



Australian Government
The Treasury



Senate Select Committee on Supermarket Prices

Treasury Submission | Inquiry into Supermarket Prices

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Contents

Introduction.....	1
Section 1: Overview of supermarket sector	2
Structure of supermarket industry in Australia.....	2
Geographic representation.....	2
Competition and supermarket profitability	3
Recent initiatives	5
Section 2: regulatory framework for supermarket suppliers.....	6
Sector specific regulation	6
Industry Codes of Conduct	6
The conduct of supermarkets towards suppliers is regulated by the Food and Grocery Code	6
Supermarkets must also comply with the Unit Pricing Code	7
Economy-wide protections	8
Competition law	8
Consumer Law	8
Unfair contract terms	9
Unfair trading practices	9

Introduction

The Department of the Treasury welcomes the opportunity to make this submission to the Committee's inquiry into Supermarket Prices in Australia.

Treasury is responsible for the competition and consumer law that applies across the economy, including the supermarket sector. Treasury has an overarching role managing the industry codes policy framework.

This submission provides an overview of the Government's current initiatives and the regulatory arrangements that govern the conduct of the supermarket sector. It aims to inform the Committee's consideration of the regulatory frameworks that protect suppliers and the interests of consumers, responding to parts (g) and (h) of the Committee's Terms of Reference.

This submission comprises the following sections:

Section 1 provides an overview of the supermarket sector in Australia.

Section 2 outlines the regulatory framework for supermarket suppliers.

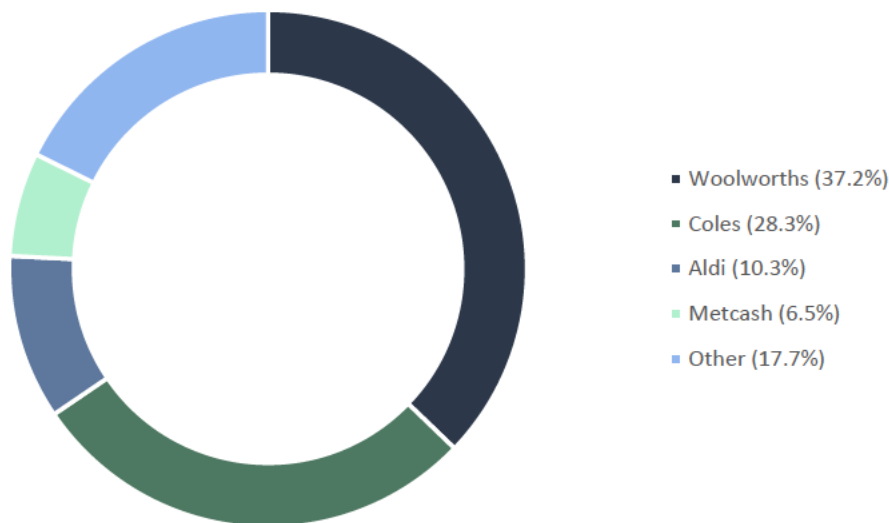
Section 1: Overview of supermarket sector

Structure of supermarket industry in Australia

Australia's largest supermarkets are Woolworths, Coles and Aldi. Metcash Food & Grocery (Metcash) is a wholesaler that services the IGA network, Foodland IGA and FoodWorks as well as some independents not affiliated with any chain or banner group.

Australia's food and grocery sector is concentrated, with the largest four retailers (supermarkets) and wholesalers (Metcash) holding a market share of more than 80 per cent (see chart 1). A concentrated market such as this can provide those few players with substantial market power over its counterparts in the supply chain.

