

Woolworths 
The fresh food people



coles

A SUBMISSION TO THE SENATE
SELECT COMMITTEE ON
SUPERMARKET PRICES:

To inquire into and
report on the price
setting practices
and market power of
major supermarkets

Submitted by Hon Bob Katter

2024

Introduction

On 6 December 2023, the Senate resolved that the Select Committee on Supermarket Prices be established to inquire into and report on the price setting practices and market power of major supermarkets.

It is noted that the committee welcomes submissions from people detailing their experiences with the rising prices of essential food and groceries and also retailers, primary producers, experts and academics in market power, competition policy and supply chains, and any other interested stakeholders.

However, the committee should be aware that they are unlikely to receive free and frank submissions from many primary producers given the overwhelming power of the supermarket chains. These chains have the power to determine:

- The price given to primary producers
- The primary producers they wish to purchase from
- The burden of costs and risks that the primary producer has to wear
- The markup applied to fresh produce.

In a situation where the major companies that control the supermarket chains receive almost 80c in every dollar spent,

the power they have over Australian consumers and producers is unparalleled.

Little has been done by successive governments to reign in this power. Almost all attempts by farming organisations to level the playing field have been met with contempt. Farmers are forced to compete against each other with the most compliant to the whims of the supermarket giants being the victor. Anyone who would dare to speak out or use the avenues of complaint regarding unfair practices is severely penalised by being banned from future purchasing agreements.

Significant supermarket reform is required if we are to ensure the future of Australian farmers but also allow ALL Australian consumers to have continued access to essential food and associated items.

It is contended that such significant reform is unlikely to come from the current Terms of Reference. Whilst the individual points might be of some relevance, if each are addressed in turn they might only result in minor recommendations which are unlikely to have any real effect on the behaviours and market share of the major supermarkets and the power imbalance experienced by consumers and producers.

Rather it is argued in this submission that substantial and real reform should immediately be taken to totally change the power of the Australian supermarket duopoly. This serious reform is recommended under 4 main actions in this submission:

- Anti-price gouging;
- Divestiture legislation;
- Higher tariffs on imported goods;
- Maximum mark-up on all produce.

These actions will lead to substantial and significant reform and a long-term positive effect on Australia's economy.

However, given that the huge supermarket profits will be placed in jeopardy they will be each ridiculed and fought against tenaciously by those with a vested interest in the existing duopoly.

Reform will put in jeopardy the \$1 billion in profits each supermarket posted in August last year and the incredible influence they have over Australian families absorbing almost 80c in every household dollar spent.

Reform is not for the faint of heart, but it is absolutely essential if cost-of-living pressures are to be address and Australian primary producers are to continue to feed Australia.

This submission supports the comments by Allan Fels, who led the Australian Competition and Consumer Commission from 1995 to 2003, that government should "beef up" mechanisms to investigate price gouging and introduce new powers to break up companies that abuse their market powers.

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Recommendations

Summary of recommendations and priorities

ANTI-PRICE GOUGING

- Strong government enforcement body with extensive investigation powers and severe penalties (over \$100 million (or 1/10th annual profit) for corporations and over \$10 million for individuals – rather than the current corporate penalty of \$64,000 under the Food and Grocery Code)
- Mechanisms that allow consumers to express concerns about pricing without having to demonstrate a technical breach of the law
- Mechanisms that allow farmers and agents to confidentially express concerns about pricing without fear of repercussions or having to demonstrate a technical breach of the law
- Measures that compel Supermarket Directors and Executives to provide robust and frank information to oversight bodies

DIVESTITURE POWERS

- Give divestiture powers to the Australian Government to force businesses that hold a near-monopoly or duopoly control over a market to sell down assets, as a means of ensuring concentrated markets remain competitive
- Give similar divestiture powers to the Australian courts to order divestiture to not only penalise, but also prevent, abuse of market power.
- Restrict market share to 23% for corporations in the grocery sector.
- Prohibit colluding activity between divested assets.
- Prohibit unfair or biased purchasing arrangements or other practices that create allow dominant market share behaviour.
- Prohibit the expansion of supermarket branded products that are available exclusively at a particular supermarket.
- Prohibit anti competitive-behaviour including creeping acquisitions, greenfield acquisitions and restrictive covenants.

