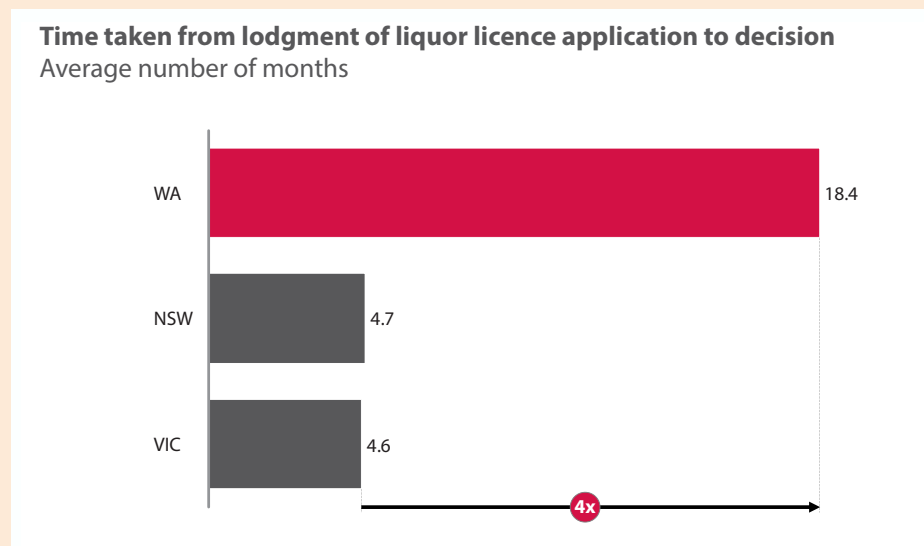
For example, most states require a new licence application to be approved by both the relevant local council as well as the state regulator. These two consent authorities often duplicate each other’s work (e.g., they can both requiring a comprehensive ‘impact statement’ to be carried out at the planning permit and liquor application levels without each decision-making body recognising the significant steps taken by the other). The end result is that a comprehensive social impact study is completed twice for the same application. To illustrate, below we outline the difficulties faced by liquor licence applicants in Western Australia (see ‘Case study 4: WA liquor licence approval process’).

Case study 4: WA liquor licence approval process

Waiting time

On average, liquor applications in WA take longer to resolve than anywhere else in Australia. Currently, the average time it takes Woolworths to secure a licence application in WA is over 18 months. This is up to four times longer than the average in other jurisdictions such as Victoria and New South Wales (see Exhibit 24 below). Even the shortest processing time for WA was still four times as long as the other states.

Exhibit 24



This is true even when comparing the longest application processing times in recent history, with the WA Licensing Authority still taking four times as long as the longest application processing time in Victoria.

Holding on to property for such long periods of course incurs significant holding costs. This is in addition to the costs of the licence application process itself which are extremely high compared to other states – legal fees in WA cost nine times the NSW average and 49 times the Victorian average.

Transparency in decision making

These costs and delays are compounded by a lack of transparency and certainty in the decision making process. Currently the Director General of Racing, Gaming and Liquor has the power to either determine the application or refer the decision to the Liquor Commission of WA. To date, all new licence applications for Dan Murphy's stores have resulted in the Director General absolving his decision-making powers and referring the application to the Liquor Commission. This has occurred despite the applications involved being for significantly different locations, varying socio-demographics and levels of community involvement/objection.

For example, the application for a Dan Murphy's store at Cannington did not draw any objections from the public, yet the matter was still referred for a hearing and determination. None of the referrals had reasons attached, nor were there any published criteria which would allow an applicant to determine whether a matter is

likely to be referred to the Commission for a hearing. This approach contrasts with that in other jurisdictions. In Victoria, the matter is only referred to a hearing if there are objections. In NSW, all applications are determined by the Casino Liquor and Gaming Control Authority.

The lack of strict timeframes for referrals to be made coupled with the lack of transparency around any concerns that may have led to a referral make it challenging for the applicant to properly plan business opening horizons or address matters that gave cause to the referral.

Duplication of processes

The process in Western Australia is made considerably more complicated by local councils acting as an overlapping consent authority and forcing licence applicants to address the same sets of issues involved in the licence application process.

There have been two instances recently where local councils have refused development consent for Dan Murphy's liquor stores in WA (at Currambine and Bicton), both of which were overturned following an appeal to the State Administrative Tribunal. In both cases, these interventions resulted in additional costs amounting to hundreds of thousands of dollars and added many months to the application process.

Finally, a recent trend in liquor licensing has been the introduction of 'risk-based' licence fees imposed on a particular liquor premises. Woolworths is concerned that these fees are not being determined according to the applicable risk as assessed by regulators and that this is resulting in the imposition of inequitable fees. For example, in the ACT, a Dan Murphy's liquor store located in or near a shopping centre whose latest hour of trading is 9pm is paying a licence fee that is significantly larger than a nightclub in a city entertainment precinct trading until 4am. In NSW, a family owned and operated business with 18 stores spread across regional areas, with no breaches ever recorded, has a 147 per cent higher fee than a 'high profile' Tier 1, large capacity, and late night trading bottle shop in Sydney.

2.3 Recommendations to protect and improve the competition framework

This section responds to the questions raised in Chapters 5 and 6 of the Issues Paper.



Question 3

Are the current competition laws working effectively to promote competitive markets, given increasing globalisation, changing market and social structures, and technological change?