Chart 1: Market share of supermarkets in Australia¹



Source: IBIS World

In its 2008 Inquiry into the competitiveness of retail prices for standard groceries, the ACCC found Coles, Woolworths and Metcash have significant buyer power in relation to many packaged grocery products because many suppliers effectively have little option other than to deal with these buyers. The ACCC found competition between retailers was, however, sufficient to ensure that Coles and Woolworths could not simply retain all of the benefits of the lower wholesale prices they extract—at least some of the benefits flowed to consumers in the form of lower retail prices.²

Geographic representation

Business concentration (defined as a percentage of total industry establishments) and the degree of local competition is positively related to population. Table 1 shows NSW and Victoria's shares of supermarkets and grocery stores are larger than their shares of national population. Supermarkets also benefit from proximity to trade hubs like the ports of Sydney and Melbourne.

¹ IBIS World Industry Report, *Supermarkets and Grocery Stores in Australia*, August 2023, p 11

² Australian Competition and Consumer Commission (ACCC), *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, (Canberra 2008), p xiv

Low population density is a barrier to supermarket expansion in WA as remote stores outside of larger cities like Perth and Bunbury, get fewer customers and are more costly to stock due to transport costs.³

Table 1: Percentage of total establishments compared with population⁴

State/territory	Establishments (%)	Population (%)
NSW	32.7	32.6
VIC	28.3	24.8
QLD	18.3	20
WA	8.8	10.1
SA	6.3	7.5
TAS	2.6	2.3
ACT	1.7	1.6
NT	1.3	1

Competition and supermarket profitability

The level of, and changes in, profitability and margins provides an indication of the level of competition in the supermarket sector.

The following tables outline published corporate results for the major supermarkets Woolworths and Coles and figures to the extent they are available for Metcash. Aldi does not produce public annual reports with details on its sales and profit margins.

As shown in tables 2 and 3 in 2022-23 Woolworths obtained around 6 cents in every dollar spent as earnings before interest and tax (EBIT), while Coles obtained almost 5 cents. These figures have increased slightly over the past five years.

³ IBIS World Industry Report, *Supermarkets and Grocery Stores in Australia*, August 2023, p 40

⁴ ibid p 39

Table 2: Woolworths results over past five years (Australian Food group)⁵

\$ million	2018-19	2019-20	2020-21	2021-22	2022-23
Sales revenue	39,635	42,151	43,509	45,740	48,047
EBITDA	2,583	3,707	3,954	4,044	4,651
EBIT	1,827	2,056	2,319	2,406	2,865
Gross Margin (%)	28.7	29.2	29.7	27.4	28.1
Cost of doing business (%)	24.1	23.9	24.1	22.1	22.1
EBIT margin (%)	4.6	5.3	5.5	5.3	6.0

Table 3: Coles results over past five years (Supermarkets group)⁶

\$ million	2018-19	2019-20	2020-21	2021-22	2022-23
Sales revenue	30,993	32,993	33,868	34,624	36,746
EBITDA	1,735	2,867	3,001	3,022	3,157
EBIT	1,183	1,618	1,702	1,715	1,765
Gross Margin (%)	24.8	25.5	25.9	26.3	26.4
Cost of doing business (%)	20.9	20.6	20.9	21.4	21.6
EBIT margin (%)	3.8	4.9	5.0	5.0	4.8

5 Woolworths Group, *Annual Report 2023*, [Woolworths Group 2023 Annual Report.pdf](#), p 31
Woolworths Group, *Annual Report 2022*, [Woolworths Group Annual Report 2022 print friendly.pdf](#), p 27
Woolworths Group, *Annual Report 2021*, [195984_annual-report-2021.pdf \(woolworthsgroup.com.au\)](#) p 24
Woolworths Group, *Annual Report 2020*, [195794_annual-report-2020.pdf \(woolworthsgroup.com.au\)](#), p 24
accessed 10 January 2024

6 Coles Group, *Annual Report 2023*, [Annual_Report.pdf \(colesgroup.com.au\)](#), p 30
Coles Group, *Annual Report 2022*, [Annual_Report_2022.pdf \(colesgroup.com.au\)](#), p 34
Coles Group, *Annual Report 2021*, [Annual_Report_2021.pdf \(colesgroup.com.au\)](#), p. 30
Coles Group, *Annual Report 2020*, [Annual_Report_2020.pdf \(colesgroup.com.au\)](#). p 43
accessed 10 January 2024