Recommendations

Summary of recommendations and priorities

TARIFFS ON IMPORTS

- Recognise the economic, social and environmental impacts of imported products
- Provide a blanket customs tariff of 5% on all imports unless:
 1. A higher import tariff already applies;
 2. Overwhelming justification is provided for a reduced tariff and only when it is demonstrated that:
 - The goods to be imported are not currently produced in Australia;
 - Investment is being undertaken to produce such goods in Australia; and
 - Australian manufacturers, consumers and producers benefit significantly from the importation of the goods at a reduced tariff.

MAXIMUM 100% MARKUP

- Define and cap the charges that a supermarket can put on producers / suppliers
- Require supermarkets to publicly state on a weekly basis:
 - the price paid to suppliers for produce;
 - all the costs that are included in this price, including the costs of ripening, transportation, storage;
 - the price charged to consumers.
- Introduce a maximum markup of 100% that supermarkets can charge all produce.
- Scrap the Food and Grocery Code of Conduct, calling it out for what it really is – a measure that has been long abused by the supermarkets to control and restrain suppliers/producers. It does nothing to address the power imbalance rather it enforces and capitalises on that power imbalance



Critical detail

ANTI-PRICE GOUGING

Price gouging involves pricing high-demand essentials at levels significantly higher than what is commonly considered acceptable, reasonable or fair. Using such a definition it seems logical that government has strong legislation to stop price-gouging and penalise those found to be price-gouging.

Price gouging in the fresh food sector has been the subject to a series of inquiries and reports over the last 20 years. However, little action has been undertaken to reign in this practice. Laws in this area need to be urgently and significantly strengthened.

Anti-pricing gouging legislation should be immediately introduced and should include:

- Strong government enforcement body with extensive investigation powers and severe penalties (over \$100 million (or 1/10th annual profit) for corporations and over \$10 million for individuals – rather than the current corporate penalty of \$64,000 under the Food and Grocery Code);

- Mechanisms that allow consumers to express concerns about pricing without having to demonstrate a technical breach of the law;
- Mechanisms that allow farmers and agents to confidentially express concerns about pricing without fear of repercussions or having to demonstrate a technical breach of the law;
- Measures that compel Supermarket Directors and Executives to provide robust and frank information to oversight bodies.



Critical detail

DIVESTITURE POWERS

Divestiture powers can be used to force the break-up of dominant businesses. These powers already exist in competition policies of a number of overseas nations, including the USA. In practice these powers are generally used to force the sale of certain assets in merger proposals (ie. US Bell Telephone breakup). However, they might also be used to force the sale of certain assets when a business has become too dominant.

In Australia, the top two supermarkets account for more than 70% of the nation's grocery market. This concentration of power creates an imbalance that appears to have led to vast profits at the expense of consumers and producers.

Historically attempts by the Australian Government to open the grocery sectors have failed. The major supermarkets have bargained their way around various restrictions favouring smaller players such as reducing trading hours and floor sizes. They have successfully lobbied government for the removal of such restrictions and entered into anti-competition lease agreements so they can gain more market share, crushing those smaller groups that were established or trying to emerge in the grocery sector.

Divestiture appears to be one of the few options remaining to force the break-up of the 2 major dominant supermarkets in Australia. Divestiture could limit their combined market share to a rate more comparable to those overseas ie. 43% combined market share of Britain's top two supermarkets and 34% combined market share of the US's top four supermarkets.

Australian divestiture legislation would need to:

- Give divestiture powers to the Australian Government to force businesses that hold a near-monopoly or duopoly control over a market to sell down assets, as a means of ensuring concentrated markets remain competitive
- Give similar divestiture powers to the Australian courts to order divestiture to not only penalise, but also prevent, abuse of market power.
- Restrict market share to 23% for corporations in the grocery sector.
- Prohibit colluding activity between divested assets.
- Prohibit unfair or biased purchasing arrangements or other practices that create allow dominant market share behaviour.
- Prohibit the expansion of supermarket branded products that are available exclusively at a particular supermarket.
- Prohibit anti competitive-behaviour including creeping acquisitions, greenfield acquisitions and restrictive covenants.

Critical detail

TARIFFS ON IMPORTS

Applying a customs tariff on goods coming into Australia is an important mechanism that can be used by government to cover the costs associated with imported goods.

Cost impacts caused by imported goods are many and varied, but over the past decades successive governments have taken a restrictive rather than broad view. An almost unfettered approach to imports has been taken and governments have agreed to free trade agreements that fail to consider the economic, social and environmental impacts of these agreements on Australian manufacturing and farms.

Recently government recognised the power that tariffs provide in supporting countries like the Ukraine, in temporarily removing tariffs on Ukraine manufactured goods and produce, whilst adding a tariff of 35% on manufactured goods and produce from Russia and Belarus.

