Introduction & Summary of Recommendations

Australian United Retailers Limited (AURL), trading as FoodWorks, is pleased to make this submission to the Competition Policy Review.

It is our view that action needs to be taken to foster greater competition within the Australian supermarket industry by strengthening and supporting the independent supermarket sector. A growing and prosperous independent supermarket sector will aid the Australian economy and create the necessary competitive tension in the supermarket industry to drive benefits for Australian consumers. This industry is currently highly concentrated and becoming even more concentrated, creating the conditions for anticompetitive behaviour.

Simple reforms to the *Competition and Consumer Act* 2010 (CCA) and other State based legislation are needed to create a more equitable market and help reduce its continuing concentration.

AURL has reviewed the legislation governing competition in this market and recommends the following legislative changes:

- Amendments to the CCA to address the issue of anticompetitive price discrimination;
- Sections 46(1) and s46(1AA) of the CCA should be amended to supplement the current purpose test for misuse of market power and below cost pricing with an effects test;
- Mandatory merger notification requirements should be incorporated into s50 of the CCA;
- Amendments should be made to s50 of the CCA to enable the cumulative effect of acquisitions to be taken into account in determining whether an acquisition has the effect or likely effect of substantially lessening competition.
- Queensland liquor licensing laws should be amended to facilitate greater competition in the supermarket industry in that State;

These changes are described in the section of this submission titled 'Competition Concerns'. In the following section AURL describes its operations and provides an overview of the supermarkets sector which provides the background for AURL's concerns and recommended legislative changes.

Australian United Retailers Limited

AURL is an independent retail supermarket group with around 600 supermarkets and $2 billion in annual retail sales. It is wholly Australian owned and operated.

We operate under a number of banners including FoodWorks, FoodStore, Farmer Jacks and The Greener Grocer, as well as unbranded stores. All stores are independently owned, with the majority held in single ownership.

We are represented across all States & Territories (excluding the Northern Territory) and offer a range of stores in varying locations, from small convenience stores serving coastal towns to large full-line supermarkets in major shopping centres.

AURL provides its member stores with:

- The purchasing power of ~600 supermarkets;
- Contracts with preferred suppliers;
- Promotional programs, including catalogues;
- Branding and signage artwork;
- Local area marketing support; and
- Operational support including:
    - Business support staff;
    - Fresh food specialists;
    - Pricing files;
    - Sales reporting and analysis tools;
    - People management advice;
    - Store development / design services;
    - Demographic and market analysis; and
    - Space planning / planograms.

Our stores typically purchase around half of their merchandise from Metcash, who is our contracted wholesaler, with the other half sourced direct from suppliers.

AURL is a listed company on the National Stock Exchange. Shares in the company are only issued to member supermarkets. This allows the business to be run in the interest of its member stores, rather than for institutional investors and others who are typically focused on dividend yields or day to day changes in share prices.

As the AURL group is comprised of independently owned and operated supermarkets, AURL provides stores with a considerable degree of flexibility, including the ability to determine their pricing structure.

These pricing decisions are based on a range of factors, including:

- The location and type of store;
- The type of customer targeted, how they use the store and their expectations;
- The competitive environment; and

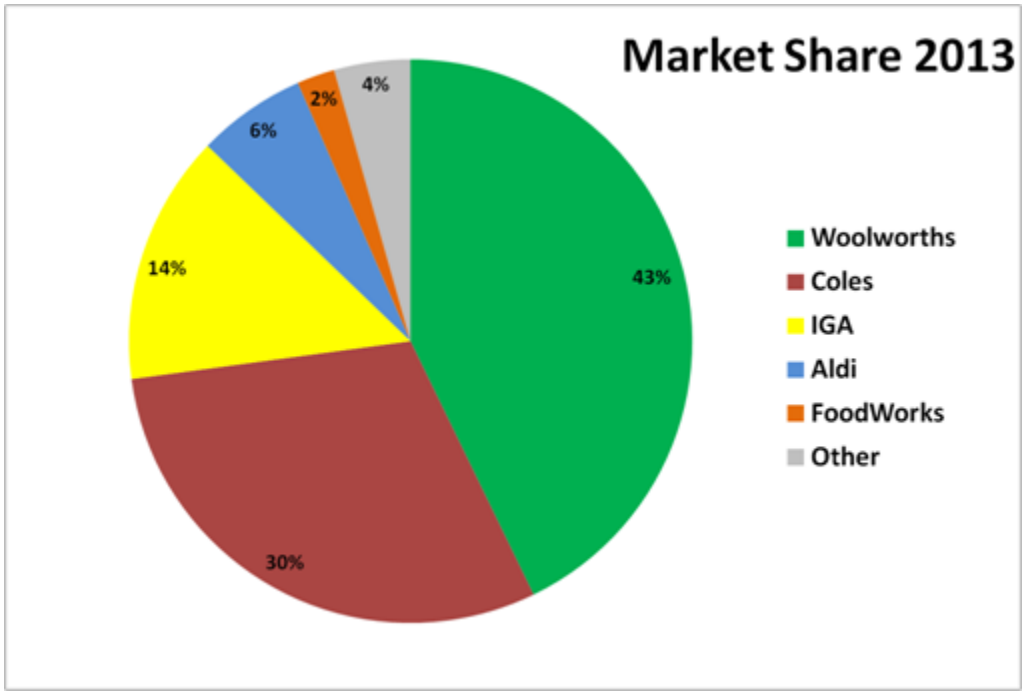
- Individual commercial viability considerations.

Promotional activity across FoodWorks stores is determined centrally and varies according to the type of store and State. AURL ensures strict promotional compliance for member stores.

Supermarket Sector Overview

The Australian supermarket industry is estimated to generate sales of around $101,000 million annually. Of this we estimate Woolworths and Coles hold a combined market share of 73%. On this basis Australia has one of the most concentrated supermarket industries in the world.

Coles and Woolworths have seen their combined share of the supermarket industry grow significantly over the past 40 years, increasing from ~35% in 1975 to ~73% in 2013. According to IBISWorld this steady rise in market concentration has "…**stemmed from the acquisition activity undertaken by Coles and Woolworths.**" (IBISWorld, Supermarkets and Grocery Stores in Australia, Aug 2013, P19).



Source: Internal FoodWorks estimates, June 2013
'Other' includes Costco, Spar and various smaller brands and unbranded supermarkets.

According to data published by the ABS, the supermarket industry has grown on average by 4.1% pa over the last four years. However, over the same period Coles has grown by 5.5% and Woolworths 4.4%. These results demonstrate that Coles and Woolworths continue to grow faster than the market, thus increasing their market shares and further concentrating

the Australian supermarket industry. These increases are despite growth in both Aldi and Costco over this period. The following table shows these increases in retail sales growth.