As discussed in Part 1 of our submission:

- Competition policy and competition laws should protect and enhance healthy, competitive markets for the benefit of consumers
- The retail sector in Australia has been reviewed as part of a number of Federal Parliamentary and Australian Competition and Consumer Commission (ACCC) inquiries over the past 35 years.¹³³ None of those reviews has concluded that specific competition laws focusing on the retail sector are required or justified
- The retail sector has become more competitive since the ACCC's 2008 grocery inquiry (which found the grocery sector to have been workably competitive). The retail sector is intensely competitive and provides real and measurable benefits to consumers.¹³⁴

It is for these reasons that Woolworths considers that only limited changes are needed to the *Competition and Consumer Act 2010* (Cth) (CCA) to ensure the ongoing protection and enhancement of healthy, competitive retail markets for the benefit of consumers.

This section addresses the following topics:

2.3.1 Defining and analysing markets

2.3.2 Misuse of market power

2.3.3 Unfair and unconscionable conduct

2.3.4 Price signalling

2.3.5 Resale price maintenance

2.3.6 Mergers provisions

2.3.7 Collective bargaining process

2.3.8 Enforcement powers, penalties and remedies, and our experience with the ACCC

2.3.1 Defining and analysing markets

We believe that defining markets and analysis of competition in markets needs to keep up with new business models and changing consumer demands and expectations.

'Market' is defined in section 4E of the CCA as a market in Australia that includes all goods or services that are substitutable for, or otherwise competitive with, each other.

¹³³ Most recently:

- the Independent Review of the competition provisions of the Trade Practices Act 1974 and their administration (the Dawson Committee) 2003
- the ACCC's Unleaded Petrol Price Inquiry 2007 (and subsequent annual monitoring reports)
- the ACCC's Grocery Inquiry 2008

¹³⁴ Australian Competition and Consumer Commission v Metcash Trading Limited [2011] FCA 967 at [12]

As noted in section 2.1, this definition, and the way in which it has been interpreted by the Courts,¹³⁵ is broad and flexible enough to take into account the dynamic characteristics of retail markets, including innovation, product differentiation, technological change, changes in consumer preferences and supplier business models and the global context in which Australian businesses compete.

However, in practice, there has been a tendency for this definition to be applied to retail markets in a formalistic, static and narrow way (in terms of technology, geography, products, customers and/or suppliers), with the consequence that competition analysis has tended to be similarly static and narrow, too focused on concentration levels and individual competitors, and failing to have sufficient regard to the broader dynamics that represent commercial reality, including changing consumer behaviour (see 'Case Study 5: Hawker Supa IGA').

Market analysis must keep up with new business models

Market analysis should not be focused on the number of individual competitors with similar businesses. It should recognise the broad range of offers and business models that together operate as collective constraints. In retail market definition and analysis, there has been a tendency to identify only a small number of relevant competitors with substantially the same businesses, resulting in competition analysis that considers only a small number of participants.¹³⁶

Woolworths considers that the process of competition is not determined by the number of similar competitors in a market. Every market is unique and many other factors need to be examined, including the level of price and non-price competition, efficiency and profitability levels, and barriers to entry. Focusing only on competitors with very similar product ranges, formats or geographic proximities ignores the commercial reality that broader competitors (either individually or collectively) exert a significant constraint in the relevant market.

As discussed in Part 1, our supermarkets face fierce competition, not only from traditional supermarket rivals, but also from convenience stores, service stations, fresh food specialists such as bakeries, seafood and health food stores, delicatessens, meat and fruit and vegetable retailers, other specialist chains, international chains such as ALDI and Costco, and online retailers. The various business models are different and new business models are emerging. It is these collective constraints that are relevant to the assessment of competition in markets in which Woolworths operates.

Finally, as noted above, business models are evolving and incumbent retailers' own business models also evolve in response to changing consumer demands and expectations.

The drive by major retailers across the world for increased efficiencies in their networks, logistics and distribution systems has meant that those retailers willing to invest in these areas benefit from a lower cost structure, enabling them to 'invest' these cost savings in lower retail prices, making them increasingly more competitive than those retailers unwilling to make this commitment. The consumer is the beneficiary of these strategic developments and this must be taken into account in market analysis. A narrow focus on

¹³⁵ See *Boral Besser Masonry Ltd v ACCC* (2003) 215 CLR 374; *ACCC v Flight Centre Ltd* (No 2) [2013] FCA 1313; *Singapore Airlines Ltd v Taprobane Tours WA Pty Ltd* (1991) 33 FCR 158; *NT Power Generation Pty Ltd v Power and Water Authority* (2004) 219 CLR 90; *Australian Gas Light Company v ACCC* (No. 3) (2003) 137 FCR 317; *Queensland Co-op Milling Assn Ltd, Re* (1976) 25 FLR 169; *Queensland Wire Industries Pty Ltd v Broken Hill Pty Co Ltd* (1989) 167 CLR 177; *TPC v Australia Meat Holdings Pty Ltd* (1988) 83 ALR 299; *Australian Rugby Union Ltd v Hospitality Group Pty Ltd* (2000) 173 ALR 702; *Seven Network Ltd v News Ltd* (2009) 182 FCR 160; *SPAR Licensing Pty Ltd v MIS QLD Pty Ltd* (No 2) [2012] FCA 1116

¹³⁶ See, for example, Public Competition Assessments for the acquisition of Hawker Supa IGA, Statement of Issues for acquisition of St Kilda IGA

the impact of these productive investments on individual competitors, or the potential removal of an independent competitor from a market, has the potential to significantly impede or limit such investment, to the detriment of consumers.

Finally, some business models may involve forms of vertical integration, which delivers efficiency benefits to the ultimate benefit of consumers. As such, there should not be any presumption that vertical integration results in a substantial lessening of competition. Rather, market definition and analysis of the competition effects of conduct in markets should be sufficiently flexible to analyse changing business models in the broader context and the market dynamics in which they are evolving.

