

Attachment 1

**Additional Comments by Senator Nick Xenophon and
other Senators to the 2011 Economics References
Committee Report on *The impacts of supermarket price
decisions on the dairy industry***

**Additional Comments by
Independent Senator Nick Xenophon,
Nationals Senator John Williams,
Liberal Senator the Hon. Bill Heffernan,
Democratic Labor Party Senator John Madigan, and
Australian Greens Senator Christine Milne**

**Going 'Down Down': The long-term viability
of Australia's dairy industry**

1.1 Fresh drinking milk is a daily household staple, but the discounting of generic-brand milk to a level that even Woolworths deems 'unsustainable for the Australian dairy industry',¹ has created a situation of looming market failure in the fresh milk market.

1.2 While there may be short-term gain for consumers being able to purchase fresh milk for only \$1 per litre, the move to discount generic milk has serious long-term implications. It will damage the sustainability of dairy farmers, milk vendors, processors and ultimately supply of fresh milk to Australians.

1.3 Evidence from the United Kingdom has shown that this aggressive discounting ultimately leads to less choice for consumers, higher prices on products that are not staples and unsustainable pressure on farmers and others in the supply chain.

1.4 This unsustainable pressure severely impacts the supply chain by causing higher prices several years after the discounting, due to farmers leaving the industry and a loss of production for supply. The discounting cycle ultimately benefits no one except the retailer.

1.5 It should be noted that Coles was given an opportunity to provide additional evidence to the inquiry for its final report, but declined to appear at further hearings.

1.6 Given its pivotal role in commencing the milk price wars, and the consequences it has had on dairy farmers, milk vendors and processors, it seems extraordinary that Coles did not avail itself of this opportunity.

1.7 Since the deregulation of Australia's dairy industry in 1999, the number of dairy farmers has steadily decreased and the volume of milk production has decreased

1 Ms Natalie Samia, Woolworths Limited, *Submission 98*, p. 2.

from 11.3 billion litres in 2001/2002² to just over 9 billion litres in 2009/2010³. The supermarket milk price war will have an even deeper impact.

1.8 In its submission to the inquiry, Woolworths admitted that, while it would absorb the losses in the short term, contracts with dairy farmers and processors would ultimately have to be renegotiated:

These prices set a new benchmark, and can be expected to flow back to processors and farmers as new supply and pricing agreements are negotiated over the coming months and years.⁴

1.9 Comments by Wesfarmers' CEO Richard Goyder do not appear to support either the claim of 'staying down' or of absorbing the cost:

Obviously if any product range has substantiated and necessary cost increases, we will look to see if we can absorb that and if we can't, we will pass those on. In the long run milk will be no different.⁵

1.10 Irrespective of how Coles' and Woolworths' discount milk campaign is funded, the above statements make it clear that ultimately it will be the farmers, the processors and the consumers who will pay.

1.11 There is no question that the enormous market power of Coles and Woolworths, which, combined, control approximately 80 per cent of Australia's dry packaged grocery market, has allowed them to engage in pricing, procurement and marketing behaviour that significantly disadvantages smaller retailers and, in particular, farmers and processors.

1.12 Such massive market power has been allowed to occur due to a combination of factors, including state planning laws and competition laws that are weak, unclear or where remedies are available, they are not vigorously enforced.

The Role of the ACCC

1.13 The Australian Competition and Consumer Commission's (ACCC) 22 July 2011 response to the milk price war firmly cements this notion. The then-Chairman of the ACCC, Mr Graeme Samuel, indicated that the milk wars were potentially good for consumers and competition within the market:

It is important to note that anti-competitive purpose is the key factor here. Price cutting, or underselling competitors, does not necessarily constitute

2 Australian Bureau of Statistics, *The Australian Dairy Industry, 1301.0 – Year Book Australia, 2004*.

3 Dairy Australia, 'Dairy at a Glance', www.dairyaustralia.com.au/Statistics-and-markets/Farm-facts/Dairy-at-a-glance.aspx, accessed 29 October 2011.

4 Ms Natalie Samia, Woolworths Limited, *Submission 98*, p. 3.

5 *Courier Mail*, Wesfarmers hints at end to discounts, 29 July 2011, p. 38.

predatory pricing. Businesses often legitimately reduce their prices, and this is good for consumers and for competition in markets.⁶

1.14 The ACCC also indicated at the time that it would continue to monitor conduct within the dairy industry and grocery sector for signs of anti-competitive behaviour.⁷ The approach of the-then Chairman appears to have been narrow and blinkered.

