

**SENATE ECONOMICS REFERENCES COMMITTEE**  
Questions on Notice

The impacts of supermarket price decisions on the dairy industry

Melbourne, 8 March 2011

QoN No.	Hansard Page Reference	Senator	Witness/organisation	Question	Status
1	Written	Xenophon	SADA	<p><b>Do you think it is likely that processors will cut the price of their branded milk in an attempt to maintain market share? What influence do they have on its price on the supermarket shelf?</b></p> <p>Our understanding is that the Supermarkets control the price on the shelf (as with all retailers) and if a processor wishes to reduce the wholesale price it is up to the supermarket to decide to pass this on to the consumer if they wish. We also have concerns at the moment that the supermarkets are placing branded milk on the shelves with very short "best before dates" and also reducing shelf space available to the branded products.</p>	
2	Written	Xenophon	SADA	<p><b>Are you aware of informal agreements between processors that they will not poach each other's suppliers?</b></p> <p>We are not aware of any agreements.</p>	

3	Written	Xenophon	SADA	<p><b>a) One submission suggested that producers should be able to have tradable and dual supply contracts and thereby trade their contracts between processors either in long or short-term tranches of milk volumes. What is your view of this proposal?</b></p> <p>We consider this could be beneficial to for farmers to have access to both sectors of the market and allowing this access to be tradable would enhance the transparency of the domestic market.</p> <p><b>b) What do you think of proposals that would require processors to gain ACCC approval for their contracts with dairy producers?</b></p> <p>We do not feel this would add greatly to the operation of the contracts that are available to farmers. Farmers already have choice and can choose processors that fit their business. The lack of transparency for farmers is further up the supply chain.</p>	
4	Written	Xenophon	SADA	<p><b>a) How transparent are the prices and terms of the contracts for private label milk and branded milk between the major supermarkets and the processors?</b></p> <p>This information is outside SADA's ability to comment.</p> <p><b>b) Do you think there would be noticeable benefits if this information was more widely available?</b></p> <p>The transparency would allow the farmers and the rest of the supply chain understand the ability in the market to pay farmers a reasonable share of the retail price.</p> <p><b>c) What would they be?</b></p> <p>As above.</p>	