Market analysis must keep up with changing consumer demands and expectations

Again, the current CCA provisions are sufficiently broad and flexible to enable analysis which takes account of changing consumer behaviour and demand, and the way in which firms respond to those changes. However, in practice, retail market definition and analysis has tended to focus on:

- A small geographic area around the target retailer
- A sub-set of customers, being those who regularly purchase across the multiple product categories offered by the target retailer.

Such an approach is out of step with modern consumer behaviour. As discussed in Part 1, consumer shopping patterns have rapidly evolved in response to increased consumer awareness of product availability, price, and an ever-increasing range of different purchasing channels. Consumers are now mobile, price and service offers are transparent and consumers have access to this information through smartphones and other technology. They are demanding more choice, higher quality products and services at lower retail prices.

Woolworths' assessments of new store opportunities and range/pricing decisions take into account analysis of consumer behaviour and demand, not just simplistic and outdated assumptions based on a geographic area surrounding a retail outlet. Likewise, retail market definition and analysis should also take these complexities into account and move away from a static and narrow focus that is based on outdated assumptions about consumer shopping behaviour.

Case Study 5: Hawker Supa IGA

In 2012/2013, the ACCC reviewed an acquisition by Woolworths of an independent supermarket business in Hawker in the ACT under its informal merger review process. Woolworths notified the ACCC of the proposed acquisition in accordance with the Charter for the Acquisition of Independent Supermarkets (signed by Woolworths in 2005).

The ACCC's review of the acquisition commenced in October 2012 and concluded in July 2013 for a total of 131 review days. Despite this lengthy investigation, the ACCC ultimately concluded that the proposed acquisition would not be likely to have the effect of substantially lessening competition in the local retail supermarket market surrounding the Hawker Supa IGA.

The Hawker case highlights two issues:

- In practice, market analysis is too narrow and static

- The merger review process could be improved.

Market analysis

The Hawker case is an example of where retail market analysis is too static and narrow. In this case, the ACCC applied the following narrow market analysis when considering the acquisition:

- A small geographic area surrounding the Hawker store
- Only the existing supermarket competitors within that small geographic area as the relevant substitutes – and in doing so the ACCC did not accept that the wide variety of other formats and competitors, including specialists and convenience stores, were sufficiently close substitutes to be included
- Customers of the target store as the relevant customers
- A potential concern arising from the removal of a single independent supermarket from the local area (notwithstanding the other 10 other supermarkets and 6 supermarket brands in the local area).

Merger review process

The Hawker case is also an example that illustrates potential improvements in the merger review process.

The vendor had made a commercial decision to sell its store to Woolworths at a purchase price of around \$5 million. The transaction did not justify the 131 days taken by the ACCC to examine the proposed acquisition. This was largely a result of the narrow approach it took in its analysis and resulted in the following costs and consequences:

- The review took 131 days and cost Woolworths and the vendor a considerable amount of external legal and expert fees in addition to management time
- The time taken delayed completion by nearly 6 months, which resulted in further costs to the vendor and delayed Woolworths' investment in the target store
- Ultimately, Woolworths' investment delivered benefits to consumers in the improved offer, prices and service, and the specialty shops in the shopping centre benefited from the increased foot traffic in the shopping centre.

2.3.2 Misuse of market power



Question 4

Given structural changes in the economy over time, how should misuse of market power be dealt with under the CCA?

We believe that:

- Misuse of market power should be dealt with under section 46 in its current form
- An effects test would be detrimental to consumers
- Specific predatory pricing provisions should be reviewed.

Misuse of market power should be dealt with under section 46 in its current form

Misuse of market power should be dealt with under the CCA through a single prohibition as is provided in section 46 in its current form. Section 46 prohibits a corporation from taking advantage of substantial market power for the purpose of reducing competition. This principle can be adopted and applied at every level within a corporation.

Woolworths considers that this clear principle enables the corporation to focus on reducing prices, improving services and increasing efficiency. Competition law and policy must enable corporations to focus on these activities, without being distracted from achieving these objectives through a requirement to consider the possible effects of pro-competitive activities on its competitors.

An effects test would be detrimental to consumers

There have been some calls to amend section 46 to replace the current 'purpose' test with an 'effects' test.¹³⁷ Woolworths believes that such amendment would be counterproductive for two reasons.

The first is that the current 'purpose' test is the best way to distinguish between vigorous competition and anti-competitive practices.

The second is that the conclusions reached in the numerous reviews of the CCA over the past 35 years which have considered whether to add the 'effects test' remain applicable. On every occasion, the introduction of an effects test has been rejected.¹³⁸ There is no need to revisit the conclusions reached in those reviews. Woolworths endorses the key concerns raised in each of the previous reviews, being that:

- An effects test would catch pro-competitive behaviour and would therefore have an adverse impact on the competitive nature of Australian businesses by ensuring that those businesses with the lowest productivity and efficiency and highest operating costs would become the benchmark for pricing and competitive activity
- An effects test would not usefully be able to distinguish between legitimate and illegitimate activity. It would substantially widen the application of section 46 and create significant and ongoing uncertainty for all Australian businesses.

Woolworths believes that an effects test would not be to the benefit of the end consumer but, rather, would more likely be to the sole benefit of less efficient businesses. It would have widespread and significantly prejudicial implications for competitive behaviour and for the ability of all Australian businesses to strive for competitive efficiencies.

