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JOINT SELECT COMMITTEE ON THE RETAILING SECTOR

Reference: Industry concentration in the retailing sector

FRIDAY, 16 APRIL 1999

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JOINT SELECT COMMITTEE ON THE RETAILING SECTOR

Friday, 16 April 1999

Members: Mr Baird *(Chair)*, Mr Jenkins *(Deputy Chair)*, Senators Boswell, Ferris, Forshaw, Murray and Schacht and Mrs Elson, Mr Fitzgibbon and Mr Nairn

Senators and members in attendance: Senators Boswell and Forshaw and Mr Baird, Mrs Elson, Mr Jenkins and Mr Nairn

Terms of reference for the inquiry:

To inquire into:

(a) the degree of industry concentration within the retailing sector in Australia, with particular reference to the impact of that industry concentration on the ability of small independent retailers to compete fairly in the retail sector;

(b) overseas developments with respect to this issue, highlighting approaches adopted in OECD economies; and

(c) possible revenue-neutral courses of action by the Federal Government (ie courses of action that do not involve taxation reform).

WITNESSES

Committee met at 9.06 a.m.

CHAIR—This is a hearing of the Joint Select Committee on the Retailing Sector. Today's hearing at Brisbane Council City Hall is part of the committee's inquiry into industry concentration in the retail sector. I welcome Mr Jim Stewart and Dr Michael Wilson.

STEWART, Mr Charles James, State President, Queensland Hotels Association

WILSON, Dr Michael Francis, Consultant, Queensland Hotels Association

CHAIR—The committee prefers all evidence to be held in public, but at any time, if you prefer your evidence to be taken in camera, I am sure that we will refer it to the committee and they will consider it. The main question in regard to that would be that at some later stage the Senate may decide to make all evidence public. Having said that, the committee has before it submission 159 dated March 1999. Are there any additions or deletions you wish to make to your submissions?

Mr Stewart—Not additions or deletions, Chairman, but we could perhaps expand on it if you wish us to.

CHAIR—All right. I now invite you to make your opening statement and then we will follow that with questions. Thank you for coming.

Mr Stewart—Thank you for your invitation, Chairman and members of the committee. By way of very brief background, the Queensland Hotels Association has existed in this state since 1885 with the principal duty of operating within the community to protect and serve the interests of its members, being the more than 1,200 hotel keepers of Queensland. The QHA represents hotels of all shapes and sizes from the small and as far away as the Birdsville Hotel through to hotels such as Conrad Jupiters on the Gold Coast, so we are representative of the entire spectrum of hotels in this state. Amongst the ones that are more concerned with the purpose of the inquiry, we employ over 26,000 Queenslanders in various capacities within the pub section of the industry. That does not include all the people employed in four- and five-star hotels. In addition, the hotels rather obviously provide a very wide range of goods and service to all population centres within Queensland. This includes the provision of packaged liquor sales.

To bring us to the issues we wish to raise today, we feel it is worth mentioning a very brief background on liquor legislation in Queensland which governs our industry and the reform that has occurred to that over many years. I might begin by saying that, although the industry existed before 1912, the first statewide legislation did not come into place until 1912 and it was an amended act until 1992. We have 80 years of development of the industry and amendments over many different governments, but the first major reform with a complete new act happened in 1992. That followed a four-year process from 1988 when the National Party government of the day introduced an inquiry into the industry.

They reviewed the entire legislation and made a recommendation which ironically then went to the new Goss Labor Party government when they came to office. That government then determined what became the 1992 act, which took into account a number of major changes to the structure of the industry in Queensland. Since then we have gone on to see numerous minor changes, culminating in a review in 1997-98 that led to a bill that was before the parliament when the last change of government occurred.

In this year we have been dealing since December-January with the national competition review process of our legislation. Through all the reviews that have been conducted by successive governments it has been determined that what is now the current model for the hotel industry, and therefore the public retailing of liquor in Queensland, is the most responsible and effective way to achieve that. In Queensland only licensed clubs can sell packaged liquor to their members and their guests, or hotels to the general public. The 1992 act reinforced a concept which had been modelled in 1989 and then confirmed in 1992, and that is the detached bottle shop. It is something that is unique to Queensland, and how it works can be misunderstood both in our community here and certainly interstate.

As I said before, successive governments have held that the hotel industry should be accountable and responsible for the operation of off-premises liquor sales. The quid pro quo for that was that we put on the line our entire licence and the entire premises attached thereto. The detached bottle shop is not a separate entity to a hotel; it is part of the hotel premises. It just happens to be in a different location. It is part of the hotel licence, so any breach of the act that may occur in the detached bottle shop, such as the serving of an under-age person, affects the principal licence where it is located.

