

The Secretary
Senate Economics References Committee

Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia



Australian National
Retailers Association
ABN 78 118 494 643

8/16 Bougainville Street
Manuka ACT 2603

Tel +61 2 6260 7710
Fax +61 2 6260 7705

admin@anra.com.au

The Secretary

**Responses to Questions Taken On Notice at the Senate Economics
References Committee Inquiry into the GROCERYchoice Website**

Thank you for your advice in relation to the questions taken on notice at the hearing in Melbourne on 6 October 2009.

ANRA's responses to these questions are attached. Please contact Dr Long in relation to any queries you may have in relation to these matters.

Yours sincerely

Ms Margy Osmond

CEO
ANRA

Dr Brendan Long

Director of Policy and Strategy
ANRA
0408421447

QUESTIONS TAKEN ON NOTICE BY MS OSMOND

1. Senator BARNETT—Can you advise the committee either now or on notice of the various meetings you had with the relevant minister—as in Minister Bowen and then subsequently Minister Emerson—and/or his officers?

Mrs Osmond—I am very happy to give you a more detailed list on notice.

Response.

- 17 March 2009 Margy Osmond and Malcolm Roberts met with Chris Bowen in Canberra.*
- 30 April 2009 Meeting in Sydney convened by Brett Gale from Chris Bowen's office with ANRA and Choice attending. Attendees included Nick Stace, Linda Magee, Bill Davidson, IT professional, Andrew Hall, Nat Samia, Rob Hadler, Chris Mara, Roni Perlov, Margy Osmond and Malcolm Roberts.*
- 18 June 2009 ANRA (Margy Osmond and Malcolm Roberts) meet Minister Emerson and Lynne Ashpole in Canberra.*
- 22 June 2009 Malcolm Roberts (ANRA) meets Minister Emerson and Lynne Ashpole in Canberra.*
- 26 June 2009 ANRA (Margy Osmond and Malcolm Roberts), IGA, Aldi, Franklins (Roni Perlov), Woolworths (Nat Samia), Coles (Chris Mara) meet with Craig Emerson at Parliament House to discuss the outstanding issues with the Grocery Choice website. Choice was invited to attend, but didn't.*
- 26 June 2009 The Minister issues a media release, pulling Grocery Choice. This is the first ANRA knew of the Minister's decision.*

2. Mrs Osmond—The outcome of those discussions was the meeting of 30 April, which was an attempt to start thrashing out those concerns by putting all the players in the one room. We facilitated that meeting simply to be of assistance to our members.

Senator BARNETT—Who was at that meeting?

Mrs Osmond—I cannot give you exact names. I apologise.

Senator BARNETT—Are you happy to take that on notice?

Response

Brett Gale, Nick Stace, Linda Magee, Bill Davidson, IT professional (name not known), Andrew Hall, Nat Samia, Rob Hadler, Chris Mara, Roni Perlov, Margy Osmond and Malcolm Roberts.

3. Mrs Osmond—As I indicated in my opening remarks, what came from that meeting was a commitment from Choice to supply us with a memorandum of understanding, which at that point—virtually the beginning of May—we still did not have. That did arrive—

Senator BARNETT—Can you table that MOU or provide it on notice?

Mrs Osmond—I do not have it with me, but I would be happy to provide you with a copy of that.

Response

See Attachment A.

4. Senator BARNETT—Do you have minutes of that meeting? [26 June]

Mrs Osmond—I would have informal minutes, but not with me.

Senator BARNETT—Can you provide that on notice?

Mrs Osmond—Yes, I probably could, but once again they would be informal minutes, so we will have to put them in some kind of shape. But, yes, they could be provided on notice.

Response

After reviewing ANRA's files, it appears that no minutes of the meeting were produced by ANRA. The meeting was attended by senior managers of each of the relevant member companies. Under these circumstances ANRA would not normally take minutes.

5. Senator BARNETT—Who represented IGA? Was that NARGA or IGA?

Mrs Osmond—Once again I think I will have to take that on notice. I will have to come back to you with the names.

Response

IGA

6. Senator XENOPHON—Could you take on notice providing copies of any email correspondence between ANRA and Coles and Woolworths and Franklins in relation to that.