Retail Sales Growth	2012/13	2011/12	2010/11	2009/10
Coles	5.5%	4.6%	6.3%	5.4%
Woolworths	4.4%	3.8%	4.3%	5.1%
Industry (ABS Grocery & Liquor Retail Sales)	3.8%	4.4%	3.5%	4.6%

Source: Company reports & ABS 8501.0 Retail Trade, Australia, Table 11

As a consequence the independent supermarket sector has been growing at well below the industry growth rate and has therefore been losing market share.

The strong growth of Coles and Woolworths has been achieved through a combination of new stores, store acquisitions and improvements to existing stores. This activity has impacted the independent supermarket sector as follows:

- When Coles or Woolworths purchase an independent supermarket there is a direct exchange of sales from the independent supermarket sector to the major chains.
- When Coles or Woolworths open a new store or improve an existing store there is often an impact on nearby independent supermarkets.

Over a 4 year period it is expected that Coles and Woolworths combined will have purchased 16 independent supermarkets, totalling over 46,000 sq m of supermarket floorspace. This will result in sales of around $348 M per annum being taken directly from the independent supermarket sector. The following table shows the acquisitions by Coles and Woolworths since 2011.

Year	Coles Acquisitions	Woolworths Acquisitions	Floorspace Acquired (Sq m)
2014	Busselton Supa IGA (P), WA (4,578 sqm) Halls Head Supa IGA (P), WA (3,839 sqm) Bunbury Supa IGA (P), WA (2,985 sqm) Dianella Supa IGA (P), WA (4,638 sqm)		16,040
2013		St Kilda Supa IGA, Vic (1,259 sqm) Hawker Supa IGA, ACT (2,000 sqm) Rasmussen Supa IGA, Qld (1,400 sqm) Banksia Beach Supa IGA, Qld (2,200 sqm) Logan Village IGA, Qld (~500 sqm)	7,359
2012	Whiford City Supa IGA, WA (4,680 sqm) Cockburn Gateway Supa IGA, WA (3,469 sqm) Toowoomba Supa IGA, Qld (3,532 sqm) Mackay Supa IGA, Qld (~3,500 sqm)	Thornlie Supa IGA, WA (4,179 sqm)	19,360
2011	Coolum Beach IGA, Qld (2,813 sqm)	Jindalee IGA, Qld (800 sqm)	3,613
Total			**46,372**

Coles and Woolworths are also in the process of securing a substantial number of new sites. We have identified over 160 confirmed proposed new store sites being pursued by Coles and Woolworths across Australia, with many more rumoured and brand undisclosed projects also revealed.

The Australian supermarket industry is, by any measure, concentrated and becoming more concentrated.

The Australian supermarket industry has characteristics that exacerbate anticompetitive behaviour, in particular a highly concentrated market, a small number of businesses with substantial market power and high barriers to entry (eg significant sunk costs, large economies of scale, a saturated geographic market, limited product differentiation and restricted access to suitable sites). These conditions result in a lack of competitive tension in the market, increasing the risk that businesses with substantial market power do not compete effectively on price. The ACCC noted that the independent supermarket sector now only offers limited competitive constraint on the pricing power of the major supermarket chains, thereby further limiting the level of price competition in Australia. (Competition and Consumer Legislation Bill 2011, Explanatory Memorandum, 2011, Point 4.65)

These high barriers to entry mean that it has taken Aldi almost ten years to become profitable, far longer than most new market entrants could wait.

Evidence that prices are not being constrained in the Australian market can be observed in the rate at which the major chains adjust the prices of goods sold in their supermarkets. Our internal monitoring of over 5,700 staple products sold by Woolworths in Victoria shows that since January 2014 there has been over 2 times more products increasing in price compared to products reducing in price.

Source: Internal AURL monitoring

As a consequence of this lack of competitive tension in the Australian market, Coles and Woolworths are able to extract relatively high margins for the goods sold to Australian consumers.

Margin (%)	Woolworths F&L	Coles F&L	Aldi International (est)	Costco International
Gross Margin	27.3%	25.5%	15.0%	12.8%
Cost of Doing Business Margin (CODB)	19.8%	20.9%	10.0%	10.1%
EBIT margin	7.5%	4.6%	5.0%	2.7%

Source: Citi Research, Trends in the Australian Grocery Sector – The increasing reliance on margin, 1 August 2013

Over the last decade Coles and Woolworths have continued to increase their EBIT margin. Much of this growth is understood to have been achieved through reducing their Cost of Goods Sold (ie the price paid to suppliers) which accounts for ~75% of their revenue. This implies that savings achieved through lower prices from suppliers is not being passed onto consumers. It would appear that high and rising margins at Coles and Woolworths is a symptom of the uncompetitive nature of the market and the lack of competitive tension.

EBIT Margin (%)	1999/2000	2011/12
Woolworths	3.3%	7.5%
Coles	3.4%	4.6%

Source: Citi Research, Trends in the Australian Grocery Sector, The increasing reliance on margin, 1 August 2013

The current ACCC proceedings in the Federal Court against Coles for unconscionable conduct towards suppliers is a further indication of the current market imbalance and the power these major supermarket chains have over suppliers. In this case it is alleged by the ACCC that Coles has taken advantage of its superior bargaining position to seek payments from suppliers when it had no legitimate basis for seeking them, and "***using undue influence and unfair tactics against suppliers***" to obtain these payments. Not only is this alleged behaviour unfair and unconscionable to suppliers, it also delivers the major chains an unwarranted and unfair price advantage over independent supermarkets.

The above overview provides the background for the legislative changes AURL seeks in the following section of this submission.

Competition Concerns

In this section AURL describes the competition concerns in the supermarket industry and the changes to the CCA and other legislation which should be made in response to those concerns.

AURL considers that the following legislative changes are necessary to respond to its concerns:

- Amendments to the CCA to address the issue of anticompetitive price discrimination;
- Sections 46(1) and s46(1AA) of the CCA should be amended to supplement the current purpose test for misuse of market power and below cost pricing with an effects test;
- Mandatory merger notification requirements should be incorporated into s50 of the CCA;
- Amendments should be made to s50 of the CCA to enable the cumulative effect of acquisitions to be taken into account in determining whether an acquisition has the effect or likely effect of substantially lessening competition.
- Queensland liquor licensing laws should be amended to facilitate greater competition in the supermarket industry in that State;

Each of these proposed amendments is discussed in further detail below.