For many years various manufacturers and agricultural organisations have called for the Australian government to impose tariffs on imports. However, we are finding that retailers are using ever-increasing cheap imports from subsidised overseas locations to gain market share. Australian clothing and vehicle manufacturers have succumbed to cheap imports. The supermarket duopoly has aggressively used its' home brand products to edge out Australian processed foods.

Late last year the former Coca-Cola Amatil Chief Executive Terry Davis was reported to have spoken about the huge challenges associated with trying to keep Australian processed foods on the shelves of Australia's two major retailers, in the presence of their own home brand products made from cheap imports. (Coca-Cola Amatil also owns SPC Ardmona, one of Australia's few remaining fruit and vegetable processors).

Supermarket reform must consider the serious issue of imported goods and the impact that this unfettered importation has on Australian manufactures, producers and, ultimately, consumers.

Australian custom legislation should be amended to:

- Recognise the economic, social and environmental impacts of imported products
- Provide a blanket customs tariff of 5% on all imports unless:
 1. A higher import tariff already applies;
 2. Overwhelming justification is provided for a reduced tariff and only when it is demonstrated that:
 - The goods to be imported is not currently produced in Australia;
 - Investment is being undertaken to produce such goods in Australia; and
 - Australian manufacturers, consumers and producers benefit significantly from the importation of the goods at a reduced tariff.

Critical detail

MAXIMUM 100% MARK UP

Separately to this Senate Inquiry is a review of the Food and Grocery Code of Conduct. A cynic could argue that the Food and Grocery Code of Conduct has in recent years been used by the supermarket duopoly to impose restrictions and gain maximum control over the producer/supplier.

One only needs to consider the price given to the farmer (often referred to as the “farm-gate price”) and the price paid by the consumer.

However, before we can make this point it should be clarified that calling the price given to the farmer the “farm gate price” is somewhat misleading as not only does the farmer have to pay for the production costs, wages, fertilisers, land, irrigation, machinery but the farmers also has to pay the costs for transport to the markets, ripening and inspection of the produce, and if rejected, dumping fees.

Supermarkets on the other hand, have arguably much smaller costs, relating to retailing the product given to them in final form.

Despite this significant disparity in costs often the supermarket double or even quadruple the price they pay the farmer when they charge the consumer.

For example, bananas purchased for \$1.50/kg are often sold to the consumer at \$4/5 kg.

You don’t have to be great at maths to work out where the \$1billion in annual profit is coming from.

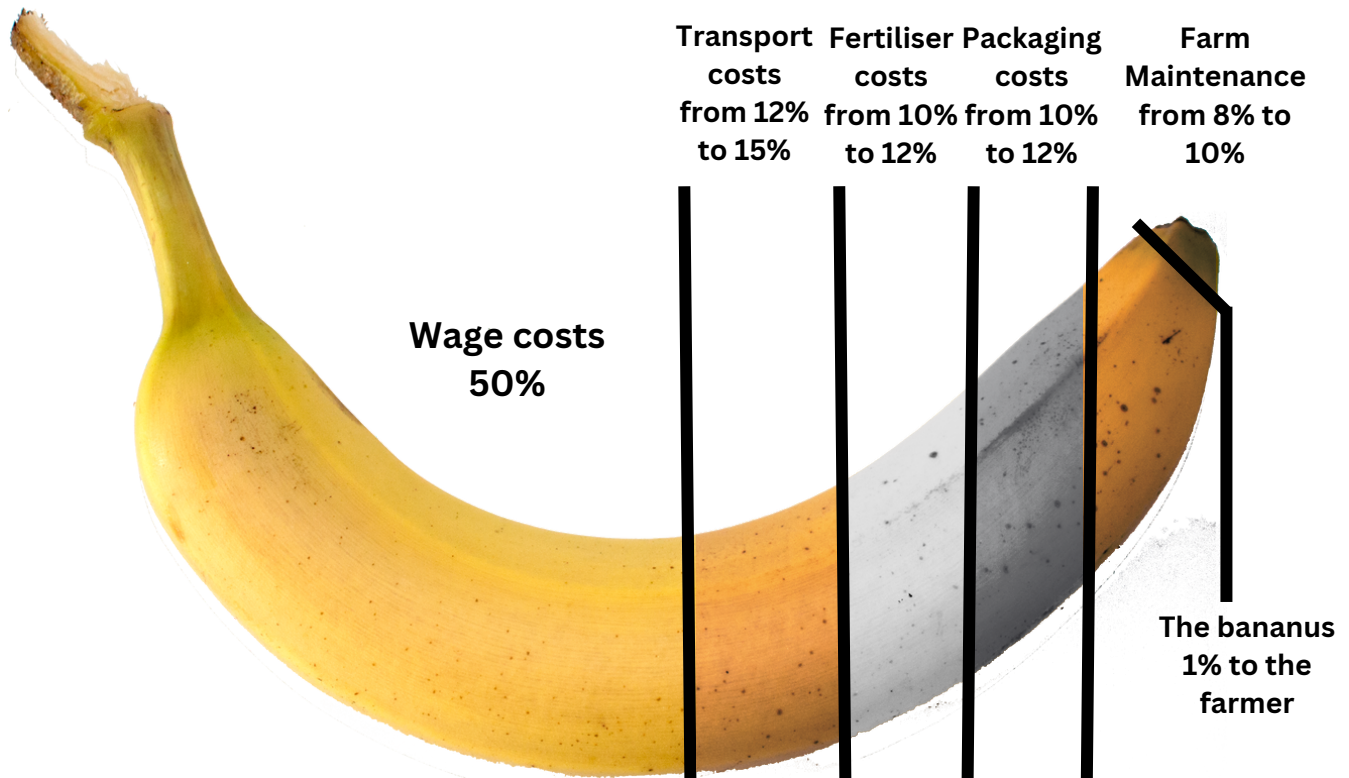
If government is serious about tackling the cost of living, supporting Australian farmers and consumers and ensuring access to fresh fruit and vegetable it should immediately