Mrs Osmond—I would have to go back and have a look. I am not certain what there is and I would need to check with our members in any event.

Senator XENOPHON—If you could take it on notice—I think is quite important in terms of what email trail there was in relation to that.

Response

ANRA has taken the view that these emails are private in nature and also constitute commercial in confidence material. ANRA's position is that disclosure of these emails by ANRA would be prejudicial to the privacy or the rights of those other persons who were party to the exchange of these emails

As a result ANRA indicates that it would prefer not to make these emails available to the Committee.

7. Mrs Osmond—I cannot tell you about what meetings Choice may have had with the minister. All I can tell you is that we were asked if we would attend a meeting.

Senator BARNETT—Were you asked verbally or in writing?

Mrs Osmond—My recollection is that we received a telephone call, but I will take that on notice.

Response

ANRA received a verbal invitation.

8. Senator XENOPHON—Was there any discussion prior to 26 June of a meeting to discuss the GROCERYchoice website after the launch of the website the following week?

Mrs Osmond—Not that I am aware of.

Senator XENOPHON—Can you check to see if there was an invitation from the minister's office in relation to that?

Mrs Osmond—Sure.

Response

ANRA is not aware of any proposed meeting in the timelines indicated in the Senator's question.

QUESTIONS TAKEN ON NOTICE BY DR LONG

1. Dr Long—Essentially, the concern was: who bears the legal responsibility for accuracy of material presented on website? That had not yet been resolved through caveats or whatever to the satisfaction of our members.

Senator BARNETT—I do not want to interpose on Senator Xenophon, but I would very much like to know, and hopefully committee members would like to know, what the answer was to those questions and those concerns you had about the legal issues.

Dr Long—We are happy to cooperate in any way.

Senator BARNETT—Please take that on notice. I do not want to take up Senator Xenophon's time.

Response

In response to the Committee's question ANRA would like to make available correspondence between Mr Stace of Choice and ANRA, and emails between Linda Magee of Choice and ANRA.

ANRA has consulted with Choice and understands that Mr Stace and Ms Magee agree to the disclosure of these emails to the Committee.

The correspondence is presented in Attachment B and C and D and E.

2. Senator BARNETT—. If you could take on notice to provide further and better particulars with respect to that concern and as to the reasons why you took the action that you did. We have heard evidence—I will not go into it now because we do not have time. But I would like you to respond in further detail to that question.

Response:

ANRA refers the Committee to point 2. page 2 of the attached letter to Mr Stace of 28 April 2009.

MEMORANDUM OF UNDERSTANDING

DATED: 2009

PARTIES

BETWEEN AUSTRALIAN CONSUMERS' ASSOCIATION of 57 Carrington Road,
Marrickville in the State of New South Wales ("CHOICE")

AND ("the Company")

RECITALS

- A. CHOICE is a not-for-profit company limited by guarantee and is the largest consumer organisation in Australia.
- B. The Company owns and operates supermarkets in Australia.
- C. CHOICE intends to relaunch the website known as Grocerychoice ("**the Website**") in July 2009 for the purpose of assisting Australian consumers in comparing general price levels of supermarkets in their local areas.
- D. The Company proposes to contribute to the operation of the Website by participating in a regular Grocerychoice Industry Consultative Forum ("**the Forum**") and by providing CHOICE with prices of consumer goods for sale in the Company's supermarkets ("**the Price Information**") on a twice weekly basis.

This Memorandum of Understanding is not intended to create contractual obligations between the parties but records the common understanding of the parties of the following matters:

1 Participation

- 1.2 CHOICE acknowledges that the Company participates in the Forum and provides the Price Information on a voluntary basis and that the Company is at liberty to cease participating in the Forum and/or cease providing the Price Information at any time and without prior notice.

2. Use of Price Information and the Website

- 2.1 The Company acknowledges that CHOICE may use the Price Information for publication on the Website. The Company acknowledges that, once publication of the Price Information on the Website occurs, all such Price Information will be in the public domain. The Company acknowledges that the Pricing Information may be used by CHOICE to calculate unit prices. CHOICE acknowledges its good faith intention to refrain from disturbing the original form of the Pricing Information beyond what is necessary for meaningful comparisons.

