



**Submission to the
Senate Economics Committee Inquiry on
The impacts of supermarket price decisions on
the dairy industry**

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CHOICE exists to unlock the power of consumers. Our vision is for Australians to be the most savvy and active consumers in the world.

As a social enterprise we do this by providing clear information, advice and support on consumer goods and services; by taking action with consumers against bad practice wherever it may exist; and by fearlessly speaking out to promote consumers' interests - ensuring the consumer voice is heard clearly, loudly and cogently in corporations and in governments.

1. Executive summary

CHOICE believes that the impacts of recent supermarket price decisions on the dairy industry relate to broader issues around competition in Australia's grocery sector.

The high levels of market share of the two major supermarkets create the potential for anti-competitive impacts along the food supply chain, including the possibility that discounted pricing in the short-term may have negative consequences further down the track.

However, the nature of these potential impacts is poorly monitored and understood, a fact that is obvious from the lack of progress following the Senate's 2010 report into the Australian dairy industry.

Recommendation 1: CHOICE believes that concerns around supermarket price decisions and competition in the grocery sector should be addressed as part of a comprehensive and coordinated National Food Policy, enabling information and regulatory gaps to be tackled systematically.

Recommendation 2: CHOICE believes that an Australian Supermarket Ombudsman should be established to provide a national impetus for reform and pro-active and constant monitoring of consumer issues in the grocery sector.



2. Introduction

"In an environment of rising prices, it is vitally important that consumers can have confidence that the prices they are being charged are fair, and are not the result of market power, particularly in relation to the two major grocery chains in Australia."

CHOICE Submission to ACCC Inquiry into grocery prices, March 2008

While CHOICE welcomes scrutiny of the impacts of supermarket price decisions on the dairy industry, we believe that many of the issues raised here are relevant to the operation of Australian supermarkets and the food supply chain more broadly.

CHOICE has consistently supported measures to address the anti-competitiveness of Australia's grocery sector, and this is an issue which regularly ranks among the top concerns of our members.¹ The high concentrations of market share of the two major supermarkets, estimated at up to 80 per cent of the grocery market,² create an obvious potential for anti-competitive impacts right along the food supply chain, from producers and processors through to consumers and other retailers in-between.

CHOICE also believes that competitive pricing is critically important to consumers, no more so than when it comes to staples such as milk and bread. However, pricing is one part of the consumer landscape that extends to product choice and quality, diversity of retailers, food security, health and environmental sustainability. A genuinely competitive and consumer-focused market should not provide one of these benefits at the expense of the others. For example, if heavy discounting in the short term has the effect of reducing product choice beyond what consumers want or undermining food security in the medium or long term, this is not a 'win' for consumers.

For these reasons, CHOICE believes that concerns around supermarket milk pricing should be considered in the wider frame of competition issues in the supermarket sector and the need for greater coordination of food policy nationally. The commonality of these issues is clear, for example, from the recommendations of the Committee's 2010 report into the Australian Dairy Industry, several of which deal with competition policy broadly and the effectiveness of current regulatory and policy settings.

On this basis, CHOICE welcomes the opportunity to make a submission to the Senate Economics References Committee Inquiry on the impacts of supermarket price decisions on the dairy industry. In this submission, CHOICE will address the following Terms of Reference:

- Whether recent price reductions of milk and other dairy products are anti-competitive;

¹ For an overview of CHOICE's campaigning on supermarket prices and competition, see 'Checkout CHOICE – A fair go for supermarkets', at <http://www.choice.com.au/sitecore/content/choice%20supermarket/home.aspx>

² Senate Economics References Committee, 'Milking it for all its worth – competition and pricing in the Australian Dairy Industry', May 2010, p. 19.



- The recommendations of the 2010 Economics References Committee report, Milking it for all it's worth – competition and pricing in the Australian dairy industry, and how these have progressed; and
- Other related matters, specifically the need for a comprehensive and coordinated National Food Policy, and the case for establishing an Australian Supermarket Ombudsman.

3. Are recent price reductions anti-competitive?

CHOICE is a strong advocate for competitive pricing, and is reluctant to take issue with discounting where this provides benefits for consumers. In the case of recent discounting of dairy products, an obvious concern is whether this is the result of healthy competition or of market power that is likely to have a range of negative impacts for consumers, including potentially increasing that market power.