1.15 As predicted, this 'wait and see' response has been shown to be inadequate in supplementary evidence provided to the committee.

1.16 Mr Brian Cassidy, Chief Executive Officer of the ACCC, told the committee during the ACCC's first appearance before the committee for this inquiry that the ACCC would wait for the impacts of the heavy price discounting to be fully realised before taking any action.

According to the wording in the act, we have to have a reason to believe not necessarily that there has been a breach but a reason to believe that there may have been a breach of the law or predation. We cannot just do it off the top of our hats; we do need to have some basis to form our suspicion. We have been challenged on this in court on occasions over a period of time. It is a fairly large threshold but we do need to have something.⁸

1.17 He continued:

Our frame of reference, if you like, is to enforce the law. We need to have conduct which, at least on the face of it, may constitute a breach of the act. We cannot look at a situation, and this goes a bit perhaps to some of Senator Heffernan's questions earlier, and say, 'We do not like that, so we're going to do something about it.' It has to be in the context of a potential breach of the law.⁹

1.18 It is concerning that the ACCC does not see that it is within its capacity to investigate potential negative impacts across the supermarket supply chain and to intervene before irreversible damage to the dairy industry is done, particularly given that it has already been indicated to the committee that dairy farmers are being affected financially.

6 Mr Graeme Samuel, ACCC: Coles discounting of house brand milk is not predatory pricing, www.accc.gov.au/content/index.phtml/itemId/998776/fromItemId/142, accessed 29 October 2011.

7 Mr Graeme Samuel, ACCC: Coles discounting of house brand milk is not predatory pricing, www.accc.gov.au/content/index.phtml/itemId/998776/fromItemId/142, accessed 29 October 2011.

8 Mr Brian Cassidy, ACCC, *Committee Hansard*, 9 March 2011, p. 22.

9 Mr Brian Cassidy, ACCC, *Committee Hansard*, 9 March 2011, p. 45.

1.19 Indeed, at the committee hearing on 6 October 2011, Mr Terry Toohey, Director of the Australian Dairy Farmers, indicated that the impacts of the milk wars were taking effect:

We randomly surveyed 60 of our dairy farmer members across all of New South Wales recently. The survey showed that, from the 2010-11 season to the 2011-12 season, the milk price for New South Wales dairy farmers decreased by 1.4c a litre, taking the average milk price from 47.7c down to 46.3c a litre. In 2010 New South Wales milk production was approximately one billion litres, according to Dairy Australia's statistics. Taking 1.4c a litre from our milk price equates to decreasing earnings in the New South Wales dairy industry by \$15 million or \$18,000 per farm on average.¹⁰

1.20 Mr Chris Griffin, President of the Australian Dairy Farmers, suggested that the Association's primary concerns with the milk price war still remained the same, despite the conclusion of investigations by the ACCC:

Back in March in my opening statement I made it clear that the core issue in this debate is that price cuts are unsustainable. That statement is becoming clearer by the day. As I said in March, milk priced at \$1 per litre simply is not sustainable; there is not enough money to support all of the supply chain at that price.¹¹

1.21 Mr Griffin further indicated that based on economic modelling, the consumer shift to generic milk as a result of the price wars could cost the value chain \$44 million annually.¹²

1.22 However, Mr Griffin has also indicated that, should the current year-to-date shift to generic milk be annualised, and as a result branded products discounted to remain competitive, an annual loss of \$227 million could be likely.¹³

1.23 Milk processor Parmalat Australia Ltd also indicated to the committee that milk price discounting is 'placing enormous pressure on processor margins through loss of branded sales', and has the 'potential to destroy the Queensland and Northern NSW dairy industries'.¹⁴

1.24 Further, a number of submitters suggested that uncertainty in the industry is undermining investment confidence. The Australian Dairy Farmers suggested that the milk price war and the long-term industry outlook are key reasons for producers limiting their investment or leaving the dairy industry altogether.

10 Australian Dairy Farmers, *Committee Hansard*, 6 October 2011, p. 3.

11 Australian Dairy Farmers, *Committee Hansard*, 6 October 2011, p. 1.

12 Australian Dairy Farmers, *Committee Hansard*, 6 October 2011, p. 2.

13 Australian Dairy Farmers, *Committee Hansard*, 6 October 2011, p. 2.

14 Parmalat Australia Ltd, *Submission 117*, p. 2.

1.25 It is clear from the evidence that the heavy discounting of generic milk products is having a dramatic financial impact on dairy farmers and processors.