- 2.2 CHOICE and the Company each acknowledge their good faith intention to work co-operatively with each other and with the other participants in the Forum to collate the Price Information in a manner which benefits consumers and fairly represents the Price Information and that such co-operation will extend to discussion by the Forum of appropriate items for inclusion in comparative collections of consumer goods.
- 2.3 The Website may refer to other CHOICE articles and CHOICE websites, but, except to the extent necessary to carry out the purpose of the Website described in Recital C above, will not otherwise advertise consumer goods or services.

3. Accuracy of Price Information

- 3.1 The Company acknowledges that it will bear responsibility for providing timely and accurate Price Information and that CHOICE will not bear any responsibility for errors, omissions or inaccuracies in the Price Information as provided by the Company to CHOICE from time to time. CHOICE will publish an appropriate disclaimer on the Website to inform consumers of the temporary accuracy of the Price Information.
- 3.2 CHOICE acknowledges its good faith intention that the Price Information it publishes will be an accurate reflection of the Price Information supplied by the Company. CHOICE acknowledges that it will not hold the Company responsible for errors, omissions or inaccuracies in the Price Information as published by CHOICE where such errors, omissions or inaccuracies are attributable to the negligence of CHOICE.
- 3.3 The Company may review the Website on a regular basis and notify CHOICE of any errors, omissions or inaccuracies in the Price Information published on the Website as soon as practicable. CHOICE will take all reasonable steps to correct any errors, omissions or inaccuracies so notified by the Company as soon as practicable.

4. Representations arising from Price Information

- 4.1 The Company acknowledges its good faith intention that the Price Information will reflect the price of goods reasonably available in its supermarkets in line with normal consumer expectations.
- 4.2 Without limiting the generality of 2.4 above, the Company acknowledges its good faith intention to refrain from bait advertising in connection with the Website or any other practice which has the potential to compromise the integrity of the Price Information.
- 4.3 CHOICE acknowledges that it will not hold the Company responsible for any misrepresentation of the Price Information as supplied by the Company where such misrepresentation is attributable to an act or omission of CHOICE.

Signed for and on behalf of CHOICE:

.....

Signed for and on behalf of the Company:

.....

choice

57 Carrington Road Marrickville NSW 2204
Phone 02 9577 3333 Fax 02 9577 3377 choice.com.au



Margy Osmond
CEO
ANRA
Unit 8, 16 Bougainville Street
Manuka ACT 2603

28 May 2009

Re: Grocery Choice documents

Dear Margy

I am writing to finalise all documentation requested at our meeting with ANRA on 30 April 2009 concerning Grocery Choice.

Please find attached the following documents:

- Re-drafted Memorandum of Understanding incorporating supermarket comments as confirmed in Malcolm Roberts emails of 14 and 21 May 2009.
- A proposed list of top-selling product lines to appear on the site. We are happy to include top-selling generic and private label products as provided by retailers and we will also include ALDI products
- A rationale for comparing like-for-like
- A proposal for comparing fresh food (fruit and veg, meat and fish, deli goods)
- Data integrity process

Could you please review the documents and provide feedback by 5 June. They will form the basis of a meeting with the Minister's Office and ANRA, to be organised by the Minister's staff after 8 June.

I will send hard copies in the post on Monday.

Kind regards

A handwritten signature in black ink that reads "Linda Magee". The signature is written in a cursive, flowing style.

Linda Magee
Head of Online Services, CHOICE

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 Fax 02 9577 3377 Email ausconsumer@choice.com.au www.choice.com.au
The Australian Consumers' Association is a not-for-profit company limited by guarantee. ABN 72 000 281 925 ACN 000 281 925



Australian National
Retailers Association
ABN 78 118 494 643

8/16 Bougainville Street
Manuka ACT 2603

Tel +61 2 6260 7710
Fax +61 2 6260 7705

admin@anra.com.au

28 April 2009

Mr Nick Stace
Chief Executive
Choice
57 Carrington Road
MARRICKVILLE NSW 2204

Dear Nick

Re: **Outstanding issues in relation to Grocery Choice website**

ANRA members believe that a grocery prices website must be accurate, independent and unbiased. Since discussions began with Choice in January 2009, ANRA members have participated in a cooperative and collaborative manner with the design team. During the meetings ANRA members have raised important design issues which must be addressed to ensure that price data is accurate and useful for consumers. Unfortunately many of these issues remain unresolved.