As the ACCC notes, it is difficult to prove instances of 'predatory pricing' under the Competition and Consumer Act (the Act), particularly as such behaviour may initially appear pro-competitive.³ This submission does not suggest that in light of the recent actions of major supermarkets in relation to dairy products there is currently sufficient evidence to indicate (or for a Court to infer) that an anti-competitive purpose, as defined under the Act, exists.

However, CHOICE notes recent media reports referencing claims from unnamed industry sources that Coles Supermarkets are incurring losses of \$300,000-\$400,000 per week to sell heavily discounted milk,⁴ and that representatives of Woolworths Supermarkets have expressed concerns about the impacts of price reductions on dairy farmers.⁵ These claims require further investigation, given it is difficult to see why any retailer would sustain such losses if it were not seeking to eliminate or damage its competitors. CHOICE believes it is relevant to question whether the discounting of dairy products is symptomatic of anti-competitiveness within Australia's supermarket sector, and whether it may serve to reinforce the market power held by the major players, to the detriment of consumers.

CHOICE does not support consideration of measures to restrict or regulate the discounts offered by supermarkets. Such an approach would address one potential symptom of a broader anti-competitive arrangement rather than its cause, could have unintended consequences and would ignore other critical points along the dairy supply chain, such as the relationship between producers and processors. Rather, CHOICE is supportive of measures to promote genuine competition in Australia's supermarket sector, as a more competitive market will limit the capacity of supermarkets to dictate terms overly detrimental

³ Australian Competition and Consumer Commission, 'Predatory pricing (s46(1) and s46(1AAA))', accessed at <http://www.accc.gov.au/content/index.phtml/itemId/816375> on 25 February 2011. As defined by the ACCC, "Predatory pricing occurs when a company sets its prices at a sufficiently low level with the purpose of damaging or forcing a competitor to withdraw from the market."

⁴ Phillip Coorey, 'Milk War Heats Up as Woolies Side with Farmers', Sydney Morning Herald, 28 February 2011, accessed at <http://www.smh.com.au/business/milk-war-heats-up-as-woolies-sides-with-farmers-20110227-1ba06.html> on 28 February 2011.

⁵ ABC News Online, 'Woolies admits milk war will hurt farmers', 28 February 2011, accessed at <http://www.abc.net.au/news/stories/2011/02/28/3150349.htm> on 28 February 2011.



to suppliers as well as providing a range of important benefits for consumers. This is why we strongly support the introduction of an Australian Supermarket Ombudsman, as further discussed in the recommendations of this submission.

4. Follow-up from ‘Milking it for all it’s worth...’

As already noted in this submission, the recommendations of the Senate Economics Committee’s 2010 report into the Australian dairy industry encompass issues that go beyond the dairy sector alone.

For example, Recommendation 8 calls for the ACCC to conduct “further study into the implications of increasing shares of the grocery market being taken by the generic products of the major supermarket chains... [including] ..the needs of Australia in terms of food security and economic and environmental sustainability, as well as the economic viability of farmers and processors.”⁶

At other points, the report identifies issues in the dairy industry that hold relevance across Australia’s food sector. For example, Recommendation 4 “requests the ACCC to undertake monitoring of the pricing practices within the dairy chain with a view to establishing whether predatory pricing or misuse of market power is occurring,”⁷ while Recommendation 14 calls on the Federal Government to address “the issues of food security and the future sustainability of the dairy industry at a federal level,” with a review “facilitated through the Primary Industries Ministerial Council.”⁸

CHOICE cannot find evidence that these recommendations have been progressed, and believes they point to significant information gaps in the analysis of anti-competitiveness in the Australian food supply chain, particularly around impacts on consumers. There should be a far greater understanding of how the high concentrations of market share within Australia’s supermarket sector are likely to impact on consumer product choice, diversity of retailers, and medium-to-long term food security and environmental sustainability. There should also be much greater transparency around pricing practices along food supply chains, including between producers and processors, and processors and retailers.