1.26 Furthermore, if experiences in the United Kingdom are anything to go by, independent retailers will also suffer a considerable loss of sales as consumers opt for discounted milk.

1.27 In its submission to the committee, National Foods (now Lion Dairy & Drinks) elaborated on the experience in the UK:

While the price reduction did not increase the demand for grocery fresh white milk, the big 4 retailers were able to increase their share of grocery fresh white milk (from 55% to 59%) in just 3 months...

Further, after the big 4 retailers in the United Kingdom reduced the price of house brand milk, herds declined and more milk imports increased to the United Kingdom.

While industry level data is not yet available, National Foods anticipates that this price reduction will also result in a further shift in milk sales from independent grocery stores (e.g. IGA, Ritchies, Foodland, Franklins) and the non-grocery channel.¹⁵

1.28 The Lion Dairy & Drinks (formerly National Foods) supplementary submission also indicated that following the \$1 per litre generic milk pricing, sales at petrol stations and convenience stores declined by 2.7 per cent while grocery volumes gained 8.4 per cent over the same period.¹⁶ Meanwhile, milk sales in the 'unstructured convenience channel', which includes takeaway food shops, corner stores, coffee shops and newsagents, have decreased by 15.1 per cent on the previous year.¹⁷

1.29 The above impact is substantial and will only get worse. It shows that part of Coles' strategy is to take market share from the non-grocery channel, which means there will be fewer corner stores and independent petrol stations to compete with.

1.30 Given this impact, the ACCC's statements that it believes Coles' competitors consist of solely other supermarket retailers, are surprising.¹⁸

1.31 It is worth noting that the unparalleled market power of Coles and Woolworths in Australia is not replicated anywhere else in the world.

1.32 However, Lion Dairy & Drinks (formerly National Foods) actually suggests that the impacts could be much more severe in Australia, given our high concentration of grocery retailers.

15 National Foods, *Submission 97*, pp. 18-19.

16 Lion Dairy & Drinks, *Submission 159*, p. 7.

17 Lion Dairy & Drinks, *Submission 159*, p. 8.

18 ACCC, answers to questions on notice, 20 October 2011.

1.33 Mr Duncan Makeig of Lion Dairy & Drinks suggested in his appearance before the committee that in the long-term, providing fresh milk to non-grocery outlets may not be viable:

...the longer term impacts of this pricing on the diversity and choice available in the industry today have to be weighed up against the short-term benefits for customers that shop at the large retail chains. In the longer run it may become uneconomic to provide fresh white milk to non-grocery outlets in Australia. It is clear that, unless something is done to address this, the dairy industry will undergo some serious structural change. There will be a lot of losers in that change—distributors, franchisees, small retail outlets, milk vendors, farmers and the Australian consumer.¹⁹

1.34 He continued:

What we are trying to explain to the Senate is that if the political will and the population of Australia is comfortable with that accelerating from the position currently where 100,000 outlets sell milk to, say, 1,000 outlets and it is just an acceptable evolution of the commercial retail markets in Australia then we think that will happen.²⁰

1.35 It should be noted that National Foods has expressed concerns that it is looking at a negative return on their investments, a process which is clearly not sustainable either.

1.36 Therefore, the ACCC's assertion that the major impact of the reduction in milk prices has been on the supermarkets is simply not justified by the evidence received by the committee.

1.37 It is also surprising that the ACCC feels able to make such a statement given the limited nature of their inquiries. When questioned about Coles absorbing the cost of the discounting they admitted that there had been no monitoring of the 12,000–18,000 other items in the average Coles stores.²¹

1.38 Throughout this inquiry, it has become apparent that the ACCC feels it is difficult to prove instances of predatory pricing and anti-competitive behaviour. This is due to a lack of transparency regarding the pricing behaviour of the major supermarket chains, as well as between producers and processors.

1.39 Furthermore, from a consumer perspective, the dominance of the major supermarkets means that while they may be able to selectively reduce prices, smaller milk vendors are not able to and therefore there is a lack of effective competition in the dairy sector. This lack of effective competition disadvantages consumers and can lead to higher retail prices over time.

19 Mr Duncan Makeig, Lion Dairy & Drinks, *Committee Hansard*, 6 October 2011, p. 13.

20 Mr Duncan Makeig, Lion Dairy & Drinks, *Committee Hansard*, 6 October 2011, p. 17.

21 ACCC, *Committee Hansard*, 6 October 2011, p. 37.

1.40 It is clear that the relevant legislation must be amended as a matter of priority to ensure that anti-competitive effects are monitored and dealt with comprehensively and effectively.