137 For example, 'Small grocers and the former ACCC chairman Allan Fels are calling for an effects test, a tough, new law to stop big supermarket strategies that effectively eliminate small competition' (see <http://www.abc.net.au/7.30/content/2014/s3995432.htm>)

138 The following Committees rejected or refused to endorse the idea of incorporating an effect test into section 46 TPA:

- the Trade Practices Consultative Committee (the Blunt Committee), 1979;
- the House of Representatives Standing Committee on Legal and Constitutional Affairs (the Griffith Committee), 1989;
- the Senate Standing Committee on Legal and Constitutional Affairs (the Cooney Committee), 1991;
- the Independent Committee of Inquiry (the Hilmer Committee), 1993;
- the House of Representatives Standing Committee on Industry, Science and Technology (The Reid Committee), 1996/97;
- the Joint Select Committee on the Retailing Sector (The Baird Committee), 1999; and
- the House of Representatives Standing Committee on Economics, Finance and Public Administration (the Economics Committee, 2001). and
- the Independent Review of the competition provisions of the Trade Practices Act 1974 and their administration (the Dawson Committee), 2003

There is a significant risk that such a test would be seen to operate, and be administered, in a way that seeks to protect inefficient businesses from normal, vigorous competition that delivers lower prices, better services and increased innovation to the Australian economy. This would greatly add to business uncertainty, inhibit investment and stifle productivity and Australian consumers will be substantially worse off as a result.

Specific predatory pricing provisions should be reviewed

We believe that section 46(1AA) (the Birdsville amendment) should be reviewed. There is an opportunity to update section 46 to reflect international best practice competition principles.

We acknowledge the importance of a prohibition against the misuse of market power to eliminate or substantially damage a competitor, prevent competitive entry or deter or prevent competitive conduct by engaging in predatory pricing. However, section 46(1AA) is inconsistent with the accepted understanding of predatory pricing because it does not require a corporation to misuse its market position, but merely to hold the relevant market position itself. This is an important distinction because the objective of the legislation should not be to prohibit all pricing by large corporations below which other competitors can profitably match.

The OECD recognised this issue in its 2010 Report on Competition Policy in Australia:

This 'Birdsville amendment'...deviates from orthodox economic theory by adopting a threshold based on market share rather than market power, and removing the element of taking advantage (and thereby the requirement of showing a connection between the market share/power and the offending conduct).¹³⁹

...It is of particular concern that there is now a prohibition that is intended to address predatory pricing but that has the potential to curb discounting by large corporations. Replacing a market power criterion with a market share threshold invites inefficient outcomes, promising protection of the interests of smaller firms but potentially resulting in higher costs to the consumer. Elaboration of ways to interpret 'taking advantage of market power' may add complexity and uncertainty, too.¹⁴⁰

...It is questionable whether there is sufficient evidence to support a view that the general prohibition under Section 46 does not cater adequately for predatory pricing cases. In its current form, the new dedicated prohibition risks causing undue and unproductive uncertainty in the business sector about pricing decisions and may even have a 'chilling' effect on competitive behaviour; in particular in light of the replacement of the 'power' element with a 'share' element in the predatory pricing prohibition.¹⁴¹

Case study 6: Section 46(1AA)

The ACCC has sought extensive information from Woolworths under section 46(1AA) on at least five occasions.

In each instance, the allegation was that Woolworths' retail prices for petrol or other products were too low. In response, we have provided extensive information and documents to the ACCC demonstrating that:

139 OECD Review of Regulatory Reform: Competition Policy in Australia (<http://www.oecd.org/gov/regulatory-policy/44529918.pdf>), p22

140 OECD Review of Regulatory Reform: Competition Policy in Australia (<http://www.oecd.org/gov/regulatory-policy/44529918.pdf>), p58

141 OECD Review of Regulatory Reform: Competition Policy in Australia (<http://www.oecd.org/gov/regulatory-policy/44529918.pdf>), p61

- We have policies, practices and guidelines to ensure that our ranging and pricing decisions are made for pro-competitive purposes (i.e., for the purpose of ensuring that our businesses serve our customers by providing high quality products and the best customer service, at the lowest possible prices)
- Our pricing and ranging decisions are not made with an anti-competitive purpose (i.e., for the purpose of damaging a competitor or preventing them from entry or engaging in competitive activity).

We support the right for customers and competitors to make complaints to the ACCC if they are concerned that our stores or employees have engaged in conduct in breach of the law. However, we believe that a filter should be applied to decide whether the ACCC will investigate such complaints (e.g., a requirement that the complainant provide sufficient information to enable the ACCC to reasonably conclude that there might be a real risk of breach).

Such a filter is appropriate because, while it is easy for competitors to raise a complaint with the ACCC, it is a costly exercise to provide information to the ACCC in response to such requests, including within time periods which are in some cases unreasonably short having regard to the work involved in comprehensively responding to such inquiries.

2.3.3 Unfair and unconscionable conduct



Questions 5 and 6

Are existing unfair and unconscionable conduct provisions working effectively to support small and medium sized business participation in markets?

Are there other measures that would support small and medium sized business participation in markets?

Woolworths believes that:

- Industry specific issues are best dealt with through industry regulation, not competition laws
- Unconscionable conduct provisions are capable of addressing concerns raised by small businesses
- Industry Codes of Conduct are appropriate and the framework is working well.

Industry specific issues are best dealt with through industry regulation, not competition laws

Calls have been made for changes to the competition laws which appear to be designed to protect particular sectors or market participants operating in retail markets in Australia.¹⁴²

Woolworths believes that there is no justification for competition laws designed to protect particular sectors or market participants and that the introduction of such laws would be to the detriment of competition and consumers.