The following is a summary of the issues of concern which we would like to see as the core of our discussions later this week.

1. The current model proposed by Choice is based on an inaccurate premise in relation to how shelf prices are set.

The model seems to be built on the assumption that shelf prices are set by head office across the network of stores of each major retailer and are stable through the weekly retail cycle. In fact, the retail grocery market is far more dynamic.

Contrary to the expectation of your designers, no retailer has a centralised data system which records in real time the prices of grocery items sold across the chain. Creating such a system would cost the industry (and therefore consumers) millions every year.

Shelf prices in individual stores frequently vary from what might be called the standard price. Store managers have the discretion to respond to local competition by marking down products. Store managers may discount below the standard price to clear perishable products. On a broader scale, a standard price set on one day can be changed across many stores the next day as retailers respond to competition. Thus the standard price is often not the actual shelf price in many stores or may only be valid, for many stores, for a short period.

This pattern of local short-term discounting or sudden shifts in the standard price across a network of retail outlets is found in other high volume, low margin markets. However, price volatility is all the greater in the case of supermarkets which have as many as 30,000 items on sale in a single store. Prices for up to 30 per cent of the product range may change over the course of a week. Even changes in standard prices do not occur uniformly or instantly across a retail chain. Stores have some discretion to change the shelf price subject to available staff and other store priorities. Price changes may be delayed for such operational reasons.

2. Price volatility raises significant legal issues.

Retailers are concerned about their potential liability, under s.52 and other provisions of the Trade Practices Act 1974, when pricing information provided in good faith is found to be inaccurate. Choice has not responded to retailers' requests for arrangements to limit their liability to cases of deliberately misleading conduct.

Legal liability aside, retailers are concerned that the standing of the website with customers can be easily compromised where the reported standard price varies from the actual shelf price.

Another legal concern is the risk of breaching the Trade Practices Act by providing a "discounted price" for discontinued items or items in limited supply. The Australian Competition and Consumer Commission (ACCC) insists retailers who offer products at a certain price must be able to offer to supply those goods at that discounted price for a period that is reasonable, and in quantities that are reasonable. Retailers who fail to do so may be found to have engaged in bait advertising in breach of s.56 of the Act.

3. In- store checking

For these legal reasons amongst others, retailers have a strong preference for in-store price checking which reports the actual shelf price of the targeted items. While in-store price checking would produce results which date as quickly as any other method, it does have the advantage of reporting an actual price. In the absence of readily available actual price data for the thousands of products sold across the hundreds of stores operated by each major retailer, in-store price checking is the most reliable method. ANRA members believe that \$13 million in public funding should be more than adequate for collecting this data.

4. Product comparisons

ANRA members are seeking greater clarity about the methodology for product comparisons. Accurate comparisons need to compare "like for like" goods. In the case of fresh food, meat and private label products, for example, each retailer sets its own product specifications. ANRA members do not support the proposal that Choice apply its own ratings to products.

ANRA members are also seeking clarity as to how their respective "loyalty" and petrol discount offers will be recognized in the overall comparison of the true value of their respective basket values. Clarity is also sought from CHOICE as to the methodology to be adopted to inform users of the website where retailers charge their customers for plastic bags and recover credit card and debit card commissions from their customers, as is the case of Aldi.

ANRA members also do not support the proposal from Aldi that its products be compared to proprietary branded products rather than retailers' private label products. Since Aldi's products are only available at Aldi stores, it would be more appropriate for Aldi's products to be compared with retailers' private label products

5. Unit Pricing

Whilst ANRA members support the introduction of a unit pricing code in-store, this method will not sufficiently address the issue of different sized products. Retailers are in discussions with the Commonwealth about the scope of the unit pricing code; some product categories are likely to be exempt from unit pricing requirements. Use of a unit price as well as a sale price risks complicating the data and confusing consumers. ANRA members believe Choice will need to operate in-store audits of unit pricing to confirm the accuracy of data.