Anticompetitive Price Discrimination

AURL submits that the CCA should be amended to specifically address the issue of anticompetitive price discrimination. The current provisions of the CCA do not sufficiently address price discrimination conduct such as that which occurs in the supermarket industry to the detriment of competition.

Anticompetitive price discrimination continues to be a problem in the Australian supermarket industry. The practice of suppliers selling to some customers at one price and to other comparable customers at a higher price is an on-going concern to AURL. The market dominance of the major supermarket chains has created an environment where price discrimination is standard practice and delivers them unfair competitive advantages.

- Independent wholesalers are not able to obtain goods or services at prices comparable to those charged by suppliers to the major chain supermarkets. This is despite having central distribution warehouses of comparable size and capable of like performance to the major chains. This was confirmed by an enquiry by the ACCC in 2002 which concluded that ***"…Woolworths and Coles receive better wholesale prices more often than the independent wholesalers."*** (ACCC, Report to the Senate by the Australian Competition and Consumer Commission on prices paid to suppliers by retailers in the Australian grocery industry, 2002, P2).

- Opponents to the reintroduction of anticompetitive price discrimination legislation claim that the additional funding support provided by suppliers directly to independent retailers, over and above the wholesale price, sometimes referred to as 'off-invoice' funding, ensures the net price paid by independent retailers equates to the price paid by the major chain supermarkets. However, such 'off-invoice' funding is spasmodic and will only cover a limited range of merchandise at any point in time. It is our view that the net price of goods supplied to independent supermarkets (inclusive of this additional supplier funding) is, in the main, more expensive than the equivalent price paid by the major supermarket chains.

- Around half of our supermarket purchases are sourced from Metcash who is our contracted wholesaler, with the other half arriving directly from suppliers. Many of these direct suppliers are contracted to supply the entire FoodWorks network, giving them access to a significant buying group. It is our understanding that there is a significant differential between the price the product is or can be provided to our independent retailers by our direct suppliers compared to that provided to the major supermarket chains. In our view the significant price differences cannot be justified in terms of volume or other intangibles such as promotional activity.

To survive, suppliers must at least receive a price that on average is equal to their own costs, including a return on capital. As a consequence, because the major chain supermarkets are able to negotiate below average prices on a sustained basis, other buyers (ie independent wholesalers and independent supermarkets) have to pay more. Given the volume of sales accounted for by the major chains, the increase in price for others is substantially more (the 'waterbed effect').

In their submission to the 2011 Senate Inquiry into the Dairy Industry, Lion Dairy and Drinks stated that they could not make money out of the supply of house brand milk to either Coles or Woolworths at the contract price they charged. They said to make money out of their dairy division they had to sell milk at a higher price to smaller outlets to recoup the lost margin from the sale of house brand milk. The committee reported on this issue as follows:

> ***"7.37 There appears to be two areas where price discrimination issues may be relevant to the dairy industry and the grocery sector generally. The first issue is the wholesale prices within the supply chain, including pricing differences between generic and branded milk and the price of milk offered by processors to different customers. The second is the different retail prices of generic and branded milk, although they are essentially the same product. <u>An anti-competitive outcome may occur as a result of milk processors charging smaller retailers a higher price for their branded milk, to offset the lower wholesale price they receive for selling generic milk to Coles and Woolworths.</u>"***

(Senate Economics References Committee '*The impacts of supermarket price decisions on the dairy industry'*, November 2011)

This anticompetitive advantage for the major chain supermarkets applies not only to goods purchased for resale. It applies also to other associated costs of doing business, such as, but not limited to, transport, electricity, refrigeration and air-conditioning installation and maintenance, cleaning services, staff training, staff uniforms, store fit out, in-store consumables, and so on. For example, it has been brought to our attention by the WA Independent Grocers Association of a situation where a transport company delivers pallets of stock from Perth to Esperance for both Woolworths and an independent supermarket in the same truck, yet the freight rate charged to Woolworths is half that of the independent supermarket.

As a result independent supermarket retailers are at an unfair cost disadvantage to the major chains at a retail level, giving the major chains either a price advantage or larger margins (where the price advantage is not passed on to consumers). This in turn grows the major chains' market share, increases their market dominance and perpetuates the practice of price discrimination. The pressure on suppliers (real and perceived) to deliver lower prices to the big retailers is significant given the current market imbalance. This dominant position of the major chains was noted by the ACCC in 2002 where it stated that ***"Most suppliers could not afford to lose access to the retail outlets of Woolworths and Coles."*** (ACCC, Report to the Senate by the Australian Competition and Consumer Commission on prices paid to suppliers by retailers in the Australian grocery industry, 2002, P48). Similarly, the current ACCC proceedings in the Federal Court against Coles for unconscionable conduct relate to Coles' dealings with approximately 200 suppliers for whom Coles perceived itself to be and was in fact critical to the suppliers' businesses.

As a result of anticompetitive price discrimination, independent supermarkets cannot compete fairly with the major chains. This reduces the competitiveness of the industry as independents will be forced out of the market and consumers will ultimately suffer from reduced competition.

It is noted that the United States, the European Union and the United Kingdom all have competition laws addressing anticompetitive price discrimination.

While s49 of the CCA was repealed primarily because of a recognition that price discrimination can have pro-competitive effects,[1] as explained above price discrimination can have significant anticompetitive effects. The potential anticompetitive nature of price discrimination was raised in the 1979 Blunt Report. Whilst noting that price differentiation by suppliers may or may not result in anticompetitive outcomes, the report identified that:

> **"*However, systematic price differentiation may have on occasion anti-competitive effects. It may be used to preserve and strengthen a monopoly position, to tie buyers together with sellers giving discounts for concentrated purchases or make entry into segments of a market difficult or impossible*".**
> (Blunt Report, Small Business and the Trade Practices Act, 1979, Clause 10.34).

[1] Hilmer, National Competition Policy Report, 1993, p79.

As noted in the section of this submission giving an overview of the supermarket sector, the current ACCC proceedings in the Federal Court against Coles for unconscionable conduct towards suppliers is an indication of the current market imbalance and the power these major supermarket chains have over suppliers. Not only is this alleged behaviour unfair and unconscionable to suppliers, it is also unfair to its smaller competitors, delivering the major chains an unwarranted and unfair price advantage.

Opponents to anticompetitive price discrimination legislation claim that there is no need for a reinstatement of s49 because sections 45 and 46 of the CCA provide sufficient regulatory control. In our view section 45 and 46 are not sufficient to dissuade anticompetitive price discrimination for the following reasons:

- Section 46 was found to be seriously deficient to regulate this behaviour in the High Court's decision in the Boral Besser Masonry v. ACCC case.
- Specific legislation prohibiting anticompetitive price discrimination should be better able to restrain such behaviour compared to the far more generalised provisions of sections 45 and 46.
- The ability of s46 to deal with anticompetitive price discrimination is limited by the current requirement to show that the corporation used its market power for an anticompetitive purpose. In such cases the effects of the conduct are often clear, however, it is difficult to prove the corporation had the requisite purpose. Whereas s49 was based on an 'effects' test.