As discussed in Part 1, Australia has unique characteristics, with challenges posed by large distances and a small and geographically dispersed population with low

¹⁴² For example, see discussion at pages 20-25 of Agenda for National Competition Policy Inquiry (November 2013) Monash Business Policy Forum, Monash University, Faculty of Business and Economics; also see calls by Independent Contractors Australia: <http://www.independentcontractors.net.au/from-the-desk-of-the-executive-director/reaping-the-rewards-of-a-fair-go-for-small-business>

population growth. This has resulted in the major national retailers investing in systems and facilities to ensure the efficient handling, storage and distribution of products daily to their stores, across Australia, to the benefit of consumers.

Sufficient domestic market size is necessary to generate economies of scale and enable the efficient delivery of a generally consistent retail offer to all Australians. Similar or greater market concentration levels exist for the same reason in many overseas countries as well as in other Australian industries where there are national operators, including the food manufacturing industries.

The increasing move towards globalised retail markets means that the continued drive for improved efficiency by domestic retailers should not be impeded by the protection of less efficient operators. To be able to give Australian consumers the benefits of world-standard operations, domestic retailers should not be restrained by regulatory controls which inhibit investment and innovation (as innovations promote lower costs and lower retail prices).

Claims made by interest groups for additional competition regulation specific to particular sectors or participants are not justified on competitive or economic grounds. As concluded by the Dawson Committee:

*'...competition measures which are specific to particular industries should be avoided. The competition provisions should protect the competitive process rather than particular competitors. They should not be seen as a means of achieving social outcomes unrelated to the encouragement of competition or as a means of preserving corporations that are not able to withstand competitive forces. Competition regulation should be distinguished from industry policy.'*¹⁴³

Protection of inefficient and uncompetitive players will lead to higher retail prices, lower retail investment, lower employment and economic stagnancy in metropolitan, rural and regional areas.

Rather than protecting individual competitors, Australia needs to ensure that its competition law and policy does not prevent Australian-owned retailers from remaining internationally competitive. In order for Australian companies to attain efficiencies necessary to meet a competitive world market, there needs to be competitive and growing domestic markets. The placing of unnecessary regulatory restrictions on consumer-based market growth reduces domestic competitiveness. Such restrictions would remove the incentive for companies to innovate, improve service levels and efficiencies, and to offer a high quality, broad range of products and services at consistently lower prices.

Unconscionable conduct provisions are capable of addressing concerns raised by small businesses

Woolworths considers that the unconscionable conduct provisions work effectively in their current form as they apply to commercial or small business transactions. The recent proceedings commenced by the ACCC against Coles demonstrate that the unconscionable conduct provisions in their current form have the capacity to apply to dealings between a retailer and its suppliers.

Industry Codes of Conduct are appropriate and the framework is working well

Woolworths considers that issues that are specific to particular industries or sectors which require some form of regulation should be addressed by way of industry specific regulation, such as industry codes of conduct, and not through the competition laws. Woolworths considers that industry codes are an appropriate mechanism to address such issues.

143 Dawson Committee Report, Summary, page 7

Woolworths complies with the Franchising Code of Conduct, Oilcode and the Unit Pricing Code. It has recently reached agreement on the draft terms of a Grocery Industry Code of Conduct, subject to the making of regulations under the CCA to implement those terms as a voluntary industry code of conduct. The process by which that agreement was reached involved lengthy negotiation of specific provisions, having regard to the legitimate interests of all parties involved in the negotiations. The proposed Grocery Industry Code of Conduct, agreed between the Australian Food and Grocery Council, Coles and Woolworths in October 2013, is intended to regulate standards of business conduct in the grocery supply chain and to build and sustain trust and cooperation throughout that chain, to ensure transparency, minimise disputes and provide an effective, fair and equitable dispute resolution process for raising, investigating and resolving disputes.

The final form of the agreed draft represents a balance that all participants consider to be workable and fair to all parties involved. It provides for substantive and procedural safeguards for supply relationships, backed by a low cost, fast track dispute resolution system as well as the appropriate level of commercial flexibility (subject to these safeguards) necessary for the code to be workable from an industry perspective.

Woolworths considers that such a Code is appropriate and sufficient to address such issues as they arise in the grocery supply chain. Accordingly, no changes to the relevant provisions of the CCA are required.

2.3.4 Price signalling



Question 7

Should the price signalling provisions of the CCA be retained, repealed, amended or extended to cover other sectors?

Woolworths considers that the price signalling provisions should be repealed. They are sector-specific and, as such, are out of step with international competition law best practice, which avoids sector-specific competition regulation.

2.3.5 Resale price maintenance



Question 8

Do the provisions of the CCA on resale price maintenance operate effectively, and do they work to further the objectives of the CCA?

The prohibitions against resale price maintenance are operating effectively to further the objectives of the CCA to enhance the welfare of Australian consumers, through the promotion of competition.

Woolworths' retail pricing policy is to sell competitively. Our prices are determined by the market and our ability to reduce input and operating costs through investment in logistics and store operations technology. These reduced costs are invested into lower prices to customers.

The resale price maintenance provisions, as currently drafted, are essential to ensure that retailers are free to compete with one another on price for the benefit of Australian consumers. This was acknowledged by ACCC Commissioner Sarah Court when commenting on undertakings obtained by the ACCC from the Australian importer of KitchenAid products in April 2014:

*'The competitive process relies upon retailers being free to discount their goods and compete with each other on price...If a supplier tries to force or induce a retailer to stick to a particular price, it concerns the ACCC as consumers benefit from being able to shop around for the best deal.'*¹⁴⁴

144 KitchenAid Distributor undertakes not to induce retailers on minimum prices: <http://www.accc.gov.au/media-release/kitchenaid-distributor-undertakes-not-to-induce-retailers-on-minimum-prices>

The seriousness of resale price maintenance and the important role it plays in ensuring lower prices for consumers was also acknowledged by ACCC Chairman Rod Sims in December 2012 in relation to the acceptance by the ACCC of court enforceable undertakings from hearing aid wholesaler and retailer, Oticon Australia Pty Ltd.¹⁴⁵

The resale price maintenance provisions operate effectively so that suppliers are unable to dictate fixed or minimum prices at which retailers are required to sell, which enables retailers to set their retail prices by reference to the market and to pass on cost savings for the benefit of consumers.