CHOICE believes that relevant recommendations from the ‘Milking it for all it’s worth...’ report should be progressed as part of a comprehensive and coordinated approach to food policy in Australia, including to competition issues within the supermarket sector. This would ensure that retail pricing issues were not considered in isolation from other key consumer concerns, and that information and regulatory gaps were identified systematically, rather than in an ad-hoc fashion.

⁶ Senate Economics References Committee, May 2010, p. 4.

⁷ Senate Economics References Committee, May 2010, p. 3.

⁸ Senate Economics References Committee, May 2010, p. 5.



5. Recommendations

5.1 Implementing a National Food Policy

CHOICE believes that issues around the impacts of discounting on the dairy industry reinforce the need for a genuinely coordinated approach to food policy in Australia. For example, the food sector is currently populated by at least six separate regulators, nine policymaking agencies at a Federal Government level along with many more in state governments, and a plethora of researchers and stakeholders, ranging from farming groups to food retailers, importers and exporters.⁹ A strategic approach to engaging these multiple and varied players along the food supply chain will help ensure decisions affecting the future of Australia's food industry are coherent and consistent.

Similarly, the top-down perspective of a national policy framework will help identify any regulatory or policy gaps and duplication, and better inform political debates around food issues. Nowhere is this lack of perspective more obvious than in the current debate around milk prices, where as this submission has noted, the potential impacts of the growth in major supermarket generic brands, and associated issues around future prices and food security, are poorly understood.

CHOICE welcomes the initiative of the Federal Government in engaging stakeholders (including CHOICE) through the National Food Policy Working Group as part of its commitment to developing a National Food Plan.¹⁰ However, we believe the National Food Plan its current form only represents one piece of the 'puzzle'. CHOICE believes the Government should go further, formalising the development and implementation of a truly comprehensive National Food Policy within an existing Government central agency, or else creating an agency specifically structured and empowered to administer a National Food Policy. A similar recommendation is made by Prime Minister's Science, Engineering and Innovation Council in its October 2010 report on food security, which calls for the establishment of the 'Australian Food Security Agency' to coordinate policy and programs and take responsibility for data collection along the food supply chain, along with a number of other suggested functions.¹¹

While CHOICE is not necessarily advocating for the creation of a new agency, we do believe that a National Food Policy requires a dedicated and centralised location within Government to ensure it is appropriately 'disinterested', giving fair consideration to issues right along the food supply chain, not just from the point of view of one set of stakeholders. A dedicated structure will also ensure that there is the required level of institutional momentum to follow-up on issues and implement programs such as research agendas over the long term.

⁹ For further detail, see the breakdown of "major players relevant to food security" in The Prime Minister's Science, Engineering and Innovation Council [PMSEIC], Australia and Food Security in a Changing World, October 2010, p. 64

¹⁰ Senator the Hon. Joe Ludwig, Minister for Agriculture, Fisheries and Forestry, 'Government begins work on Australia's first National Food Plan', 1 December 2010, accessed at <http://www.maff.gov.au/media-releases/2010/december/government-begins-work-on-australias-first-national-food-plan> on 28 February 2011.

¹¹ PMSEIC, October 2010, pp. 3-4.



In summary, CHOICE believes there is a need for a National Food Policy, anchored within a single Federal Government agency, that will:

- Allow for a national debate about the future direction of the food industry that takes account of multiple stakeholder and regulatory factors;
- Provide a framework for regulators, industry and consumers, so that plans and decisions can be consistent with the strategic direction;
- Ensure that the various arms of government policymakers act in a way that is coherent and consistent with each other;
- Make sense of the regulatory and political landscapes and ensure that gaps between them are minimised;
- Identify any regulatory or policy gaps or unnecessary bureaucracy and duplication; and
- Ensure the connections between different issues along the food supply chain are better researched and understood, for example between retail pricing, product choice, food security, health and nutrition, and environmental sustainability.

Next steps towards a National Food Policy

The Federal Government has taken a positive first step through the establishment of the National Food Policy Working Group, and CHOICE believes this forum can provide immediate input towards the formalisation of a National Food Policy. We also note that other stakeholders, such as the Australian Food and Grocery Council, have put forward the case for a national food policy agenda.¹²

CHOICE believes it is crucial to ensure Australia's National Food Policy is developed with a whole-of-government perspective, based on collaboration and engagement with all stakeholders including consumers and communities, farmers and growers, suppliers and food manufacturers, supermarkets and specialty retailers, restaurants, cafés and food businesses, health professionals and food scientists.