The penalty for such breaches under the Queensland legislation can be cancellation of licence, so we are talking about putting on the line the entire business, land, and probably in most cases the entire investment of a family or a number of families in a hotel business, for the privilege of meeting what was perceived to be at the time the community need for more convenient liquor sales through shopping centres and other retail areas. In that period of time about 450 retail outlets have been provided throughout Queensland. The current NCP review process will determine whether that has been a successful model but, as I say, successive governments have held the view that it has been. It is certainly looked upon by the concerned welfare sector as something that is the best way to regulate what is a product that needs regulation. That is the concept behind the detached bottle shop.

The other rule that applies, again as part of the regulation control aspect, is the prohibition on more than three detached shops being granted to any one licence. There is also a prohibition on going beyond a five-kilometre radius of the premises. A public need test is done on every site, so the liquor licensing division is determining whether there is public need or whether the application for a detached shop fits the other criteria before a licence is granted. With 1,200 potential licensees at three each it is 3,600. There are only 450, which gives an indication that over those seven or eight years of their existence they have been properly and thoroughly vetted through the application and granting process.

That brings me, Chairman, to the shopping centre issue. We, as a by-product of that process, have become tenants in retail shopping centres of all sizes from the shopping town type of complex through strip shopping to stand-alone shops. It has raised the issue amongst our members of the structure of the lease and rental situation within the operations. We have found, as I am sure you have heard from plenty of others, that the structure seems to be based from the major retailers down to the smallest in terms of what they pay and how they pay it.

We accept that we are actually limited by our legislation to a space limitation of 100 square metres plus 30 square metres of storage, so any application that our members may make to seek space in a shopping centre cannot be for more than 130 square metres anyway. We do not have any position to say to a landlord that we are going to take 2,000 square metres or any significant holding that might get us some discount for size. We have experienced first hand at all levels and right throughout the state the fact that the per square metre rate that we pay is at a great premium compared to what is paid by the major anchor tenants of whatever sized shopping centre it is, and that can apply to smaller strip shops as well, because we are often one of the smallest shops.

So we would draw to the attention of the committee that, as part of the process of acting responsibly, successive Queensland governments have established this mechanism and we feel that, as operators, we are then disadvantaged by a system that allows really a pro rata burden to be placed on us in the form of rents and other lease conditions that do not apply across the board—probably no different to any other tenant of similar size.

On other issues, we would like to refer briefly to and elaborate upon our comments on buying power. We have for many years, obviously, competed with the major retailers with products, the obvious ones being things like coca-cola and other soft drinks. It is more than anecdotal evidence, it is long-established, that many of our members, particularly the smaller ones in regional centres—and in fact nowadays even the bigger ones in the city—buy their products from the local supermarket, because they certainly cannot buy as cheap as that from the wholesaler—or the manufacturer in the case of coke and the other market leaders. We have been concerned about that for a long time. We have never had a satisfactory explanation from our suppliers as to how something like that can arise.

It also draws our attention and concern to the process of wholesaling generally and that the ownership of that should be examined. One of our concerns has been that over the years we feel that the sales tax base has been eroded. If the retail price can be set as low as it is in some cases, then we question whether the full sales tax is being paid on the process on the way through.

CHAIR—Just as a matter of interest, I have just made a note to the secretary of the committee that we could perhaps ask Coca-Cola to appear before this committee and explain how they go about their pricing, so that may throw some light on it. On the other hand, they may say nothing to it, because it is a comment that has been made in different parts of Australia.

Mr Stewart—Thank you, Chairman. It will be certainly a commercial issue that they will be concerned about. We do not pick on them deliberately, it is just that they happen to be, of course, the market leader in their sector. On the sales tax issue, if I could—and expanding across borders—having been, and continuing to be, in the NCP process here with the review of our act, it has led us to thoroughly investigate the retailing of liquor in other states, and what the current position is in each one.

We find all sorts of different outcomes, but one that is consistent is that the majors, where they are involved in the liquor industry, certainly treat liquor as they do their other products and wholesale to themselves, which effectively means they regulate what the sales taxable price will be. This is a facility which is, obviously, not available to small retailers. So that is something that is of particular concern, again, to our regional and country members right throughout Queensland where they are dealing with the additional onerous costs of freight, something that is probably unique to regional Queensland in that we have such a decentralised population of both people and communities, and it is certainly a major concern that this sort of difference can take place.

CHAIR—We welcome Senator Boswell.

Senator BOSWELL—Sorry I am late. Sorry I am late, Mr Stewart.