In our opinion there are a number of benefits of including a specific anticompetitive price discrimination law, including:

- It makes it clear to business that this type of behaviour is illegal.
- Suppliers will have a mechanism to address unrealistic pricing demands from larger customers, demands which could either damage their viability or require them to increase prices to other customers.
- It would foster a stronger independent supermarket sector better able to offer competitive tension in the market and place a price constraint on the major supermarket chains.

Accordingly, AURL considers that the CCA should be amended to better address the problem of anticompetitive price discrimination. In our opinion, amending the CCA to address price discrimination would not necessarily prevent pro-competitive behaviour. Should a supplier wish to offer lower prices to its customers, rather than to one select customer, this would still encourage competition from rival suppliers. Nor would such a change necessarily limit price flexibility in the industry. Rather it would ensure that independent supermarkets could offer customers more competitive prices and thereby apply competitive pressure on the major chains to pass on the full benefit of any cost price discounting. It should create a more competitive market for the benefit of customers.

Further, the offending conduct is limited to where a corporation has a substantial share of the market and where the conduct substantially lessens competition in a market in which the corporation or the purchasers it is discriminating between supply goods. Given the limited scope of the proposed amendment, procompetitive price discrimination that does not substantially lessen competition would still be permissible as such discrimination would not fall within the proposed prohibition.

RECOMMENDATIONS

Amend section 46 introducing the conditions under which price discrimination would apply as follows:

> **Section 46 (1AAB)**
> A corporation must not discriminate between purchasers of goods or services of like grade or quality in relation to prices charged for the goods or services, discounts, allowances, rebates or credits given or allowed in respect of the goods or services or the provision of or payment for services provided in respect of the goods if the discrimination has the purpose, or has the effect or is likely to have the effect, of substantially lessening competition in a market.

Effects Test

AURL submits that the misuse of market power and below cost pricing provisions in s46(1) and s46(1AA) of the CCA should be amended to supplement the current purpose test in that section with an 'effects test.' [2]

That is, s46(1) would apply where a corporation with a substantial degree of market power takes advantage of that power for the purpose, 'or with the effect or likely effect', of one of the anticompetitive matters in s46(1)(a) to (c). Section 46(1AA) would apply where a corporation with a substantial share of a market supplies, or offers to supply, goods or services for a sustained period at a price that is less than the relevant cost to the corporation of supplying such goods or services, for the purpose, 'or with the effect or likely effect', of one of the anticompetitive matters in s46(1AA)(a) to (c).

Unlike other important sections in the CCA dealing with anticompetitive conduct, such as sections 45, 47, 49 and 50, section 46 is solely focused on purpose. Each of those other provisions capture conduct with the 'effect' or 'likely effect' of substantially lessening competition. However, s46(1) does not prevent a corporation with a substantial degree of market power from taking advantage of that power with the ‘effect’ or ‘likely effect’ of misusing its market power. Similarly, s46(1AA) does not prevent a corporation with a substantial share of a market from supplying goods or services for a sustained period at a price that is less than its cost of supplying such goods or services with a prescribed anticompetitive 'effect' or 'likely effect'. Rather under sections 46(1) and s46(1AA) it is necessary to show that the corporation had the purpose of engaging in the anticompetitive conduct prohibited by those provisions. .

[2] The issue of whether s46 should focus of prohibiting the anticompetitive effect of the conduct is referred to at 5.9 and 5.10 of the Competition Policy Review Issues Paper, 14 April 2014 (**Issues Paper**).

AURL submits that there should not be a distinction between s46 and other Part IV prohibitions particularly given the policy objective of s46 is the same as the other prohibitions - being to prohibit specified conduct that will damage competition. This in turn promotes the object of the CCA being, in part, to enhance the welfare of Australians through the promotion of competition (s2 of the CCA). Similar to other provisions of Part IV, the anticompetitive conduct covered by s46 should be prohibited even where it is not possible to demonstrate an anticompetitive purpose for that conduct.

A similar view was expressed by the ACCC in 2002:

> ***"The reason for the distinction between s. 46 and the other Part IV prohibitions is not obvious. The policy objective of s. 46 is fundamentally the same as the other prohibitions in Part IV—that is, the prohibition of specified conduct that will damage competition. As well, Australia's prohibition on misuse of market power is inconsistent with similar prohibitions in the United Kingdom, Europe and the United States. The Commission believes the distinction between s. 46 and the other Part IV provisions should be removed. However, this does not suggest that the purpose test in s. 46 is inappropriate. As in ss. 45 and 47 a purpose test is an important element of s. 46 where it can be proved"***
> (Australian Competition and Consumer Commission, *Submission to the Trade Practices Act Review Committee*, June 2002, p. 78)

In our view section 46 as it currently stands is too onerous and severely limits the occasions upon which such anticompetitive behaviour can be prevented or prosecuted. Extending s46 to an 'effects test' will enable it to capture anticompetitive conduct engaged in by a corporation with a substantial degree of market power which would otherwise damage competition in a market.

In the 2011 Senate Inquiry into the Dairy Industry the ACCC expressed a similar view on the ability of an 'effects-test' to capture anticompetitive behaviour compared to the current purpose test:

> ***"Senator O'BRIEN—Is it the experience of the ACCC that proving effect is easier than purpose?***
>
> ***Mr Cassidy—It can be. In subsection 46(7) there is a provision where you can deduce what the purpose was from the conduct. So if you look at the conduct and you say to yourself the only purpose they could have had in doing what they did was in order to damage a competitor, you can get it by that sort of deduction rather than unnecessarily having direct evidence of what the purpose was. That makes it a bit easier. Having said that, I would agree with the general proposition, and I suspect my colleagues would as well, that it is probably easier to establish effect than it is to establish purpose."*** (Mr Brian Cassidy, Chief Executive Officer; Mr Marcus Bezzi, Executive General Manager, Enforcement and Compliance Division, Australian Competition and Consumer Commission, *Committee Hansard*, 9 March 2011, p. 26.)