6. Neutral Website

ANRA members are concerned that the purpose of the website should be to provide accurate information to consumers, free of editorial bias or commentary. Retailers have noted that Choice proposes to highlight “bargains for the week” which will inevitably be selective and compromise the neutrality of the website. ANRA members believe that it is inappropriate for a government funded website to be used as a cross selling platform for Choice’s products and services. The proposal to rename the website Choice Grocery and to integrate it into the suite of Choice business products highlights this conflict of interest.

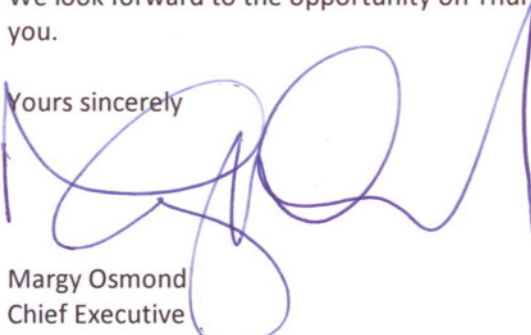
The website should be a separate and neutral source of consumer information. Anonymous blogging is inappropriate and should not be part of the website.

Finally, ANRA members noted with disappointment your recent comments about grocery pricing in Australia. These comments suggest a pre-determined view or intent by Choice and are, as the 2008 ACCC inquiry conclusively established, ill-informed. I would highlight that the ACCC found that the overwhelming driver of price inflation in Australia has been the drought, increased input commodity costs and import barriers for cheaper products. The industry has worked with the Government on implementing new measures to assist consumers including a unit pricing code.

ANRA members urge Choice to adopt a more neutral approach to such matters and see this as a pre-requisite for any partnership between Choice and the grocery retailers.

We look forward to the opportunity on Thursday afternoon this week to discuss these issues with you.

Yours sincerely



Margy Osmond
Chief Executive
ANRA

Attachment D.txt

From: Malcolm Roberts
Sent: Monday, 28 September 2009 2:40 PM
To: Liz Rodway
Subject: Attachment D

-----Original Message-----

From: Linda Magee [mailto:LIMAGEE@CHOICE.COM.AU]
Sent: Thursday, May 21, 2009 4:15 PM
To: Malcolm Roberts
Cc: billd@bdavidson.biz; Norm Crothers
Subject: RE: grocerychoice

Hi Malcolm

Thanks for your email. Our lawyer has been briefed on the points raised in your previous email. If there are no further issues we will ask him to proceed with a redrafted MOU.

I will get back to you with the earliest date for delivery.

Regards
Linda

Linda Magee
Head of Online Services & Business Growth CHOICE A not-for-profit company limited by guarantee ACN 000 281 925
57 Carrington Rd
Marrickville NSW 2204
Australia

Tel: 61 2 9577 3378
Fax: 61 2 9577 3377
Email: limagee@choice.com.au
Website: www.choice.com.au

Please consider the environment before printing this email This email (and any attachments) contains information that may be confidential, privileged or otherwise protected from disclosure. It is intended solely for the recipient(s) named above. If you received this email by mistake, please notify the sender and destroy it and any copies. Thank you.

>>> "Malcolm Roberts" <mroberts@anra.com.au> 21/05/2009 3:57:09 pm >>>
Hi Linda

I have had some further discussions with our members which have confirmed that the key points mentioned in my earlier email are the main issues which retailers wish to see addressed by the MOU. I don't have anything further to add to the list at this point.

I was wondering whether your legal advisers have been able to redraft your draft MOU in light of these points ? It would be great if we could circulate an amended MOU soon.

Thanks very much for your help.

Regards

Malcolm

Malcolm Roberts
Director (Policy & Strategic Development) Australian National Retailers Association
8/16 Bougainville Street

MANUKA ACT 2603

Tel 02 6260 7710
Fax 02 6260 7705
Mobile 0419 835 218

-----Original Message-----

From: Linda Magee [mailto:LIMAGEE@CHOICE.COM.AU]
Sent: Thursday, 14 May 2009 5:28 PM
To: Malcolm Roberts
Subject: Re: grocerychoice

Hi Malcolm

Thank you for your response indicating that retailers are attending to this matter and that we will have a response as soon as possible.

Thank you also for outlining the expected inclusions in the MoU. We will forward these to our legal advisers for information.

I have contacted your members this afternoon with the following email and attachment. It is included here FYI.