1.41 The fact that Woolworths and Coles (through its parent company Wesfarmers) hold the lion's share of the supermarket industry, and are increasing their share of the home improvement, liquor and petrol industries, should surely be of considerable concern to our consumer and competition watchdog.

1.42 Unlike the United Kingdom and the United States, Australia does not have an express legislative prohibition against anti-competitive price discrimination. Similarly, Australia does not have a general divestiture power. Such a power also exists in the United Kingdom and the United States.

1.43 Divestiture powers effectively deal with market power by forcing businesses to 'break up' their companies once they become so large they become anti-competitive. This in turn helps maintain a level playing field and fosters more effective competition.

1.44 Associate Professor Frank Zumbo, School of Business Law and Taxation at the University of New South Wales, suggests that Australia is 'out of step' with international practice when it comes to competition legislation:

There are two areas that need to be remedied in our competition laws. The first is we need an effective prohibition against any competitive price discrimination. Australia is out of line, out of step, with international practice in this area. Other jurisdictions have express prohibitions against anti-competitive price discrimination. We do not. Any hope that section 46 would deal with that issue, I have to say, with all due respect, is somewhat misplaced if not delusional. We therefore do need an express prohibition against anti-competitive price discrimination.

The other one that I do not mention here but is one of my old favourites is that we need a general divestiture power, as per the United Kingdom and the United States. Once again, Australia is out of step with international best practice in not having a general divestiture power. To the extent that those two provisions are not in our competition laws we are out of step with international best practice and those two areas need to be remedied.²²

Recommendation 1

1.45 Amend section 46 of the *Competition and Consumer Act 2010* to effectively prohibit anti-competitive price discrimination. Consideration should be given to relevant legislation in place in the United States and United Kingdom, and the reintroduction of an 'effects test' as per section 49 of the *Trade Practices Act 1974*.

22 Associate Professor Frank Zumbo, *Committee Hansard*, 9 March 2011, p. 51.

Recommendation 2

1.46 Amend the *Competition and Consumer Act 2010* to provide for a general divestiture power whereby the ACCC could, in appropriate cases, apply to the Courts for the breakup of monopolies or dominant companies that engage in conduct that undermines competition.

1.47 Another key issue raised with the ACCC during the inquiry was whether it has investigated if Coles has cross-subsidised the lower prices on home brand milk with higher prices on other goods. The question remains as to whether prices and profit margins on other products are increased to make up the loss of profit on product lines that have been reduced.

1.48 The answers provided by the ACCC to a series of Questions on Notice related to this issue are concerning:

Question:

Would it be misleading if a supermarket advertised heavily that it had reduced the price of 6,000 products, but in reality it had also increased the price on the other 15,000 products or more in the supermarket?

Answer:

In addition to considering the accuracy of the representations the Courts will also consider the overall impression of the representations. The ACCC when assessing such matters needs to consider all the relevant circumstances as to whether the representations are misleading and deceptive.

Question:

Does the ACCC agree that misleading conduct under the Australian Consumer Law can occur through silence or half truths, so isn't it potentially misleading if Coles is heavily advertising the discounting of 6,000 products, but Coles is silent on increases on the other 15,000 products or more?

Answer:

The Courts have found that conduct by silence can be misleading and deceptive. Whether silence is misleading or deceptive is dependent upon all the relevant circumstances being taken into account including any specific representations made.²³

1.49 The above answers suggest that the ACCC has not appropriately and thoroughly investigated this issue.

1.50 The question of whether Coles' 'staying down' signage was misleading was also asked of the ACCC:

23 Australian Competition and Consumer Commission, answers to questions on notice, received 20 October 2011.

Question:

Isn't the "staying down" slogan, especially when the signage is seen across the supermarket, creating the impression of a discount across the supermarket product range?

Answer:

It is not possible for the ACCC to form a view that the use of this slogan in itself is likely to mislead and deceive. Consistent with previous answers we are required to consider all the circumstances including the context in which the slogan is made.

1.51 The ACCC's answer to this question was less than satisfactory. The inference can be drawn from these answers that the ACCC has yet to undertake a full and wide-ranging investigation into this issue.

1.52 It is also questionable whether Coles' public claims in its milk discount promotion campaign that its discounting would not affect processors or dairy farmers are now misleading given the evidence presented to the inquiry that the discounting is harming processors and dairy farmers.

