

Senate Select Committee on Supermarket Pricing
ANSWERS TO QUESTIONS ON NOTICE
Inquiry into Supermarket Pricing

Topic: Divestiture power submissions
Reference: Spoken
Senator: Nick McKim
Respondent: Dr Craig Emerson, Independent Reviewer of the Food and Grocery Code Review

Question:

CHAIR: Mrs Barker—well, either of you: would you take on notice whether in fact any submissions you received did reference divestiture powers? And, in short form, if so, if there were any, what was the nature of their submission in regard to that?

Answer:

The Consultation Paper for the Review of the Food and Grocery Code of Conduct (the Code) did not mention divestiture powers. Of the 56 submissions to the Consultation Paper, 7 submissions mentioned divestiture powers. Of these, 3 non-confidential submissions and one confidential submission appeared to support divestiture powers:

- The National Farmers Federation’s Horticulture Council suggested there be consideration of divestiture powers in relation to systemic and persistent practices that are in breach of either the Food and Grocery Code or the Competition and Consumer Act (p. 6). The National Farmers Federation, however, gave evidence to the Senate Select Committee on Supermarket Pricing on 13 March 2024 saying that it does not support divestiture of retail assets.
- AUSVEG suggested that penalties for breaches of the Code could include disincentives such as ‘*divestiture powers which can be used in cases of gross market power imbalances*’ (p. 19). However, AUSVEG raised concerns about divestiture powers resulting in unintended, negative consequences in evidence given to the Senate Select Committee on Supermarket Pricing on 13 March 2024.
- NSW Farmers noted that it had recommended divestiture powers to use in cases of gross market power imbalances against the national interest to the Senate Inquiry on Supermarket Prices (p. 4).

Two submissions that mentioned divestiture powers only noted it in the context of mergers:

- Australian Chicken Growers’ Council noted consolidation in the supermarket and poultry meat processor markets and argued that (p. 8):
 - *Divestiture of any un-announced or unapproved further takeovers (like the Woolworths takeover of parts of PetStock) must be implemented.*
 - *There is a need for better and broader monitoring of, and forced divestiture as needed, for unapproved takeovers/mergers that are likely to reduce competition.*

- The Victorian Government noted the importance of structural remedies such as divestiture of assets in dealing with anti-competitive mergers. It noted that behavioural remedies are important to prevent and deal with anticompetitive conduct and misuse of market power in the post-merger context (p. 6).

The Australian Council of Trade Unions' (ACTU) submission included Professor Allan Fels' Report from the ACTU-commissioned Inquiry into Price Gouging and Unfair Pricing Practices as an attachment, which recommended (p. 9):

... a divestiture law which allows big business to be broken up in circumstances where a Court has found that it has breached a competition law seriously and where a Court determines that divestiture is the best remedy.

However, the ACTU is on the record as not supporting forced divestiture of retail businesses as a priority for Government.

Senate Select Committee on Supermarket Pricing
ANSWERS TO QUESTIONS ON NOTICE
Inquiry into Supermarket Pricing

Topic: Dr Emerson previous work, shareholdings and board membership
Reference: Spoken and written
Senator: Nick McKim
Respondent: Dr Craig Emerson, Independent Reviewer of the Food and Grocery Code Review

Question (spoken):

CHAIR: Dr Emerson, I will ask you to take this on notice because I think you might need to go back and have a think about it. I do appreciate your disclosure around the BCA and Wesfarmers. On notice, could you provide details to the committee of any other present or past contractual arrangements, share ownerships or board positions that have the potential to create an actual or perceived conflict of interest for you around the work that you're doing?

Question (subsequently in writing):

For all paid and unpaid work undertaken by yourself or Craig Emerson Economics Pty Ltd for the Business Council of Australia, Wesfarmers, and any current members of the BCA provide:

- Start date of work
- End date of work
- Total remuneration for work undertaken.

Do you have shares in:

- Woolworths
- Coles
- Bunnings

Are you a current or former member of the board of:

- Woolworths
- Coles
- Bunnings
- BCA

Answer:

When Senator McKim asked whether I have undertaken any work for Coles or Woolworths, I indicated I had done work for Wesfarmers, which is the parent company of Coles, but was unable to complete my answer before he asked about Bunnings. I wish to complete my answer to his question as follows: I also undertook associated consulting work for Coles, as a subsidiary of Wesfarmers, in the period 2013-2014.

I also wish to clarify that, after checking, the engagement with Wesfarmers finished in 2015, not in 2016.

I refer also to your email of 19 April 2024 setting out subsequent Questions on Notice from Senator McKim.

During my appearance at the committee hearing, Senator McKim added that in relation to my commercial engagement with the Business Council of Australia (BCA) around the time of the Jobs and Skills Summit in 2022, where I advised on immigration policy and briefly on an aspect of industrial relations policy: “Thanks for that clarification. That’s accepted by the committee and there’s no adverse reflection on you in regard to that.”

I do not propose to set out the contractual arrangements I have had with individual member companies of the BCA in circumstances where those arrangements had nothing to do with the issue of forced divestiture or the supermarket industry.

I do not have any shares in Woolworths, Coles or Bunnings (or any related or competing company). I do not have shares in any member business of the BCA.

I am not and have never been a member of the board for Woolworths, Coles, Bunnings or the BCA (or any of the BCA’s members).