The introduction of an 'effects test' would also be consistent with similar legislation in other jurisdictions, for example Canada's *Competition Act.* In particular Section 79 dealing with *Abuse of Dominant Position*:

> ***79. (1) Where, on application by the Commissioner, the Tribunal finds that***
> ***(a) one or more persons substantially or completely control, throughout Canada or any area thereof, a class or species of business,***
> ***(b) that person or those persons have engaged in or are engaging in a practice of anticompetitive acts, and***
> ***(c) the practice has had, is having or is likely to have the effect of preventing or lessening competition substantially in a market,***
> ***the Tribunal may make an order prohibiting all or any of those persons from engaging in that practice.***

As mentioned above, an effects test would also help to deal with anticompetitive price discrimination. It is often noted that anticompetitive price discrimination could fall within s46 of the CCA.[3] The ability of s46 to deal with anticompetitive price discrimination is however limited by the current requirement to show that the corporation used its market power for an anticompetitive purpose. In such cases the effects of the conduct are often clear, however, it is difficult to prove the corporation had the requisite purpose. Extending s46 to cover circumstances where the effect or likely effect of the conduct is anticompetitive would enable s46 to more adequately be used to prosecute cases of anticompetitive price discrimination. However, it is still our strong recommendation for the inclusion of a specific anticompetitive price discrimination clause in the CCA.

RECOMMENDATION

Section 46 should be amended to include '*effect or likely effect'* as it does in other similar provisions in the CCA.

1. Section 46(1) should be amended as follows:

> (1) A corporation that has a substantial degree of power in a market shall not take advantage of that power in that or any other market for the purpose of *or with the effect or likely effect of:*…

2. Section 46(1AA) should be amended as follows:

> (1AA) A corporation that has a substantial share of a market must not supply, or offer to supply, goods or services for a sustained period at a price that is less than the relevant cost to the corporation of supplying such goods or services, for the purpose of *or with the effect or likely effect of:*…

[3] See for example, Dawson Review of the Competition Provisions of the Trade Practices Act, January 2003, p93.

Mandatory Merger Notification

AURL submits that there should be a mandatory merger notification requirement in the CCA[4] for participants in concentrated industries such as the supermarket industry. In addition, in circumstances where the ACCC has reviewed an acquisition through the mandatory notification process and considers that further investigation is required, a 'suspensory' clause should apply to prevent the parties from completing the transaction while a merger clearance process is undertaken.

Despite the potential for mergers and acquisitions to result in significant impacts on competition there are no mandatory pre-merger notification requirements. While the ACCC's 'Merger Guidelines'[5] and 'Informal Merger Review Process Guidelines'[6] encourage merger parties to approach the ACCC where a specified notification threshold applies, this is not mandatory.

Currently the major chain supermarkets are encouraged to advise the ACCC of any acquisition they believe may raise competition concerns. Alternatively, industry participants may bring to the attention of the ACCC mergers and acquisitions that they feel have competition concerns.

It is our understanding that Coles rarely notifies the ACCC of any of its acquisitions. Between 2005-2013 of the 5 supermarket business acquisitions reviewed by the ACCC, only 2 were notified to the ACCC in advance. Nor is Coles in the habit of notifying the ACCC in advance of its site acquisitions. For example the ACCC's assessment of Coles' acquisition of the Crows Nest Plaza Shopping Centre did not occur until after the acquisition was complete.

As described in the Supermarket Sector Overview Section of this submission, the supermarket industry is highly concentrated and is becoming even more concentrated. AURL believes that, given the level of concentration in the grocery market and the potential for significant impacts on competition as a result of mergers and acquisitions, there should be a mandatory notification requirement within the CCA.

[4] The Issues Paper questions whether the mergers provisions of the Act operate effectively at the end of 5.31.

[5] ACCC Merger Guidelines 2008 pp8-9.

[6] ACCC Informal Merger Review Process Guidelines September 2003, p8.

Accordingly, notwithstanding whether there is an amendment to the CCA to implement a general merger notification requirement, in the case of highly concentrated industries such as the supermarket industry we consider that all mergers and acquisitions should be required to be notified to the Commission at least 6 weeks prior to completion where the merged firm would have a post merger market share of greater than 20 per cent in the relevant market(s).

The six week notification period is consistent with the request by the ACCC in 2011 for supermarket operators to notify the ACCC of any proposed acquisitions that may raise competition concerns (refer annexure 1: letter from Brian Cassidy, CEO ACCC, 4 Aug 2011). It is also noted that the ACCC's 'Informal Merger Review Process Guidelines' encourage:

> "***..merger parties to approach the ACCC as early as possible when a merger is contemplated and well before a merger is completed, to ensure the ACCC has sufficient time to consider whether a review is necessary and, if so, to conduct such a review***." (P8)

Mandatory notification of proposed acquisitions is also consistent with a recommendation in the Baird report by the Joint Select Committee on the Retailing Sector in 1999, which states:

> ***"4.21 The Committee recommended a code of conduct be established requiring the mandatory notification of supermarket acquisitions by publicly listed corporations. This recommendation was not implemented."*** (Joint Select Committee on the Retailing Sector, *Fair market or market failure: a review of Australia's retailing sector*, Parliament of the Commonwealth of Australia, Canberra, 1999).

It is noted that the voluntary Produce and Grocery Industry Code of Conduct (**PGICC**), to which both Coles and Woolworths are signatories, requires industry participants to notify the ACCC of acquisitions. However, the definition of acquisition in the Code limits this requirement to the acquisition of existing businesses only, and is inconsistent with that covered by s50 of the CCA and applied by the ACCC. Further, it is merely a voluntary notification requirement. The PGICC is therefore no substitute for a mandatory pre-merger notification requirement.

> *PGICC: - ""**acquisitions" means acquiring a controlling interest in a retailing entity trading in the retail grocery trade within Australia by way of purchase, exchange, lease or other form of transfer, whether alone or jointly with another person, including any acquisition of any legal or equitable interest in such an entity**." (*Produce and Grocery Industry Code of Conduct, 2007, *P6).*

ACCC: - "***The ACCC considers that leases of sites, acquisitions of leases currently held by other parties, and acquisitions of sites that are currently empty or used for other purposes, can all be considered acquisitions of assets under s. 50 or be assessed under other provisions in Part IV of the CCA**." **."*** (ACCC, Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries, 2008, P428).

In addition, in circumstances where the ACCC has reviewed an acquisition through the mandatory notification process and considers that further investigation is required, a 'suspensory' clause should apply to prevent the parties from completing the transaction while a merger clearance process is undertaken. Whilst the Courts can take action against a merger that is subsequently found to substantially lessen competition, it is almost impossible to unravel a merger once it has been implemented (for example because key staff have been made redundant, assets have been sold and information has been exchanged). The approach of preventing parties from completing transactions before clearance has been obtained would be consistent with other jurisdictions, such as the European Union.