Recommendation 3

1.53 That the ACCC undertake a full investigation into whether Coles has engaged in misleading or deceptive conduct as a result of an advertising campaign that may have created the impression that prices are coming down across the supermarket when only a percentage of products have in fact been reduced.

Recommendation 4

1.54 That the Federal Government give a direction to the ACCC under the *Competition and Consumer Act 2010* to formally monitor pricing behaviour by the supermarket chains and along the supermarket supply chain.

Supply Chain Issues

1.55 Another issue raised throughout the inquiry was the lack of transparency in contract negotiations throughout the supply chain. This lack of transparency extends to pricing behaviour by the major supermarket chains and along the supermarket supply chain.

1.56 For consumers, this means a lack of full transparency in relation to the prices of products sold in a particular supermarket. Apart from the prices in relation to weekly specials, consumers are generally not given online access to all the in-store prices of products sold in a supermarket.

1.57 In its submission to the inquiry, Queensland Dairy Farmers argued that there was a need for 'greater transparency'²⁴ when it comes to the contracts offered to farmers by processors.

1.58 As discussed in the Second Interim Report, the discrepancy between the prices paid to the processor and the producer as compared to the retailers and processors was a key concern of the Australian Dairy Farmers:

Senator COLBECK—...I wanted to make sure it was on the record that some of the arguments that are being used by Coles in this whole debate are pretty spurious. In their letter they talk about transparency in pricing. You gave some evidence that farm gate prices are on your website, so it is pretty easy to get information on farm gate prices. The real place where prices are hidden is, in fact, between the wholesaler and the retailer. That is where we have trouble getting a real understanding of what the numbers are. So where costs are really hidden is not at the farm gate; they are, in fact, hidden because of commercial-in-confidence reasons between the wholesaler and the retailer. Would that be correct?

Mr Drury—Yes.

Senator COLBECK—You do not have any sense of any of those numbers?

Mr Griffin—No, I am not aware of any. I have asked the question: is it commercial in confidence? That is the answer we get.

Senator COLBECK—So for Coles to claim that the lack of transparency is, in fact, at the farm gate is not necessarily the case.

Mr Griffin—That is right.²⁵

1.59 Indeed, the lack of communication within the supply chain; that is, farmers are unable to talk to retailers and vice versa, means that, in many ways, the 'middle men', the processors, act as a Chinese Wall.

1.60 Mr John Cummings, Chairman, National Association of Retail Grocers of Australia (NARGA) supported the calls for greater transparency in the pricing mechanism:

There is a total lack of transparency. Again, we go back to the grocery inquiry. We asked for transparency, and I think farmers have every right to expect to see transparency. If I am going to go broke, at least tell me why I am going broke.²⁶

1.61 One method of addressing this lack of transparency is by establishing a Small Business and Farming Commissioner or a Supermarket Ombudsman, to assist dairy

24 Queensland Dairy Farmers, *Submission 94*, p. 27.

25 Australian Dairy Farmers, *Committee Hansard*, 8 March 2011, p. 18.

26 NARGA, *Committee Hansard*, 9 March 2011, p. 14.

farmers in their dealings with milk processors, and milk processors in their dealings with retailers.

1.62 Such a proposal is supported by consumer group CHOICE, who have called for the establishment of a Supermarket Ombudsman to help foster a level playing field in what is becoming an increasingly highly-concentrated retail and supermarket industry.

1.63 In his appearance before the committee, CHOICE's Mr Christopher Zinn further elaborated on how the organisation envisaged an ombudsman could operate:

The ombudsman would ensure that there is a constant focus on reform and competition in the supermarket sector. The ombudsman could drive greater transparency along the supply chain, helping provide consumers with the confidence that they are paying fair prices. The ombudsman would also be able to direct inquiries and make recommendations for change where regulations or legislation is not working as it should.²⁷

1.64 Mr Zinn continued:

... If there is a reasonable belief that down the track the supply of milk, the quality of milk, the types of milk or the brands of milk that are being available or other people who retail it could suffer as a result, then the setting up of an ombudsman is warranted.²⁸

1.65 This proposal is also supported by Associate Professor Frank Zumbo, who suggested that the role of an Ombudsman or Commissioner could assist producers in negotiating their contracts with processors:

The role of a commissioner is to assist, in this particular situation, dairy farmers in their dealings with milk processors. In this context the dairy farmers themselves could approach the commissioner and an industry association on behalf of the dairy farmers could approach the commissioner, so the commissioner is a vehicle.²⁹

1.66 While Associate Professor Zumbo has suggested that a dispute resolution mechanism could be one of the Commissioner's roles, it could also address issues relating to a lack of transparency in negotiations and assist in developing industry codes.