- Define and cap the charges that a supermarket can put on producers / suppliers;
- Require supermarkets to publicly state on a weekly basis:
 - the price paid to suppliers for produce;
 - all the costs that are included in this price, including the costs of ripening, transportation and storage; and
 - the price charged to consumers;
- Introduce a maximum markup of 100% that supermarkets can charge only all produce.
- Scrap the Food and Grocery Code of Conduct, calling it out for what it really is – a measure that has been long abused by the supermarkets to control and restrain suppliers/producers. It does nothing to address the power imbalance rather it enforces and capitalises on that power imbalance.

Farming costs

The following graphic highlights the costs involved in producing fresh food and getting that food to market.

For example, if the farmer is receiving \$1.50 for a kilo, he actually takes home less than 2c once costs are covered. The Supermarket on the other hand retails the same product at \$4-5/kg.



Costs that farmers have to bear

Conclusion

The Australian supermarket duopoly boast annual profits of over \$1 billion for each entity. Manufacturers are seeing increased competition from import home brand products, farmers are seeing lower returns and increasing costs applied to these returns and consumers are paying more for groceries.

Record profits can only be achieved at the detriment of both suppliers and consumers. Serious and fundamental reform as proposed in this submission needs to be immediately actioned if we are serious about tackling the negative impacts of market concentration and over exercise of corporate power.

This submission recommends:

1. Anti-price gouging measures: This includes establishing a robust government enforcement body with extensive powers to investigate and impose severe penalties, along with mechanisms for consumers and farmers to express pricing concerns confidentially without needing to prove legal breaches. Additionally, it suggests compelling supermarket directors and executives to provide transparent information to oversight bodies.

2. Divestiture powers: The submission advocates for granting the Australian Government and courts the authority to enforce divestiture, particularly targeting businesses with near-monopoly or duopoly control in markets. It suggests restricting market share to 23% for corporations in the grocery sector, prohibiting colluding activity between divested assets, and limiting the expansion of supermarket-branded products available exclusively at specific stores.

3. Tariffs on imports: Recognising the impacts of imported products, the submission proposes implementing a blanket customs tariff of 5% on all imports, except in cases where overwhelming justification is provided for reduced tariffs, with a focus on benefiting Australian manufacturers, consumers, and producers.

4. Maximum 100% markup: To regulate charges imposed by supermarkets on producers/suppliers, the submission suggests defining and capping these charges. It also proposes requiring supermarkets to publicly disclose weekly: the price paid to suppliers for produce, associated costs, and consumer prices, while introducing a maximum markup limit of 100% on all produce.

The submission also calls for the scrapping of the Food and Grocery Code of Conduct, arguing it does little to address power imbalances and has been abused by supermarkets to control suppliers and producers.

ACKNOWLEDGEMENTS

The Office of Bob Katter, Federal Member for Kennedy would like to sincerely thank all parties that have assisted in the development of this submission.

It is greatly appreciated.