RECOMMENDATION

Pre-merger/acquisition Notification

There should be an amendment to the CCA to introduce a mandatory merger notification requirement for all mergers and acquisitions that take place in specific highly concentrated industries, including the supermarket industry. The mandatory merger notification requirement would apply to participants in industries prescribed by regulations. It would require participants in those industries to notify the ACCC of a merger or acquisition at least 6 weeks prior to completion where the merged firm would have a post merger market share of greater than 20 per cent in the relevant market(s).

In addition, where the ACCC has reviewed a merger/acquisition through the mandatory pre-notification process recommended above and it is deemed that further investigation is warranted then a 'suspensory' clause should apply to prevent the parties from completing the transaction before clearance is granted.

Creeping Acquisitions

AURL considers that the CCA should be amended so that the cumulative effect of acquisitions (ie. creeping acquisitions) can be taken into account in determining whether the acquisition has the effect or likely effect of substantially lessening competition.[7]

The term 'creeping acquisitions' is commonly used to refer to a series of small acquisitions that individually do not substantially lessen competition in a market so as to breach section 50, but collectively may have that effect.

AURL is concerned that the practice of creeping acquisitions has been allowed to continue within Australia despite recognition of its potentially harmful effects on competition in the Australian supermarket sector. Whilst some changes were made to the CCA in 2011 to address industry concerns, these failed to address the cumulative effect of a series of small acquisitions over time.

The ACCC recognises that creeping acquisitions can be harmful and on occasion can substantially lessen competition:

> ***"… the practice of making a series of acquisitions over time that individually do not raise competition concerns, usually because the changes in competitive rivalry from any individual acquisition are too small to be considered a substantial lessening of competition. However, when taken together, the acquisitions may have a significant competitive impact."*** (ACCC, Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries, 2008, P422).

In the same report the ACCC acknowledged that price competition between the major chains is limited and that creeping acquisitions could over time become a concern due to particular structural features of the supermarket industry, including:

- the need to obtain good sites being a significant barrier to entry, particularly given the financial resources of the major supermarket chains and the leverage they wield over lessors of suitable sites;
- the existence of broader barriers to entry and expansion created through the need to obtain economies of scale and efficient wholesaling operations;
- the existence of two major supermarket chains; and
- a situation where there are many small business units (that is, retail stores or potential retail sites) that could be acquired or leased one by one or in small groups.

Further, the Committee into the 2004 Senate Inquiry 'The Effectiveness of the Trade Practices Act 1974 in Protecting Small Business'[8] highlighted that creeping acquisitions must

[7] The Issues Paper questions whether the mergers provisions of the Act operate effectively at the end of 5.31.

[8] See p 64 of the Report.

at some point result in a very concentrated market and that section 50 does not effectively address this issue.

AURL believes that 'creeping acquisitions' are having a detrimental impact on competition within the supermarket industry, including:

- They are further concentrating market power in the industry and reducing incentives for organisations to compete in these markets;
- At a local level, there is often a loss of diversity and choice available to local consumers;
- They remove an important competitor, who can offer a different product range, pricing structure and promotional program and they place upward pressure on prices; and
- At the broad level the cost base of the independent supermarket sector is undermined due to the corresponding loss in economies of scale, scope and density, with the following consequences:
    - Loss of bargaining power in negotiations with suppliers relative to the major supermarket chains (whose power as a consequence increases); and
    - Loss of economies of scale in wholesaling relative to the major supermarket chains.

The ACCC recognises that Section 50 of the CCA, which deals with mergers and acquisitions, is not able to deal with creeping acquisitions. This was acknowledged in a paper by Rod Sims in June 2012:

> ***"There is no provision in our legislation to cap market shares or to take account of previous acquisitions when reviewing the competitive effect of the next transaction – that is, there is little or no scope to consider the accumulated effect of a series of separate acquisitions over time and instead can only consider the competitive effect of each transaction."*** (Rod Sims, CEDA – 'Better communicating the ACCC's role, its approach to reviewing mergers involving small retail acquisitions and the benefits of competition in electricity', 14 June 2012).

The ACCC has also previously expressed its support for legislative changes to allow it to appropriately assess creeping acquisitions:

> ***"…the ACCC maintains its support for the introduction of a general creeping acquisition law. The ACCC considers that the supermarket industry, because of the particular structural features of the market, is one where creeping acquisitions are a potential area of concern.."*** (ACCC, Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries, 2008, PXXI).

In September 2007, Senator Fielding introduced a Bill into the Parliament to regulate creeping acquisitions. The Bill proposed to amend the CCA so that an acquisition would be deemed to substantially lessen competition if it and other acquisitions over the previous six years would have that effect (ie to cover the cumulative effect of a series of acquisitions). A Senate Inquiry into the Bill found that concerns about creeping acquisitions were valid and

the provisions in section 50 were insufficient to address the problem adequately. However, the recommendations of this Bill were never implemented.

Instead, purportedly to address the issue of creeping acquisitions, the Government introduced minor amendments to section 50 to clarify that any market could be examined in assessing whether a merger or acquisition would substantially lessen competition and that the market affected by the acquisition need not be substantial.[9] In AURL's view those amendments do not satisfactorily address the problem of acquisitions over time which collectively have the effect of substantially lessening competition.

The following case study of Hawker in the ACT demonstrates the current inadequacies in the CCA with respect to creeping acquisitions.

Case Study - Hawker Supa IGA Acquisition

In 2012 AURL submitted to the ACCC an objection to the acquisition of the 2,000 sq m Hawker Supa IGA by Woolworths. Our concern was that this north-west region of the ACT, over time, was being dominated by the major supermarket chains (in particular Woolworths) through business acquisitions. Where once this region was well balanced with independent and major chain supermarkets, this balance has been significantly eroded to the detriment of the independent sector and consumers. Significantly, where once the region supported four large independent supermarkets this has now been reduced to one, and Woolworths has taken a very dominant position.

Brand	Number of major Smkts in Region Pre Acquisitions (~2006)	Number of major Stores in Region Post Acquisitions
Woolworths	2	6 #
Coles	2	2
Aldi	0	3
Large Independent	4	1

This figures includes the approved new Woolworths in Giralang, which is expected to open in 2015.

These acquisitions have resulted in a dramatic fall in the level of choice for the local community and have removed a number of vigorous competitors from the market who have provided competitive pressure and constraint on the major supermarket chains. Once removed from the market, it is our opinion that the high barriers to entry (including restricted access to suitable sites, a saturated geographic market, limited product differentiation, significant start-up costs and fierce competition from major players with highly dominate market power) will likely exclude any new entrant in this local market that could replace the competitive constraint that were collectively provided by these large independent supermarkets.