Table 4: Metcash (Food) results over the past five years⁷

\$million	2018-19	2019-20	2020-21	2021-22	2022-23
Sales revenue	7,836.4	8,121.6	8,316.3	8,379.3	8,410.1
EBITDA	N/A	N/A	N/A	N/A	N/A
EBIT	182.7	182.7	192.4	200.3	204.0
Gross Margin (%)	N/A	N/A	N/A	N/A	N/A
Cost of doing business (%)	N/A	N/A	N/A	N/A	N/A
EBIT margin (%)	2.3	2.0	2.0	2.1	2.1

Recent initiatives

On 25 January 2024, the Government announced that the Treasurer will direct the ACCC to undertake a 12-month price inquiry into pricing and competition in Australia's supermarket sector, including the pricing practices of the supermarkets and the relationship between wholesale, including farmgate, and retail prices. The Treasurer issued the direction on 1 February 2024.⁸

Commissioning an ACCC price inquiry activates compulsory information gathering powers which can assist the ACCC to undertake specific inquiries into pricing behaviour and impediments to competition in a market.

The ACCC will produce an interim report no later than 31 August 2024 and final report by 28 February 2025.

The Government also announced it will provide \$1.1 million to respected consumer group CHOICE to provide price transparency and comparison reports on a quarterly basis for three years. This will start from the second quarter of 2024 and provide shoppers with increased transparency on the comparative costs of a basket of goods at different retailers.

⁷ Metcash, *Annual Report 2023*, [20837_Metcash_AR23_00_FULL_Web_V1.pdf](#) (mars-metcdn-com.global.ssl.fastly.net), p 39

Metcash, *Annual Report 2022*, [20548_Metcash_AR_WebPDF_FULL_V1.pdf](#) (amazonaws.com), pp 41-42

Metcash, *Annual Report 2021*, [Metcash_AR21_Linked.pdf](#) (mars-metcdn-com.global.ssl.fastly.net), p 43

Metcash, *Annual Report 2020*, [Metcash-Annual-Report-2020.pdf](#) (mars-metcdn-com.global.ssl.fastly.net), p 60 accessed 10 January 2024

⁸ <https://www.legislation.gov.au/F2024L00132/asmade/text>

Section 2: regulatory framework for supermarket suppliers

The supermarket sector is governed by a combination of sector specific regulations (such as industry codes) and economy wide legislation (including as provisions under the *Competition and Consumer Act 2010*).

Sector specific regulation

Industry Codes of Conduct

Industry codes of conduct are a form of sector-specific regulation made under Part IVB of the *Competition and Consumer Act 2010* (CCA) which regulates the conduct of industry participants towards each other (or consumers).

While codes vary, they typically require parties to act in good faith towards each other, have written agreements to cover key commercial matters and use agreed dispute resolution mechanisms.

There are currently nine prescribed codes in operation (eight mandatory and one voluntary), covering sectors including franchising, food and grocery, dairy and horticulture. This submission focuses on codes that are the primary responsibility of Treasury. The Department of Agriculture, Fisheries and Forestry has primary policy responsibility for codes covering business relationships at a production level in the agriculture sector – dairy, horticulture, and sugar, as well as the wheat port code.

Codes are additional regulations on top of general trade practices laws in the CCA. They are enforced by the Australian Competition and Consumer Commission (ACCC).

Codes can be well-suited to regulating parties in long-term, inter-dependent commercial relationships where there is an imbalance of bargaining power (for example conduct between large franchisors and smaller franchisees). At the same time, they impose regulatory costs, can be inflexible (formalising rules which become out-of-date, entrenching minimum standards) and add complexity to some businesses' operating environments (for example, if they are subject to more than one code).

Other codes exist outside of the part IVB framework, these are industry led voluntary codes are forms of self-regulation that are not set or enforced by Government. They are not prescribed under the CCA, and are usually tried before considering a prescribed code.