1.67 There is considerable concern that the tactic of using milk as a cut-price marketing agent will devalue the supply chain to an unsustainable level, and therefore it is critical that suppliers and farmers have access to effective dispute resolution processes.

27 CHOICE, *Committee Hansard*, 29 March 2011, p. 84.

28 CHOICE, *Committee Hansard*, 29 March 2011, p. 89.

29 Associate Professor Frank Zumbo, *Committee Hansard*, 9 March 2011, p. 52.

1.68 Further, given the concern that supply, quality and choice of milk available to consumers could suffer as a result of price discounting, the establishment of an ombudsman is warranted.

Recommendation 5

1.69 That the Federal Government establish an Office of the Australian Small Business and Farming Commissioner.

Conduct Issues

1.70 The committee heard evidence about conduct issues along the supermarket supply chain. The behaviour of industry participants can be dealt with effectively through a new mandatory industry code of conduct under the *Competition and Consumer Act 2010*.

Given the ongoing relationship between milk processors and dairy farmers it is important that there is full transparency between the two groups regarding the immediate and future challenges in their business relationship. It is also important that dairy farmers and milk processor have access to timely and cost effective dispute resolution processes.

A framework for full transparency and timely and cost effective dispute resolution could be usefully provided by a mandatory dairy industry code of conduct under the *Competition and Consumer Act*.³⁰

1.71 Such a mandatory code could extend across the supermarket supply chain and include the major supermarket chains. An Australian mandatory code of conduct could usefully draw on the work done in the United Kingdom in developing a Supermarket Code of Practice.

1.72 A mandatory code would need to be backed up by financial penalties for breaches of the code.

1.73 Concerns have also been expressed regarding possible abuses of contractual power along the supermarket supply chain, including by the major supermarket chains. In this regard, it would be appropriate to extend the Australian Consumer Law to deal with unfair contract terms in business to business agreement involving small businesses and farmers.

Ensuring proper judicial scrutiny of unfair terms in business to business agreements involving small businesses and farmers would go a long way to promoting better business relationships within the Australian dairy industry. Such judicial scrutiny of unfair contract terms is currently lacking and unfortunately can act as a green light to, for example, milk processors that are intent on including contract terms that go beyond what is reasonably necessary to protecting their legitimate interests. In such circumstances, the

30 Associate Professor Frank Zumbo, *Submission 99*, p. 18.

new national legislative framework against unfair terms in consumer contracts could quite easily be extended to deal with unfair terms within business to business agreements.³¹

1.74 It is worthwhile looking at actions taken in the United Kingdom, where similar discounting strategies already played out with their harmful consequences on farmers and processors.

1.75 In the United Kingdom, the Competition Commission (CC) found that one of the features that adversely affected competition in the market was the exercise of buyer power by certain grocery retailers with respect to their suppliers of groceries, through the adoption of supply chain practices that transfer excessive risks and unexpected costs to those suppliers.

1.76 The CC found that there was a detrimental effect on customers resulting from the adverse affect on competition.

1.77 In its April 2008 report titled 'The supply of groceries in the UK market investigation', the CC considered that a package of remedies consisting of the following key elements would be effective and proportionate in dealing with the various features of the market identified as having an adverse effect on competition:

- (a) the establishment of a Groceries Supply Code of Practice (GSCOP); and
- (b) the establishment of a GSCOP Ombudsman to monitor and enforce compliance with the GSCOP.³²

1.78 The new UK Code of Practice (the Groceries Code) was designed to improve the relationship between big retailers and their suppliers by preventing certain practices from occurring.

1.79 The Groceries Code came into force on 4 February 2010 and applies to all retailers with an annual turnover of more than £1 billion in groceries in the UK (there are ten such retailers in the UK) and it must be incorporated into contracts with suppliers.

Recommendation 6

1.80 That the Federal Government develop a mandatory industry code of conduct under the *Competition and Consumer Act 2010* dealing with relationships between industry participants along the supermarket supply chain. Such a code should also include the major supermarket chains.

31 Associate Professor Frank Zumbo, *Submission 99*, p. 20.

32 Competition Commission (UK), 'The supply of groceries in the UK market investigation', April 2008, www.competition-commission.org.uk/rep_pub/reports/2008/fulltext/538.pdf, accessed 1 November 2011.

Recommendation 7

1.81 That the Federal Government extend the Australian Consumer Law framework dealing with unfair contract terms to business to business agreements involving small businesses and farmers.

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