This is to update you on the status of the agreed outcomes of our meeting with ANRA on 30 April 2009.

****MEMORANDUM OF UNDERSTANDING**

This was distributed on 1 May with a deadline for comments and amendments by 13 May. Malcolm Roberts has advised me that you are in the process of obtaining legal advice and that we will have a response as soon as possible. He has indicated a number of areas which would be expected in the MoU, and this is very helpful.

****LIST OF 5,000 TOP-SELLING SUPERMARKET PRODUCTS** I apologise for the delay in sending this to you. We received a draft list of the 5,000 top-selling products from Fresh Logic this week. While the list is a good starting point, we feel we need to apply additional selection criteria to make the list relevant to both consumers and retailers. I will get this to you next week for comment. If there are products excluded which you feel should be included, we are happy to discuss this and expand the list where appropriate.

**** PROCEDURE FOR THE HANDLING AND INTEGRITY OF DATA** This document is attached for review.

Kind regards
Linda

Linda Magee
Head of Online Services & Business Growth CHOICE A not-for-profit company limited by guarantee ACN 000 281 925
57 Carrington Rd
Marrickville NSW 2204
Australia

Tel: 61 2 9577 3378
Fax: 61 2 9577 3377
Email: limagee@choice.com.au
Website: www.choice.com.au

Please consider the environment before printing this email This email (and any attachments) contains information that may be confidential, privileged or otherwise protected from disclosure. It is intended solely for the recipient(s) named above. If you received this email by mistake, please notify the sender and destroy it

and any copies. Thank you.

>>> "Malcolm Roberts" <mroberts@anra.com.au> 14/05/2009 2:12:07 pm >>>
Hi Linda

Thanks for your email to Margy.

As Margy advised in her last email, our members are obtaining legal advice on Choice's memorandum of understanding. Once this advice is received, we will give you a constructive response. The legal advice is taking some time to obtain because of the breadth of issues we believe need to be covered in the MOU.

I know Margy foreshadowed in her last email to Nick that retailers would provide their response as soon as possible. We don't regard the 13th as a deadline. We will do things as quickly as we can but we think it is more important to get things right than to chase deadlines. Nick for his part advised that we would receive the freshlogic report last Monday but we understand that sometimes things take longer than expected.

Without pre-empting the legal advice, I should mention again that retailers were expecting a more substantial MOU which would outline safeguards to protect the integrity of retailers' data and define the respective responsibilities of retailers and Choice. Given the costs and confidential commercial data involved, retailers have been looking for clear arrangements to ensure that data is properly presented and protected. As mentioned at our meeting, these arrangements are usually set at the outset of a commercial negotiation to ensure that the parties have the confidence to proceed.

I expect that our advice back to Choice will repeat the points raised at previous meetings. A MOU may need to include:

- * Clear statements of when one or both parties are liable. For example, would Choice be liable for commercial harm caused to a participating retailer if Choice is negligent ? What if any liabilities does a participating retailer have other than to provide data in good faith ?

- * How Choice is allowed to use the data provided by retailers.

- * How Choice will protect the integrity of the data - e.g. how will the data provided by retailers be manipulated by Choice.

- * What obligations in terms of fair comment, accurate presentation does Choice accept when presenting data ?

Attachment D.txt

- * An express statement that Choice does not own the data which remains the property of retailers. Data cannot be passed to third parties or used for any other purpose other than with the prior agreement of the relevant retailer/retailers.

- * How Choice intends to select the items for inclusion in "baskets" - e.g. like for like comparisons.

- * Choice would need to accept any liability which could arise from the website allowing consumers to select and compare personalised baskets from different retailers. The ACCC has guidelines on comparative advertising. As the operator of the website, Choice will need to accept liability.

- * The precise nature of the public caveats placed on the data.

- * Use of the website for commercial advertising by Choice.

This list is just indicative - I mention it to give you some idea of the issues which have been raised by retailers and which we would expect Choice to address in the MOU. The retailers are also looking at what constraints might apply through their contracts with third parties who buy data.

It would be very helpful if we could receive a copy of the freshlogic report. As you appreciate, we are keen to have some idea of the scope of your data request. Until we know how many items, and what items, are under consideration, it is impossible for retailers to begin meaningful work on this project.