To ensure the National Food Policy is appropriately broad in scope and not weighted towards any one group of stakeholder interests, it should be formed around the following three pillars:

i. Food security and environmental sustainability

Food security is a critical challenge facing nations around the world, including Australia. This includes issues around security of supply and may include issues around ownership. Food security is inextricably linked to environmental sustainability, as Australia is confronting for example in the decline of the Murray-Darling Basin river system, and the looming impacts of climate change. Environmental sustainability also extends to issues around food packaging, waste and greenhouse gas emissions.

¹² Australian Food and Grocery Council, 'A Growing and Sustainable Industry – the case for a national food and grocery agenda', accessed at <http://www.afgc.org.au/policies/case-for-a-food-agenda.html> on 28 February 2011.



ii. Competition and resilience

A competitive food industry is an imperative for driving innovation and maintaining fair costs and prices. A resilient food industry is one which remains competitive, vibrant and profitable over the long term, able to identify, respond and adapt to challenges strategically, including by responding to consumer concerns, by increasing production and embracing innovation.

iii. Consumer information and healthy choices

Like consumers around the world, Australians require confidence that food regulation and food businesses provide a safe and secure food supply, a wide variety of high-quality and nutritious food products as well as effective information that enables healthy and environmentally sustainable choices.

5.2 An Australian Supermarket Ombudsman

CHOICE strongly supports the establishment of an Australian Supermarket Ombudsman to tackle competition and fairness across the grocery sector.¹³ The ombudsman would provide much needed leadership in reforming the supermarket sector, and would ensure there was ongoing and pro-active monitoring of key issues.

CHOICE believes the establishment of a Supermarket Ombudsman is consistent with the implementation of a National Food Policy, and that the ombudsman could operate effectively within the institutional structure of the Australian Competition and Consumer Commission, thereby minimising the creation of new layers of bureaucracy.

The position of Supermarket Ombudsman would be dedicated to the task of promoting and protecting competition in the supermarket industry. This does not necessarily require the creation of any new laws, just better enforcement of existing legislation. Due to the complexity of issues involved in competition throughout the supermarket sector, the position of Supermarket Ombudsman would be ideally placed to consider all aspects of the food supply chain, and would be able to direct research priorities under the National Food Policy. There is also an international precedent for the establishment of a Supermarket Ombudsman, with the UK Government currently working through the process of implementing a 'Groceries Code Adjudicator' under its Office of Fair Trading.¹⁴

In summary, an Australian Supermarket Ombudsman would perform the following key functions:

¹³ CHOICE has been leading calls for the establishment of an Australian Supermarket Ombudsman since 2009 – for example, see CHOICE, 'A Fair Deal for Supermarket Customers', 17 November 2009, accessed at <http://www.choice.com.au/consumer-action/past-campaigns/supermarkets/a-fair-deal-for-supermarket-customers/page/our%20recommendations.aspx> on 28 February 2011.

¹⁴ See UK Department for Business, Innovation and Skills, 'Taking forward the establishment of a body to monitor and enforce compliance with the groceries supply code of practice (GSCOP): The Groceries Code Adjudicator', August 2010, accessed at <http://www.bis.gov.uk/assets/biscore/business-law/docs/competition-matters/10-1011-groceries-supply-code-practice-government-response.pdf> on 28 February 2011.



- **Leadership** – ensuring that competition and fairness is driven at a national level, with a constant and proactive focus on improving competition within Australia’s supermarket sector.
- **Fair rules and fair conduct** – ensuring that regulators enforce their rules, and where regulatory structures are deemed insufficient to deal with issues, suggesting rule changes.
- **Early stage market inquiries** – researching and making recommendations in circumstances where parts of the market are not working efficiently.
- **Consumer information** – directing and consolidating research to ensure consumers possess the right information and supporting consumer education on unit pricing.
- **Consolidating existing functions** – avoiding duplication by incorporating the ACCC and assisting in the operation of a National Food Policy, while making sense of existing schemes, including the Produce and Grocery Industry Ombudsman and other codes including horticulture.