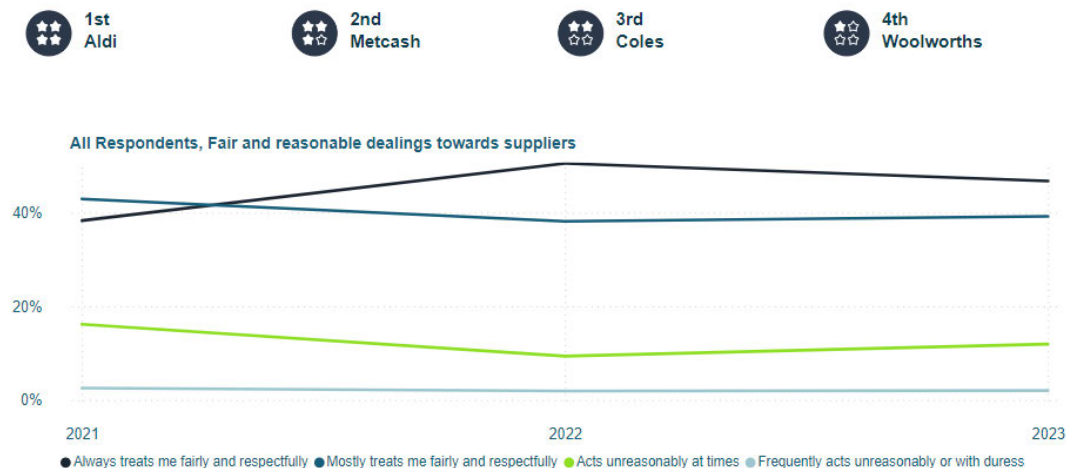
The conduct of supermarkets towards suppliers is regulated by the Food and Grocery Code

The Food and Grocery Code of Conduct is the only prescribed voluntary code under Part IVB of the CCA. The objectives of the Code are to promote transparency and certainty in commercial dealings between the parties and provide an effective process for resolving disputes without the need to resort to legal action. The Code contains rules about how supermarkets (also known as retailers) and wholesalers of grocery products in Australia must deal with their grocery suppliers (which includes food manufacturers and farmers). Woolworths, Coles, ALDI, and Metcash are signatories to the Code and are bound by it.

Each year the Independent Reviewer, Chris Leptos AO conducts a survey of suppliers to monitor conditions and the effectiveness of the Code. Survey results are published in the Independent Reviewer's annual report.

While overall the results indicate that most suppliers have generally had positive dealings with their respective retailer/wholesaler, around 14 per cent of suppliers consider that supermarkets treat them unreasonably either frequently or at times (refer to chart 2).⁹

Chart 2: Supplier experience overtime



Source: Treasury

On 10 January 2024 the Government announced the appointment of the Hon Dr Craig Emerson to lead a review that will examine the effectiveness of Code and report by 30 June 2024. A consultation paper was released on 5 February 2024.

Supermarkets must also comply with the Unit Pricing Code

The Unit Pricing Code is a mandatory industry code under Part IVB of the CCA. It sets out rules about which businesses must display unit prices, the types of products that they must be displayed for, and where and how unit prices must be displayed.

Unit pricing shows how much a product costs using a standard unit of measurement, enabling consumers to quickly compare products of different sizes and brands to work out which one offers the best value.

Supermarkets and online retailers may need to comply with the Unit Pricing Code if they sell certain food-based grocery items. Smaller retailers who are not covered by the Unit Pricing Code may choose to adopt unit pricing if they sell the minimum range of food-based grocery items. If a retailer opts in to unit pricing, they must comply with all the Unit Pricing Code's requirements.

The original Unit Pricing Code, set out in the Trade Practices (Industry Codes – Unit Pricing) Regulations 2009, was introduced following the ACCC's 2008 Inquiry into the competitiveness of retail prices for standard groceries.