2.3.6 Mergers provisions



Question 9

Do the mergers provisions of the CCA operate effectively, and are they being applied effectively by the regulators and the courts?

Woolworths considers that the general prohibition on mergers and acquisitions in section 50 operates effectively and is appropriate. Woolworths believes that:

- No amendments are needed to address ‘creeping acquisitions’
- Merger provisions could be applied more effectively by the regulators
- Improvements could be made to the ACCC’s merger review process.

No amendments are needed to address ‘creeping acquisitions’

Section 50 in its current form is capable of applying to so-called creeping acquisitions. The ‘substantial lessening of competition’ test in section 50 can be applied (and is applied by the ACCC and courts) to the analysis of individual transactions in potentially narrowly defined markets.

The effectiveness of section 50 in its current form, and the capacity of the ‘substantial lessening of competition’ test to be applied to large and small scale acquisitions of all kinds, is demonstrated by the ACCC’s opposition to a number of single store acquisitions over the past 5 years under its informal merger clearance process.¹⁴⁶

It is therefore unclear what additional harm a creeping acquisitions or market share cap provision would be directed at addressing. A specific provision directed at so-called creeping acquisitions would be inconsistent with the merger laws of other jurisdictions worldwide, including the US and EU. Without articulating this additional harm, there is a real risk that legislative amendments could give rise to unforeseen negative consequences for competition.

Merger provisions could be applied more effectively by the regulators

As noted above, in retail market definition and analysis, there has been a tendency to identify only a small number of relevant competitors, being those who have substantially the same businesses, and starting the competition analysis from the premise that the relevant market is a concentrated market with only a small number of participants.¹⁴⁷

¹⁴⁵ Resale price maintenance undertakings accepted from Oticon Australia Pty Ltd: <http://www.accc.gov.au/media-release/resale-price-maintenance-undertakings-accepted-from-oticon-australia-pty-ltd>

¹⁴⁶ For example: Woolworths Limited and Lowe’s Companies Inc - proposed acquisition of G Gay & Co stores, Public Competition Assessment dated 5 December 2013; Woolworths Limited - proposed acquisition of supermarket site at Glenmore Ridge Village Centre, Public Competition Assessment dated 25 October 2013

¹⁴⁷ See, for example, the Public Competition Assessments for the acquisition of the Hawker Supa IGA

Any analysis of the competition effects of a proposed acquisition in the retail context must take into account all market participants (not simply those with a similar offer to that of the acquirer), the way in which participants are constrained by the activity of other market participants individually and collectively in their range, pricing, service and other commercial decisions and the ability of other market participants to win customers if the acquirer sought to increase price or reduce its range or degrade its service offering.

Woolworths is concerned that the ACCC's analysis of mergers, in focusing on individual competitors, has a pre-disposition to identify '3 to 2' competition concerns in markets where there are a number of differentiated competitors who, individually and collectively, operate as competitive constraints. This approach inherently is weighted against incumbent businesses.

For the reasons outlined in section 2.3.2, market analysis of the competitive impact of mergers in the retail sector needs to take into account the significant changes that have occurred in consumer demand and shopping patterns and the evolution in retail business models to meet those needs. If market analysis does not keep up, then investment that would otherwise improve prices and service offering to consumers (as well as employment opportunities to job seekers) is less likely to occur.

Woolworths' experience has also been that, notwithstanding the findings of the Federal Court in the Metcash case, the ACCC considers a very broad range of potential alternatives in assessing the likely effects of a transaction. In Woolworths' experience, many of the potential alternatives considered by the ACCC appear to be theoretical, hypothetical and not commercially realistic. In doing so, there is a risk that too much weight may be placed on assertions from market participants and insufficient weight given to the commercial position of the vendor.

Woolworths also considers that further transparency, including detail about third party submissions (not simply high level summaries) should be provided to the merger parties (or to their external advisers, to address any confidentiality concerns) to provide the parties with an opportunity to respond substantively to issues raised.

As noted above, the geographic scope of retail markets tends to be defined by identifying a local area surrounding the relevant retail outlet(s). This relies on a static identification of the regular shopping patterns of customers who currently shop at the relevant retail outlet and who live in that local area.

However, it is the behaviour of current and potential customers which is relevant, and most importantly an assessment of the behaviour of customers if a hypothetical monopolist were to impose a 'small but significant and non-transitory increase in price' (either in the form of a price increase and/or a quality decrease) that is most relevant to identifying geographic and product market boundaries. In that respect, a simple assessment of the current behaviour of a sub-set of consumers is not determinative.

Improvements could be made to the ACCC's merger review process

Woolworths considers that the ACCC's informal merger review process could be improved in a number of respects, particularly where the ACCC is considering acquisitions of single stores or businesses with a low transaction value.¹⁴⁸

¹⁴⁸ In the EU and the US, merger regulation applies where stated thresholds are exceeded

As noted in 'Case Study 5 – Hawker' above, the current ACCC merger review process can result in considerable delays and costs for participants. The ACCC's review of the acquisition of the Hawker store should not have taken 131 days given the simple nature of the transaction and market analysis required. Lengthy reviews of acquisitions of small businesses impose significant costs on the vendor and also delay the associated investment and benefits.