9 Competition and Consumer Legislation Amendment Act 2011. See the Explanatory Memorandum to the Competition and Consumer Legislation Amendment Bill 2011 pp27-53.

Unfortunately these issues could not be taken into account by the ACCC in their deliberations due to deficiencies in the CCA that precluded it from considering the cumulative effects. As a result the Hawker Supa IGA acquisition was considered in isolation from past acquisitions and on this basis was approved. Whereas in our opinion, if the ACCC had the power to consider the cumulative effect of acquisitions, this transaction would not have been approved. The ACCC stated:

> "***67. The ACCC concluded that the proposed acquisition would result in some loss of competition, but that it was insufficient to reach the threshold of a substantial lessening of competition required to establish a breach of s. 50 of the Act."*** (ACCC, Woolworths Limited – proposed acquisition of the Hawker Supa IGA, 17 Oct 2013).

Recent Independent Acquisitions

It is our submission that creeping acquisitions continue to be a significant concern in the supermarket retailing industry. Recent acquisition activity by the two major chains include:

	Coles	Woolworths
2014	Busselton Supa IGA (P), WA Halls Head Supa IGA (P), WA Bunbury Supa IGA (P), WA Dianella Supa IGA (P), WA	
2013		St Kilda Supa IGA, Vic Hawker Supa IGA, ACT Rasmussen Supa IGA, Qld Banksia Beach Supa IGA, Qld Logan Village IGA, Qld
2012	Whiford City Supa IGA, WA Cockburn Gateway Supa IGA, WA Toowoomba Supa IGA, Qld Mackay Supa IGA, Qld	Thornlie Supa IGA, WA
2011	Coolum Beach IGA, Qld	Jindalee IGA, Qld

Whilst these acquisitions may not constitute the majority of growth in the major chain supermarkets, they do represent a significant loss from the independent supermarket sector.

Opponents to measuring the cumulative effect of acquisitions have put forward a number of concerns, including:

- It introduces uncertainty into the working of section 50;
- It would be practically difficult to implement;
- It requires maintaining a watch list of firms and their acquisitions;
- Markets and consumer preferences change over time;
- It results in increased legal costs and resourcing requirements for businesses and the ACCC;
- It could require parties to provide substantially more information to the ACCC;

- It may have the effect of deterring otherwise efficient mergers from proceeding;
- To be workable, the period over which a series of acquisitions is to be considered would need to be relatively short, which would necessarily diminish this option's effectiveness as a solution to the problem, as firms could choose to delay acquisitions to avoid the statutory time limit for consideration by the ACCC; and
- It would limit the range of potential buyers of independent supermarkets and interrupt the competitive process that exists under the Charter for the Acquisition of Independent Supermarkets.

It is the view of AURL that these concerns are not insurmountable and would not preclude the introduction of a cumulative effect test to prevent anticompetitive creeping acquisitions. Given the degree of market concentration and the perilous position of the independent supermarket sector, an added administrative impost on the major chains is considered a worthwhile trade-off. The range of potential purchasers of an independent supermarket would be reduced, but only where the acquisition is found to substantially lessen competition. The major chain supermarkets already provide the ACCC with notification of proposed business acquisitions in accordance with their commitments under the PGICC, ensuring that the ACCC will have an accurate record of past and proposed acquisitions. The ACCC's record of past acquisitions would also be enhanced with the adoption of our recommendation to introduce mandatory pre-notification requirements.

RECOMMENDATION

The CCA should be amended so that the cumulative effect of acquisitions can be taken into account.

> **Section 50**
> Prohibition of acquisitions that would result in a substantial lessening of competition
>
> (1) A corporation must not directly or indirectly:
> (a) acquire shares in the capital of a body corporate; or
> (b) acquire any assets of a person;
> if the acquisition would have the effect *or cumulative effect*, or be likely to have the effect *or cumulative effect*, of substantially lessening competition in any market.
>
> (2) A person must not directly or indirectly:
> (a) acquire shares in the capital of a corporation; or
> (b) acquire any assets of a corporation;
> if the acquisition would have the effect *or cumulative effect*, or be likely to have the effect *or cumulative effect*, of substantially lessening competition in any market.
>
> 3) Without limiting the matters that may be taken into account for the purposes of subsections (1) and (2) in determining whether the acquisition would have the effect *or cumulative effect*, or be likely to have the effect *or cumulative effect*, of substantially lessening competition in a market, the following matters must be taken into account…

Liquor Retailing

AURL submits that Queensland liquor licensing laws should be amended to facilitate greater competition in the supermarket industry.[10] In particular the requirement for an independent supermarket to own a hotel should be replaced with more typical liquor licensing requirements found elsewhere across Australia, as in Victoria under the *Liquor Control Reform Act 1998*.

It is our experience that to compete effectively in the grocery market it is necessary to provide customers with a complete offering, matching the broad range of products provided by the major chain supermarkets. In particular, liquor plays an important role in the offer of an independent supermarket:

- It opens the store up to a new market;
- It improves the overall offer of the store for customers, allowing one stop shopping convenience;
- It allows the store to compete with nearby major chain supermarkets;
- It will bring in new customers;
- It will result in a larger average basket size; and
- It has flow-on benefits for other departments in the store, particularly for complementary products (eg salty snacks).

On average liquor can account for ~18% of stores sales for FoodWorks branded stores.

Case Study – Nyngan, NSW
Nyngan is a remote country town in rural NSW, 570 kms to the north-west of Sydney.
A 1,248 sq m FoodWorks competes against a 1,200 sq m Supa IGA.
The nearest major supermarket is located 125 kms away.
Prior to October 2007 FoodWorks did not include a liquor offer, whilst the Supa IGA in town included liquor as part of its offer.
Following the inclusion of liquor into the FoodWorks offer (with no change in store size):
* Total store sales increased by **36%**
* Non-liquor sales increased by **22%**
The largest sales increases, outside liquor, were in Meat & Tobacco.

[10] The issue of restraints being imposed on the geographical location or trading hours for the sale of liquor is referred to at 2.11 of the Issues Paper.

The importance of liquor to a supermarket business was also identified by the ACCC in their 2008 retail pricing review:

> ***"As discussed in greater detail in section 9.5.2, attaching a liquor arm to a grocery business adds value to the business and allows other grocery retailers to compete more effectively with the MSCs. Any impediment to liquor retailing that the MSCs seek to impose on other grocery retailers therefore not only restricts competition in liquor retailing but also has the potential to insulate the MSCs' grocery businesses from a greater level of competition as they would otherwise be subjected to."*** (ACCC, Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries, 2008, P194).