Mr Stewart—Good morning, Senator. Chairman, the last thing I would like to address, if I could, is what we have seen throughout the process of the NCP review, and I understand that the NCP itself is perhaps not part of your brief, but I think the process has been interesting, particularly in relation to our industry and the effect and the influence that the retailers have had in the discussions. The state government identified I think nine areas of concern they had, issues that may be anti-competitive, and put them to the community back in December-January this year. We have been through the entire process in our submissions, we have had hearings throughout the state, and I think in six regional centres as well as in Brisbane.

The overwhelming response from the community has amazed me, having attended most of the hearings personally. I have been, I must admit, surprised at the community turnout that came in support of a view that we would of course agree with, and that is that there is sufficient deregulation of the industry currently. There were recurring community issues raised by a wide spectrum of organisations. Local governments, the Country Women's Association, the Drug and Alcohol Foundation, Drug-Arm and even the Boy Scouts all appeared at various hearings throughout the state. What they were most concerned about, apart from the health and welfare problem angles, were things such as loss of local jobs and therefore the flow-on effect of that in their communities and the local economy.

Some very interesting models were put to the committee for towns such as Warwick and Mackay and Mount Isa. I note that later today you are hearing from the mayor of Warwick, and it will be interesting to hear what he has to say. He submitted to the inquiry and was quite straightforward in what he had to say about the effects on local communities. We have also faced a massive newspaper advertising campaign and a massive point-of-sale campaign by the retailers on one issue. That is one of the cornerstone problems we have with the NCP process. We are looking at nine issues. We have a document that was submitted to the process that covers those nine issues and all the social effects that would come from further deregulating the access to liquor. That is, as I say, under consideration.

But, on the other side, we say to the review process that we are a package; we are saying there is a package out there of responsibility, responsive hospitality, that is tied together with the various privileges that exist under the licence, and we are aware of that. I personally place my business at risk every day that I trade. If any of my staff or management breach the act in the course of their duties, I am then liable personally. It is a responsibility we carry. We accept it because with it comes certain privileges. What we have seen the retail sector trying to do is to take out one of those privileges, but not take on any of the responsibility with it. There is some lip-service paid to what training and so forth they would provide to their staff to deal with the issue, but its relevance is lessened greatly by the fact that their capital and personal commitment is not there. There is no special capital and commitment required to establish a section of a retail store to provide for the sale of a product that should be regulated, such as liquor.

However, on our side of the fence, over the years governments have regulated heavily and enforced capital expenditure before granting the privilege of the licence. So, as I say, we have got the capital on the line, we have got the responsibility on the line, before the licence is granted and before we can trade with the public. We have had a great deal of difficulty in saying that we accept—and we do not believe the community accepts it, despite the massive campaigns—that there is need for further deregulation.

As I say, the issue that would concern this committee is the resources that have been put into this campaign by the retailers, and I cite this, for example, from my own local paper. My principal business is on the Sunshine Coast in Queensland. We ran our Easter ad for our retail sector, which we have been doing for 21 years, in the weekly paper on the Wednesday before Easter. It is a two-page colour spread which I will hand up to you, just to give you an idea. Now, that is meeting the marketplace up there, the requirements of the public for a full range of products at a price. And on the next page was the ad run by the Retailers Association and others saying that it was a bad idea that they were not doing exactly the same thing as we were doing on the previous page.

Needless to say, in that case the local paper decided that they had maybe treated us a bit unfairly by running the ads conjunctively. But we feel that that group represented at the bottom of that ad would have had more than the opportunity to make their point over the years and successive governments have said, ‘No, we’re going another way.’ We highlight it to the committee on the grounds that it is relevant in the discussion of their market domination and their intention to actually gain more market share of the retail sector in Australia. Chairman, I think that was principally all we wanted to add.

CHAIR—Thank you. Did you want to add something, Dr Wilson?

Dr Wilson—Mr Chairman and committee members, the Queensland hotel industry, the packaged liquor side of it, is a unique opportunity to understand whether or not major retailers can deliver a lower price. For instance, for comparison, in New South Wales and Victoria the major retailers such as Coles Myer have access to retail liquor sales through their outlets such as Liquorland and so on. One of the main arguments by the major retailers is that through their size, through their ability to buy, through their ability to have efficient distribution and through their ability to efficiently retail, they can deliver benefits to the consumer through lower prices.