Woolworths supports the pre-assessment process, provided it does not result in any increase in the overall timetable where the ACCC considers that a public review is required. Since 2012, the ACCC has conducted public reviews of 14 Woolworths transactions. The public review in those matters has ranged from around 20 days to over 100 days.

2.3.7 Collective bargaining process



Question 10

How accessible is the collective bargaining process for small business, and can they use it without requiring substantial legal assistance or advice?

Woolworths believes that measures are working to facilitate small business participation in markets.

Section 93AB of the CCA provides a process for collective bargaining arrangements between two or more competitors, typically small businesses, and a supplier or customer. The legislative framework enables competitors to provide notification to the ACCC of an intention to collectively bargain and obtain legal protection for such negotiations, unless the ACCC objects within a period of 14 days. In general, the ACCC will assess a collective bargaining notification on the basis of whether the public benefits outweigh the likely detriment.

Woolworths believes that this is an appropriate framework to enable a group of small or medium sized suppliers to negotiate directly with retailers. Below we provide an example of where a group of suppliers has collectively bargained directly with Woolworths to produce Farmers' Own Milk for sale in northern New South Wales (see 'Case study 7: Manning Valley Milk').

Case study 7: Manning Valley Milk

In March 2013, a group of seven dairy farmers from the Manning Valley area in NSW notified the ACCC of their intention to collectively negotiate the terms and conditions of raw milk supply agreements directly with Woolworths. Prior to this proposed arrangement, each of the farmers had been members of the MidCoast Collective Bargaining Group, which sold milk to dairy processors who then distributed it to retailers.



The ACCC conducted an assessment of the proposal and found that it would not have any significant impact on competition as participation in the arrangement was voluntary and would deliver a range of public benefits through transaction cost savings and greater involvement of the suppliers in negotiating improved returns. It therefore approved the collective bargaining arrangements for a term of 3 years.

The farmers have subsequently negotiated a raw milk supply agreement with Woolworths. This represents a landmark deal in the dairy industry with Woolworths stocking milk sourced directly from the farmers in its NSW stores. The products are marketed under

the 'Farmers' Own' brand which has been jointly developed between the farmers and Woolworths. It built on a model of direct sourcing that Woolworths had implemented with meat and fresh produce farmers over a period of 20 years.

The direct relationship offers a better deal to the farmers for their milk as it locks in longer term supply contracts and provides long term sustainability. The arrangement also benefits consumers who have expressed a preference for locally sourced milk and as it provides end-to-end transparency from shed to shelf for the products.

2.3.8 Enforcement powers, penalties and remedies and our experience with the ACCC



Questions 11 and 12

Are the enforcement powers, penalties and remedies, including for private enforcement, effective in furthering the objectives of the CCA? The Panel is interested in whether there are other remedies or powers (for example in overseas jurisdictions) that should be considered in the Australian context).

What is the experience of businesses in dealing with the ACCC, the Australian Competition Tribunal and other Federal regulatory bodies?

Drawing on our experiences, Woolworths believes that:

- Enforcement powers, penalties and remedies are adequate
- The changing digital business environment should be factored into section 155
- A transparent media policy or code of conduct is required.

Enforcement powers, penalties and remedies are adequate

The ACCC's enforcement powers are adequate and the penalties and remedies appropriate to further the objectives of the CCA, now and in the future.

The ACCC is the agency which administers the CCA, and is obviously not a court. As such, it would be inconsistent with the fundamental principles of the Australian legal system for the ACCC to be in a position where it may make orders predicated in the ACCC's view as to whether conduct breaches the CCA, without a court first deciding whether a breach has occurred.

Woolworths does not consider that there is any justification for the following powers that have been called for by some commentators and members of parliament:

- A divestiture power, under which the court could order divestiture not only as a remedy to a breach of the merger provisions in section 50 (as is currently the case), but also as a general remedy, including for breach of the misuse of market power prohibition in section 46
- A cease and desist power to enable the ACCC to issue 'cease and desist' orders.

Conduct that is a misuse of market power in breach of section 46 is behavioural, being conduct by a corporation with substantial market power which has the purpose of damaging a competitor, preventing market entry or preventing competitive activity. Divestiture is a structural remedy which is not appropriate for behavioural issues. It would in effect require the court to design a market structure to address the contravention. It should not be the role of a court or a regulator to determine market structures. Woolworths further considers that it is not appropriate to place a restriction on a company attaining a particular size or level of market power, other than by way of an acquisition that breaches section 50.

To maximise competitive outcomes requires businesses to have incentives to innovate, deliver better quality services at lower prices and win new customers. Restrictions on size or the risk of divestiture orders by reason of market size are likely to have the opposite effect.

Finally, Woolworths believes that there is no need for the ACCC to have the power to make 'cease and desist' orders. The ACCC has the ability to seek urgent interlocutory or interim injunctions from the court, in the event that such relief is warranted. This is a

well-established, transparent and accountable process and there is no evidence that it is inadequate to cause conduct that satisfies the relevant legal standards to cease.

The changing digital business environment should be factored into section 155

Woolworths believes that some changes should be made to the scope of section 155 of the CCA to enable it to operate effectively in the modern digital business environment, without imposing undue burden and costs on businesses.

The ACCC currently has very broad powers, and regularly makes decisions or initiates processes which have an immediate and significant effect on businesses and industries, and a significant and lasting impact on the Australian economy.