5	Written	Xenophon	SADA	<p><b>The Produce and Grocery Industry Code, which was introduced in September 2000, aims to promote fair and equitable trading practices within the produce and grocery industry supply chain. The code aims to minimise disputes and provides a dispute resolution system which is available to dairy farmers.</b></p> <p><b>a) Are you aware of the Produce and Grocery Industry Code?</b></p> <p>We were unaware.</p> <p><b>b) How relevant is the Code to the dairy industry?</b></p> <p>The fact that we were unaware suggests this is not an option that is very relevant to the Dairy industry.</p> <p><b>c) How effective do you consider the Code is? How could it be strengthened?</b></p> <p>Unable to comment.</p> <p><b>d) Do you consider the effectiveness of the Code and the Produce and Grocery Industry Ombudsman is limited by the fact that the Code is voluntary?</b></p> <p>Unable to comment.</p>	
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6	Written	Xenophon	SADA	<p><b>Senator Xenophon notes that Choice have called for a comprehensive and coordinated National Food Policy to be developed and a supermarket Ombudsman to be established. The Government have also formed a national Food Policy Working Group to develop a National Food Plan.</b></p> <p><b>The Senator asks</b></p> <p><b>(a) Would you support this proposal?</b></p> <p>SADA supports the development of a strong policy framework that will promote the growth and productivity of the Australian food industry. The Government on 1 December, 2010 launched the National Food Policy Working Group comprising representatives from the food chain and the consumers as represented by Choice.</p> <p>At the launch the new Working Group the NFF President. David Crombie, had this to say,  <i>“The Government needs to work with industry, right through the supply chain, in a strategic and long-term way. We need to make sure policies are geared to Australia's interests -domestically to keep quality high and prices competitive and globally to meet surging demand. Australia's farmers and processing sectors will get on with the job but we need a visionary and proactive government policy environment that supports our efforts.”</i></p> <p>But at the very time that one arm of the Australian government is working with industry to develop a long-term national food plan another arm of government is allowing the growing market domination of the supermarket duopoly. Failure by the government to sort out an effective set of arrangements in the Competition and Consumer Act will inflict long term damage to our dairy industry, retail competition, consumers, and the ability for Australia to be an exporter of food.</p> <p><b>What the government and industry is hoping to achieve with the development of the new Food Plan is; supported by all, is a worthy aspiration, and definitely in the national interest. Exactly the opposite can be said about the governments appalling performance in relation to competition policy which is anything but in the national interest.</b></p> <p>What Coles have been allowed to do is a national disgrace. The problem here is not so much Coles but the Australian government for having such a weak set of competition laws and a regulator that Senator Xenophon has described as being, <i>“less effective than a toothless chihuahua.”</i> <i>“At least a toothless Chihuahua will yap a bit</i></p>	
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				<p><i>and make a bit of noise."</i></p> <p>We are most heartened that through lobbying, by many groups along the food chain and including the consumers, we can see the politicians are beginning to voice their concerns that the action by Coles is not "sustainable" and, "<i>not in our long-term national interest. (Hartsuyker, 21 March )</i>".</p> <p><i>"The government must take every action possible to ensure that the activities within competition policy are in the national interest. Instead of allowing Coles to use its market share to drive milk processors and dairy farmers out of business...( Hartsuyker, 21 March)"</i> Again the question is being raised, this time by (Billson 21 March), as to whether the competition watch dog the ACCC is "in step" with the longer-term public policy and economic objectives of the community, government and industry. "<i>..whether the toolkit available to the ACCC is adequate, whether it best supports the public policy and economic objectives we have for our country and how well these tools are actually being used (Billson 21 March)</i></p> <p>The call for Australia to have a National Food Plan is extremely powerful in that the initiative was proposed by the national farming lobby the NFF, and has the support of all the players in the food chain (perhaps not Coles), and is also supported by the national consumer advocate in Choice at the end of the chain.</p> <p>Before we leave this issue we wish to express our disappointment with the submission to this Inquiry by Coles. The Coles Submission totally fails to address any of the serious longer term consequences of their actions for farmers, consumers, retail competition, communities, etc. Instead they focus on strategy that is flawed because it is basically about growing wealth and market share for Coles at the expense of the national good. These Coles, highly focused, corporate executives from the UK (focused on gaining market share and salary bonuses) would have us believe they are Santa Claus. Even the other major supermarket chains have said to the Senate Inquiry and publicly that what Coles is doing is not "sustainable".</p> <p>It appears that the difference between Coles and Woolworths goes further than the difference as to whether these discounts are "sustainable" It was the Woolworths CEO, Michael Luscombe, who in</p>	
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an article in the Financial Review (1 July, 2010) said, "Australia needs to take wide-ranging actions to ensure the long term security of its food supply and role as a global agricultural power house." He had asked the Prime Minister and Opposition Leader to establish a ministry to oversee the entire food production supply chain. He had the vision of "establishing Australia as a leading global brand for "clean, safe and available" food." So we see Coles with a short term grab for market share to be paid for by the farmers (as the cost of the discounts goes back to the farmers over time) as contrasting with Woolworths who are building a reputation for corporate responsibility and sustainability.

**The Senator then asks, (b) What powers and functions do you consider a Supermarket Ombudsman should have and (c) Choice have also suggested that the Ombudsman be based within the ACCC- do you have a view on this?**

For SADA the key issue is getting the right "toolkit" for the ACCC (this will be addressed and explained when answering the Senators Question 7). Having a dedicated office for the supermarkets within the ACCC is justified given the importance of the issues raised in the submissions to this Senate Inquiry. In relation to powers (to be addressed in Question 7) the key point is that currently Australia has the weakest "competition laws" of any OECD country and unless this situation is addressed the duopoly supermarket share will continue to grow and they will attain near total control of the market and the consequences and concerns expressed in the Senate Inquiry submissions will become reality.