Thank you. Trust all is going well with the project.

Regards

Malcolm

Malcolm Roberts

Director (Policy & Strategic Development)

Australian National Retailers Association

8/16 Bougainville Street

MANUKA ACT 2603

Attachment D.txt

This e-mail has been scanned for viruses by MCI's Internet Managed Scanning Services - powered by MessageLabs.

This e-mail has been scanned for viruses by MCI's Internet Managed Scanning Services - powered by MessageLabs.

This e-mail has been scanned for viruses by MCI's Internet Managed Scanning Services - powered by MessageLabs.

This e-mail has been scanned for viruses by MCI's Internet Managed Scanning Services - powered by MessageLabs.

choice

29 April 2009

Ms Margy Osmond
Chief Executive
ANRA
8/16 Bougainville St
Manuka ACT 2603

Dear Margy,

Re. Response to outstanding issues regarding Grocery Choice

Thank you for your letter of 28 April outlining your members' outstanding issues in relation to the Grocery Choice website. In advance of the meeting on Thursday I have tried to answer the concerns you and your members have raised. I have also suggested some areas of compromise in the spirit of wanting to find a way forward. I hope that our discussions on Thursday will result in a positive outcome for all, in particular the consumers and customers that we all wish to serve.

I would like to thank you and your members for participating in the forums that CHOICE has held to find workable solutions for Grocery Choice. CHOICE has involved all supermarkets in extensive discussions around the development of the site to ensure that it not only works for consumers but is also practical and affordable for the supermarkets. A number of the smaller supermarkets have responded positively and have already provided usable data.

I fully endorse your assertion that Grocery Choice must be accurate, independent and unbiased; these are principles which govern the way CHOICE operates, and they will certainly be key tenets of Grocery Choice along with a consumer-driven focus. The core purpose of the service is critical, that by working with you and your members we hope to facilitate greater price transparency which in turn will generate a more competitive groceries sector, something leading supermarkets should welcome.

I would now like to address each point as outlined in your letter:

57 Carrington Road Marrickville NSW 2204

Phone 02 9577 3333 Fax 02 9577 3377 Email ausconsumer@choice.com.au www.choice.com.au
The Australian Consumers' Association is a not-for-profit company limited by guarantee. ABN 72 000 281 925 ACN 000 281 925

choice

1. The current model proposed by CHOICE is based on an inaccurate premise in relation to how shelf prices are set.

CHOICE understands and acknowledges that prices can change at any time, that store managers have the discretion to vary prices and that no retailer has a real-time pricing system. In response to these concerns CHOICE will:

- Clearly state that the site is a price guide at a defined point in time and that prices may vary at the point-of-sale.
- Indicate to consumers that prices are indicative.
- Receive updated price files from retailers daily, weekly or as frequently as they would like.
- Clearly date and time stamp prices (eg 1100 hours on 28.8.09 or valid 24-29 May).
- Educate consumers on the complexities of grocery pricing through articles and directions on our website.

At a recent meeting with Woolworths, Ian Dunn clearly stated that the average selling price for products during any given week is only marginally different (a few cents) from the stated selling price at the start of any week. The price differential between stated and actual selling prices are minimal.

If you have outstanding concerns which are not satisfied by this response then we are very willing to discuss this further. Alternatively we have looked at a further option of obtaining point-of-sale price information. This option would state the price paid for products, rather than the price of items on the shelves.

Discussions with other supermarkets have suggested that either option is achievable, although the first option of shelf price is preferred.

2. Price volatility raises significant issues

a) Liability

CHOICE understands that retailers see risks in publishing information in good faith which is found to be inaccurate. That risk will be minimised if not eliminated by ensuring that there is no representation made through the Grocery Choice site that the price is anything other than what it is, a reported price valid at a particular point in time and subject to local variation.

To further mitigate risks CHOICE will:

- Draft a Memorandum of Understanding defining the retailer's responsibility to provide accurate information and CHOICE's responsibility to accurately publish that information.
- Apply technical and manual Quality Assurance processes to information supplied.

choice

b) Bait advertising
CHOICE will:

- Republish the special prices as they appear in retailers' catalogues and re-iterate the same disclaimers as used by retailers (eg available while stocks last).
- Facilitate consumer reporting of advertised products which are not available in reasonable quantities or for a reasonable time.
- Make clear to consumers the possible variation between price reported and actual shelf price.