The ACCC has a prolific role in regulating, investigating, prosecuting and influencing the structure of Australian businesses and the nature of how they operate. There is a high cost burden and business effect of complying with ACCC requests, section 155 notices, general enquiries, litigation and the reputation implications of ACCC-generated publicity. For example, in 2012/13 alone, the ACCC issued 358 section 155 notices.¹⁴⁹

Woolworths has had many dealings with the ACCC, both in its former and current administrative structures. These have related to proposed acquisitions of businesses, investigations into alleged breaches, litigation by the ACCC and responses to ACCC in relation to inquiries in the food/retailing/petroleum sectors.

Woolworths considers that the issue of compulsory production notices by the ACCC, and the terms of those notices, should be more balanced. Such investigations by the ACCC are based only on a 'reasonable belief' as to a 'suspected contravention' of the CCA, but require the provision of extensive documents, files, records or interviews at considerable cost (see 'Case study 8: Section 155').

Case study 8: Section 155

Since 1 January 2012, Woolworths has responded to 19 compulsory production notices issued during the course of informal merger reviews (including reviews in which Woolworths was not one of the merger parties) and in relation to enforcement investigations.

In responding to these notices, Woolworths has produced over 30,000 documents to the ACCC, many of which are confidential. In conducting searches and identifying documents that potentially fall within the scope of these compulsory production notices, Woolworths' external lawyers have reviewed over 100,000 documents to identify those required to be produced in compliance with the notices (and Woolworths employees have reviewed many times the amount reviewed by its external lawyers).

Woolworths believes that reasonable limits need to be included on the extent of the searches that are required to comply with such notices.

Section 155 was included in the predecessor to the CCA in substantially its current form. At the time of its introduction, the use of email and electronic documents and files was in its infancy. Its terms were appropriate in an environment where documents were predominantly hard copy and were maintained in hard copy files. In the current and future digital environments, Woolworths considers that the terms of section 155 are not appropriate.

¹⁴⁹ ACCC Annual Report 2012-13, p327 (<http://www.accc.gov.au/system/files/ACCC%20Annual%20Report%202012-13.pdf>)

Section 155 notices often require the recipient to produce all 'documents' which 'refer or relate to' a stated subject matter in relation to conduct which may have occurred years before the notice was issued. Complying with such notices requires the recipient to identify all business units and staff members who may have had some interaction with the subject matter (no matter how incidental), recover the whole of the mailbox and any other electronic files of each such person or business unit, including deleted items, and then review each of those items to identify those which might fall within the scope of the notice.

Complying with such requirements is burdensome and very costly and the vast majority of electronic documents identified in such searches are likely to have little if any relevance to the suspected contravention the subject of the investigation.

The need for reasonable limits on the extent of document searches has been recognised in other contexts. For example, in the context of Federal Court proceedings and pre-trial discovery, before the Court makes an order that discovery be given using documents in an electronic format, the parties must have discussed and agreed upon a practical and cost-effective discovery plan having regard to the issues in dispute and the likely number, nature and significance of the documents that might be discoverable in relation to them.¹⁵⁰

A transparent media policy or code of conduct is required

Woolworths considers that regulators should adhere to transparent media policies that govern how and when public comment is made in relation to ongoing investigations and regulatory actions. Regulators have a responsibility to balance the importance of informing the public with the need to protect parties from potential prejudice and associated harm to reputation, particularly prior to the completion of an ongoing investigation.

We have been particularly concerned about the damage to our reputation that may arise when the ACCC makes information available to the media prior to the completion of an ongoing investigation. This carries the inherent risk that information or media comment is made in a manner that denies procedural fairness to Woolworths or other parties. Woolworths endorses the conclusions of the Dawson Committee in this regard, namely:

'It is the responsibility of the ACCC to ensure that its provision of information to the media is consistent with due process and that there is confidence in the way in which it conducts itself. This extends beyond information supplied through formal printed media releases and includes informal commentary. It also involves information relating to proposals from corporations, for example in relation to mergers, which may not involve the contravention of the Act but are commercially sensitive.'

'...while the risk of damage to a corporate name from the publicising of an investigation is high, the likely educational benefit to the public is low. The risk of damage is underlined by the fact that the public perception of the implications of an investigation will be influenced by the manner in which it is reported. That is not, of course, within the control of the ACCC. ...whilst there may be circumstances in which it may be necessary for the ACCC to confirm or deny the existence of an investigation, the ACCC should avoid any comment on investigations it may be undertaking, even when the media has learnt of the investigation from another source.'¹⁵¹

150 Federal Court of Australia, Practice Note CM 6 - Electronic Technology in Litigation, 1 August 2011, pt 6.1 (<http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/cm6>)

151 Review of the Competition Provisions of the Trade Practices Act, January 2003, Chapter 12: Use of the media

Woolworths believes that the ACCC should develop a media policy or code of conduct that stipulates how and when it will make public comment. This would bring it into line with the Australian Securities and Investments Commission (ASIC), which has had a media policy in place since 1993 stipulating when it will make public comment on investigations and regulatory actions. ASIC Information Sheet 152¹⁵² outlines its current policy and covers the following areas:

- Comment on investigations
- Comment on criminal, civil and administrative proceedings
- Comment on matters with the Commonwealth Director of Public Prosecutions
- Media releases and media advisories, and
- Authorised spokespersons.

□ □ □

The competition reform agenda should focus on protecting and enhancing healthy, competitive markets for the benefit of consumers. History has shown that competition in the retail sector has been working well and delivering for consumers. In the future, competition will intensify leading to lower prices, better access and continued innovation. As such, we believe that only minor changes are needed for the policy framework.

152 ASIC Information Sheet 152 ([https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/INFO_152_Public_Comment.pdf/\\$file/INFO_152_Public_Comment.pdf](https://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/INFO_152_Public_Comment.pdf/$file/INFO_152_Public_Comment.pdf))