7	Written	Xenophon	SADA	<p><b>The committee heard in 2010 that the national health standard for milk meant there were no significant differences between private label full cream milk and branded full cream milk, other than some minor specification differences.</b></p> <p><b>(a) Is this correct?</b></p> <p>Yes this is correct. Evidence can be obtained from the Choice website (Milk Products Review, 10<sup>th</sup> September, 2009) where they compare the specifications of the private label and branded full cream milks and there is no significant difference. It has been reported to us by one consumer that purchases milk from Coles on line who has been ordering Branded milk but when delivered it has been Coles home brand. This suggests Coles even considers Private Label and Branded milk the same.</p> <p><b>(b) Do you think it is inevitable that, regardless of the current price discounts, consumers would realize this and switch to private label milk?</b></p> <p>Over time consumers are switching to the private label milk. However; there appears to be some customers that have a preference for the branded product.</p> <p><b>(c) Should it be regarded as price discrimination to sell the same product at a different price even if the product is sold in containers with different labels?</b></p> <p>Yes we believe this is price discrimination.</p> <p><b>(d) Would you support an explicit anti-price discrimination clause being reintroduced into the Competition and Consumer Act?</b></p> <p>Yes we would support the reintroduction of an anti-price discrimination clause into the Act. <b><i>We believe this strengthening of the Act could be the most important outcome from this Senate Inquiry.</i></b> This is the specific action that will best deliver on the promise of delivering on stronger competition laws. This action we believe will be supported by all except the supermarket duopoly. Even the other grocery chains support this action because they know that unless this change is introduced they will be squeezed out.</p> <p>Remember the anti-price discrimination clause (Section 49) was part of the Trade Practice Act when it was passed in 1974 but prolonged</p>	
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				<p>lobbying by big business saw it repealed in 1995.</p> <p>What makes the Australian competition laws so weak and will allow the supermarket duopoly to continue to become more and more powerful, in fact heading to a potential monopoly, is the lack of this anti-price discrimination clause. Anti-price discrimination (Section 49) is prohibited in every OECD country except New Zealand, though New Zealand has stronger prohibition on misuse of market power.</p> <p>Ken Henrick, the CEO of the National Association of Retail Grocers of Australia (NARGA), is a most respected commentator on competition laws and the ACCC and this is his take on the importance anti-price discrimination has been given internationally.</p> <p><i>"Anti-competitive price discrimination is the slippery road to monopoly. That's why the US Congress worked for almost a quarter of a century to find a way to stamp it out.</i></p> <p><i>That's why the 1957 treaty of Rome which set up the European Community dealt with a prohibition on anti- competitive price discrimination as one of its first priorities."</i></p> <p>One of the arguments put by the duopoly for getting rid of this clause was that this misuse of market power could be covered by another section of the Act (Section 46). But we now believe this was a ploy by big business to weaken the Act and take the ACCC out of the action.</p> <p>This is what Ken Henrick has to say on differences between Section 49 and Section 46;</p> <p><i>"Section 49 included an "effects" test – does the conduct in question have the effect or the likely effect of bringing about a substantial lessening of competition.</i></p> <p><i>Section 46 has a "purpose" test – what was the purpose and intent of those responsible for the conduct. How do you prove what is in the hearts and minds of those involved?</i></p> <p><i>So, at the very least section 46 is a weaker option and harder to prove."</i></p> <p><i>But Australia's version of a prohibition on anti-competitive price discrimination is a ghost law: its there, but you cannot see, hear or feel it.</i></p>	
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*And the competition regulator would prefer to hold a séance than actually deal with the problem."*

The other great opportunity and outcome with this simple legislative change of reintroducing the clause into the Act is that it should be a catalyst to get the ACCC "off its hands" and into some action.

So let us be clear, that anti-price discrimination is where one or more customers of a supplier get better prices than other customers (who from that point on are pretty much permanently disadvantaged on the prices and profit margins they can get or set). Surprise, surprise (Ken Henrick again), we now find that *anti-price discrimination is absolutely rife though out Australian industry sectors*. It is every where including groceries, liquor, general retailing, motor vehicle spare parts and the list goes on and on.

Coming back to the dairy situation we now know that the recent decision by Coles to sell its private label milk at a dollar per litre (every other major retail group was forced to follow) is "unsustainable" and the cost of the discounting will eventually be passed back to the processors and the farmers. ***This is going to force dairy farmers out of the industry.*** But consumers may be getting lower prices for private label milk but they will be paying more for other items.

SADA in its submission to the Senate Inquiry SADA asked for nothing more from the Australian Government than adequate competition laws and a regulator that was active to ensure a healthy and competitive domestic grocery market. We believe the government must strengthen our competition laws (reinstate Section 49) to bring us into line with the other OECD countries and get the ACCC to look specifically at anti-price discrimination.

While there may (we say may because of the potential for Coles to increase the price on other items) be some short term savings for the consumer the long term cost to the farmers, the processing sectors, retail competition, the consumers, and the regional communities will be many, many, multiples of any short term savings. These consequences have been well documented in the submissions to this Senate Inquiry. ***Failure by the Parliament to act now will encourage the supermarket duopoly to continue to grow and in a few years time we will all be back again with another Senate Inquiry into exactly the***

**same topic.** This will be inevitable because by then the lost opportunities to have a country well positioned to produce such abundance of fresh produce that we can continue to export food will be lost. The cost to the nation of the duopoly will then be apparent to all, but then sadly, Australia will find it a major and even more costly challenge to rebuild a competitive grocery market.

Advocates for Coles are saying we are "over re-acting" but why are they so afraid of improving the competition laws in order to better promote a free, fair, and competitive market place by re-introducing Section 49 – the anti-price discrimination clause?