AURL is concerned that our retailers face a significant barrier to obtaining liquor licenses in Queensland. Current State legislation requires ownership of a hotel as a pre-requisite to running liquor stores. If you hold a commercial hotel liquor licence, you can also operate up to three bottle shops away from your main premises. Coles and Woolworths have spent considerable amounts in buying up hotels in Queensland to gain access to freestanding liquor licences. However, this is beyond the means of individual FoodWorks owners. This point was acknowledged by the ACCC in 2008:

> **"*As such, the ACCC does not consider that the MSCs' expansion into liquor significantly raises barriers to entry. Issues such as site access would seem to be much more significant barriers. However, to the extent that selling liquor does create a competitive advantage for a grocery retailer, the need to obtain a liquor licence (which provides for more opportunity for incumbents to object) does create additional costs and potentially some barriers to entry. This is not to suggest that the ACCC considers that a relaxation of liquor licensing laws would be appropriate, given the stated aims of such legislation, including the regulation of alcohol sales, having regard to the welfare and needs of the community and the minimisation of any harm arising from misuse of alcohol*."** (ACCC, Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries, 2008, P 206).

Amending the liquor licencing legislation in Queensland need not compromise the State's objective of minimising harm caused by alcohol abuse and misuse. Other State liquor legislation, such as Victoria's, also maintain similar harm minimisation objectives.

The Victorian *Liquor Control Reform Act 1998* is the primary piece of legislation regulating the supply and consumption of liquor in Victoria. The objects of this Act are—

(a) to contribute to minimising harm arising from the misuse and abuse of alcohol, including by—
  (i) providing adequate controls over the supply and consumption of liquor
  (ii) ensuring as far as practicable that the supply of liquor contributes to, and does not detract from, the amenity of community life
  (iii) restricting the supply of certain other alcoholic products
  (iv) encouraging a culture of responsible consumption of alcohol and reducing risky drinking of alcohol and its impact on the community
(b) to facilitate the development of a diversity of licensed facilities reflecting community expectations
(c) to contribute to the responsible development of the liquor and licensed hospitality industries
(d) to regulate licensed premises that provide sexually explicit entertainment.

RECOMMENDATION

Queensland liquor licensing laws should be amended to facilitate greater competition in the supermarket industry in that State. In particular the requirement for an independent supermarket to own a hotel should be replaced with more typical liquor licensing requirements found elsewhere across Australia, like in Victoria under the *Liquor Control Reform Act 1998*. Any changes, however, should continue to promote the welfare of the community and the minimisation of any harm arising from misuse of alcohol.

Conclusion

AURL is concerned that current competition laws do not adequately address anticompetitive behaviour and the misuse of market power in the Australian supermarket industry.

This industry is highly concentrated, with two very large and dominant parties. In order for the industry to operate efficiently and effectively it is vital that we have a prosperous and growing independent supermarket sector. The independent supermarket sector should have the legislative support to provide the necessary competitive tension in the industry so as to drive benefits for Australian consumers, including prices, service levels and choice.

AURL is therefore seeking amendments to the CCA and other State based legislation in order to eliminate misuses of market power, anticompetitive activities, and establish a fair and competitive market place. The recommended changes will also provide the ACCC with the necessary tools to help achieve the general aims of Australia's National Competition Policy and the CCA.

Without legislative change the concentration in the supermarket industry is expected to worsen, and coupled with other structural issues and high barriers to entry, the conditions for anticompetitive behaviour, unconscionable conduct and the misuse of market power in this industry will continue to flourish.

AURL thanks the Federal Government and the members of the Panel for this opportunity to provide information that we strongly believe provides a compelling case. AURL hopes that its concerns and suggested remedies will be favourably considered by the panel and eventually lead to much needed competition policy reform.

Should the members of the Panel have any queries on any issue contained in this submission, AURL would be happy to provide further details.

Yours faithfully,

Rick Wight
CEO AURL

Annexure 1

EXECUTIVE

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4 August 2008

Peter Noble
Chief Executive Officer
Food Works
Level **1,**
1601 Malvern Road
Glen Iris VIC 3146

By facsimile; 03 9809 8695

Dear Mr Noble

Grocery inquiry — ACCC role in relation to leases and new sites

As you are aware the ACCC has been conducting an inquiry into the competitiveness of retail prices of standard groceries.

The inquiry has emphasised **that access** to suitable sites may be a significant barrier to the expansion of competition in local retail markets for the supply of groceries.

Submissions to the inquiry have also revealed a misconception held by some interested parties that section 50 of the *Trade Practices Act 1974* (TPA) — which prohibits the acquisition of shares or assets which would be likely to substantially lessen competition — only applies to acquisitions of existing supermarket businesses. This is incorrect. In fact, the ACCC considers that:

(a) entry into/acquisition of a lease
(b) acquisition of an option to acquire land
(c) acquisition of freehold land (collectively 'site **acquisitions')**

all involve acquisition of an asset for the purposes of section 50. This includes leases and acquisitions of greenfield supermarket sites; that is, sites that are empty or do not currently operate as a supermarket business.

The ACCC is now requesting that supermarket operators notify it of proposed site acquisitions that may raise competition concerns under section 50.

The ACCC recognises that acquiring a greenfields supermarket site in a local area in which a supermarket operator does not operate a supermarket and/or where suitable sites for competitive entry are plentiful is unlikely to raise competition concerns. However, competition concerns may arise where:

(a) the acquiring company already operates one or more supermarkets in the local area, and
(b) there are few suitable sites for a competing superinarket in the local area (that is, sites which can readily be used to open a supermarket in the near future — suitable sites do not include sites with commercial or planning impediments to the opening of a competing supermarket).

A further key issue when assessing a site acquisition would be whether, if the acquisition did not proceed, a competing supermarket would be likely to be established on the site instead.

As a significant supermarket operator, Food Works may from time to time become aware of proposed site acquisitions by other supermarket operators. If you consider that any such proposed acquisitions may raise competition concerns, please notify the ACCC.

The ACCC also asks that Food Works advise it of its own proposed site acquisitions that may raise competition concerns at least six weeks before they are to scheduled to proceed so as to allow the ACCC to conduct a merger review in accordance with the *Merger Review Process Guidelines*. Those parties proceeding with such a transaction without notifying the ACCC face the risk that the ACCC may take legal action if it considers that the completed acquisition breaches section 50.

The ACCC has also written to other significant supermarket operators, as well as significant retail landlords, concerning the matters raised in this letter.

If you wish to discuss this letter further or have any questions about the circumstances in which it is appropriate to notify the ACCC about these types of acquisitions, please contact Tim Grimwade, General Manager, Mergers and Asset Sales branch on (02) 6243 1226,

Yours sincerely

Brian Cassidy
Chief executive Officer