3. In-store checking

While CHOICE acknowledges the reliability of in-store pricing, this solution is not a viable one for the following reasons:

- To check in-store prices for 5,000 items in 7,000 supermarkets across Australia, every week, is logistically and economically unviable and unsustainable.
- To check in-store prices on a reduced number of items at an affordable cost, has been proven not to be satisfactory, as evidenced by the original site launched by the ACCC.

CHOICE would also like to clarify that the suggested \$13 million Government contribution to the site is wildly inaccurate; the true figure is substantially less. The Government's financial contribution is designed to pay for:

- the development of the current website by the ACCC.
- the contract for in-store collection from August 08 - June 09 administered by the ACCC.
- the development of the site proposed by CHOICE.
- the ongoing management and operation of the site.

4. Product comparisons

CHOICE acknowledges the difficulty of comparing fresh food, meat and private label products. We also acknowledge that any solution implemented won't satisfy every retailer and at best will be a compromise. While the consumer will be the ultimate arbiter of shopping basket composition and perception of quality, and will apply the same shopping decision-making as they would in the supermarket, CHOICE proposes the following options:

1. Use size as a differentiator where applicable (eg small/medium/large apples) or budget/everyday/premium for meat, as decided by the retailer.

OR

2. List price and other product information provided by retailers and let consumers decide.

choice

CHOICE is genuinely open to finding a workable solution. It may be that option two works for the initial stages until CHOICE, the supermarkets and the Government can resolve the product categorisation issues.

Benefits and costs

CHOICE understands that many retailers offer benefits to their customers apart from price discounts, which may influence their shopping behaviour. CHOICE's role is to alert consumers to all the benefits and costs of dealing with particular retailers, not just products for sale. To address this CHOICE will:

- Highlight details about individual retailer loyalty and petrol discount offers or costs applied to credit card transactions or plastic bags, in the hover option available for each retailer on the final shopping list cost comparison page.

Like for like

The site gives consumers the discretion to choose according to their own preference for brands, private labels or Aldi.

5. Unit pricing

CHOICE will apply the federal government's regulations on unit pricing when they are handed down. CHOICE will publish the unit prices provided by retailers and will also have the capacity to calculate unit prices in accordance with any government regulations and guidelines.

6. Neutral website

CHOICE entered into a contract with the federal government to deliver a new grocery pricing service driven by consumers. Under the terms of the contract, CHOICE has the discretion to brand it as a CHOICE product and to include extra information in keeping with CHOICE's charter as a well-known and respected social enterprise. We have a duty to represent consumer interests on prices and industry practices and to report on those.

Over the last few months the team at CHOICE has talked about the benefits of Grocery Choice to the consumer, to enhanced competition in the groceries sector and specific benefits to the supermarkets. I want to reassure you that your cooperation with this project will bring additional benefits beyond what we have previously discussed, such as:

- CHOICE will be able to offer retailers aggregated information on demand segments derived from tracked consumer behaviour by location and shopping preferences.
- CHOICE will use our inaugural CHOICE Annual Awards in 2010 to recognise high achievement in the supermarket industry.

In addition I will want to upgrade the industry forum to an Industry Advisory Board to Grocery Choice which will continue constructive dialogue.

choice

I look forward to discussing these issues further at our meeting on Thursday. For the project to meet its delivery targets, we will need a definitive answer at the meeting as to your members' intention to join the project. Our overriding preference is to work with you on this project but if your motives are otherwise, we do have other sources of information we can use. The other sources of information will not be as good as information provided by your members and may be to their detriment.

Over the last week there has been a lot of media interest in grocery prices, partly because of my recent appointment, the new CPI data and the appetite for consumers to see some changes in the grocery sector. I have been overwhelmed by public support for what we are trying to achieve with Grocery Choice and the desire for supermarkets to work closely with us. Public sentiment and the current economic times make this service even more important than when it was conceived. I urge your members to work with CHOICE to deliver an unprecedented, collaborative site in the grocery sector.

Yours sincerely,



NICK STACE
CEO