Treasury undertook a sunset review of the original code over 2018 and 2019, finding that it was operating efficiently and effectively in line with its primary objective of empowering consumers to make informed decisions about grocery purchases through greater price transparency.¹⁰ The previous

⁹ Food and Grocery Code Independent Reviewer, Annual Report 2022-23,

<https://grocerycodereviewer.gov.au/reports/annual-reports/2022-23-annual-report>, p 21, accessed 13 January 2024

¹⁰ Treasury (Commonwealth of Australia), Grocery Unit Pricing Code Review, <https://treasury.gov.au/review/grocery-unit-pricing-code-review/reviewing-code>, accessed 24 January 2024

Government remade the Unit Pricing Code without substantive changes before its scheduled sunset date in 2021.

Economy-wide protections

Australia's competition and consumer law applies generally across the economy and is applicable to the supermarket sector. The ACCC enforces the *Competition and Consumer Act 2010*, including the Australian Consumer Law (ACL).

Competition law

Competition law prohibits anti-competitive practices including cartels, misuse of market power, and anti-competitive mergers. If the ACCC does find evidence of anti-competitive behaviour they have a powerful toolkit to investigate and take action through the courts where appropriate.

The Government has strengthened Australia's competition laws by substantially increasing maximum penalties for anti-competitive conduct. Maximum penalties for a breach have increased to the greater of \$50 million, if the Court can determine the benefit, three times the value of that benefit, or if the Court cannot determine the benefit, 30 per cent of turnover for the period over which the breach took place. The new penalties will ensure that the price for misconduct is high enough to deter unfair activity that penalises good businesses and consumers, and that Australia's laws are consistent with international best practice.

Consulting on possible merger reforms has been an immediate priority of the Government's ongoing Competition Review. The Competition Review has undertaken broad stakeholder consultation over the past two months to canvas options to reform Australia's mergers system.

Reforms to Australia's merger system are being considered in the context of rising market concentration in some parts of the Australian economy, with similar trends apparent in overseas markets.

Any changes to merger settings would be about delivering greater benefits to the economy and to consumers, and providing certainty to business. Mergers should drive improvements in productivity, put downward pressure on prices and deliver more choice for Australians dealing with cost-of-living pressures.

Consumer Law

The ACL regulates business behaviour through standards-based provisions, which establish principles that generally apply across circumstances and industries, and specific provisions, which establish clear offences for defined behaviours. The ACL is a national law, as each state and territory has enacted legislation to apply the ACL as a local law.

The standards-based provisions in the ACL include prohibitions against unconscionable conduct, misleading or deceptive conduct and unfair contract terms. Specific provisions in the ACL prohibit specific discrete unfair practices such as bait advertising.

While there is no specific prohibition on excessive pricing, if a business makes misleading claims about the reason for price increases, it may be breaching the standards-based provision against misleading or deceptive conduct. In some limited circumstances excessive pricing may be considered unconscionable where it is extreme and targets particularly vulnerable consumers.

Maximum penalties for breaches of the consumer law by a body corporate have also recently been increased.

Unfair contract terms

The Government has strengthened unfair contract term protections by introducing a civil penalty regime prohibiting the use of and reliance on unfair contract terms in standard form consumer and small business contracts. The amendments, which commenced on 9 November 2023, also expanded the class of small business contracts that are covered by the unfair contract term provisions.

To be unfair a term must:

- Cause a significant imbalance in the parties' rights and obligations under the contract;
- Not be reasonably necessary to protect the legitimate interests of the party that would benefit from the term; and
- Cause detriment (financial or otherwise) to a party if it were to be applied or relied upon.

The introduction of civil penalties for unfair contract terms will deter businesses from including contract terms which are not reasonably necessary to protect their legitimate interests.

Unfair trading practices

Treasury has recently consulted on a Consultation Regulation Impact Statement seeking further evidence on the nature of unfair trading practices and the extent of any consumer and small business harm arising from potential gaps in the ACL. Public consultation was conducted over a 90-day period, which commenced on 31 August 2023 and closed on 29 November 2023. The Government is currently considering the submissions received.