Queensland packaged liquor sales does not allow any majors to come in. Most of the 1,200 participants are single hotel businesses run by one family, so one would imagine then that the retail price of liquor in New South Wales and Victoria would be substantially less than that of Queensland if the arguments of the major retailers were that they were actually delivering benefits to the consumers. I will pass this up to the secretary of the committee. The Queensland Hotels Association has run, over the last few months in association with the NCP review, surveys of the price of liquor in New South Wales, Victoria and in Queensland. Basically what was done was that a basket of goods was assembled, which was a carton of VB stubbies, a carton of Fourex Gold stubbies, a bottle of Bundaberg rum, a cask of wine and a medium priced Rosemount white and a Rosemount red.

One of the results is there: we have got this trolley priced in three liquor stores in Queensland not associated with major retailers, and three in New South Wales and three in Victoria. The prices have all changed, but what it has shown is that never was Queensland the highest. In the survey you have got there, Queensland was second. Victoria was lowest, a dollar or so above that was Queensland, and New South Wales was about $6 above that. Previous surveys have shown that they are all about the same.

CHAIR—Queensland was second highest or second lowest?

Dr Wilson—The same.

CHAIR—Sorry?

Dr Wilson—Sorry, Mr Chairman, it is the same—out of three measures. Other surveys as well, which we can forward, show that Queensland has actually been the lowest at times. The point is not whether a dollar here or there is going to make a big difference, but that the major retailers in the southern states have not delivered cheaper prices than Queensland retail liquor sales on any sort of consistent basis, or even on an individual basis, when the Queensland industry is run totally by basically small business.

CHAIR—Thank you. I presume your doctorate is in economics. Is that right?

Dr Wilson—No, it is in engineering.

CHAIR—I would now like to invite Mr Nairn to start the questioning.

Mr NAIRN—Thank you, Mr Chairman. Can I clarify what you were saying then about Queensland, because the way I read your report, the 65 per cent that you say is in the non-hotel area—

Dr Wilson—That is what we would anticipate would be lost if retailers get access to—

Mr NAIRN—So that is an estimation.

Dr Wilson—That is an estimation of what would happen if the Queensland act is changed under the present NCP review.

Mr NAIRN—So the figures that you have provided here for between October 1997 and October 1998 are national?

Dr Wilson—No, they are A.C. Nielsen figures for New South Wales and Victoria.

Mr NAIRN—New South Wales and Victoria, right.

Dr Wilson—An average between New South Wales and Victorian A.C. Nielsen figures, showing what is sold in hotels and what is sold in retail outlets.

Mr NAIRN—So currently in Queensland it is only hotels and bottle shops that might be part of the hotel?

Dr Wilson—And licensed clubs, which have the ability to sell packaged liquor to their members with an 18-litre limit.

Mr NAIRN—What would you estimate the market share of that would be in hotels and the clubs?

Dr Wilson—My estimate would be about 10 per cent of the total market.

Mr Stewart—Eight to 10 per cent.

Mr NAIRN—Now I understand. The A.C. Nielsen report talked about metro national. I could not understand what that related to. I have a problem with some of your recommendations and how you would see these being implemented. I will take your recommendations 7, 8, 9 and 10 which are all about buying practices. Recommendation 8 says:

Amend trade practices legislation to force major retailers to open their books to the regulators.

What does that mean?

Dr Wilson—At this point in time, if you are a producer and you are selling through to the retailers, much of what goes on with regard to the negotiation of price possibly never ever shows up in the retailer's books in any form whatsoever. As an example, a recent client of mine in the non-hotel industry was relating his experiences with the Coles buyers for his product and his experience was, when they were renegotiating the range, Coles did not want to change the price in their books so they fiddled with all the ullage figures—which is damaged stock—and a range of warehousing and other arrangements, to have the figure appear on their books in the way they wanted to see it, whereas in reality they were going to pay the producer less through varying his ullage percentages.

When you talk to people who deal with the major buyers, a lot of effort has gone into structuring your price through your warehousing percentage, your lining fees, your bulk buying rebates, your ullage and all these things, to present the figures in the light that suits them. One must ask why are all these hidden percentages there, if they cannot be open and up-front about them?

Mr NAIRN—But in practical terms, does the ACCC every year sit down and look at all the books of all the retailers—which retailers are subject to this, which ones are not? It is sort of real Big Brother stuff, isn't it?

Dr Wilson—Yes. One would imagine that it would only be done if there were a complaint that appeared to have some grounds, obviously in the same way as a number of our individual tax returns are audited every year. You would not be auditing every retailer every year.

Mr NAIRN—I will move on to recommendation 9 which says:

Amend company reporting law to force separate disclosure of all income from non-sales activities by retailers.

Once again, would all of your members be happy to participate in that? If you are going to change company reporting, a hotel is a retailer as well.

Mr Stewart—We do not have any problems with that. We disclose that now. If I can speak on that, my accounts certainly disclose any rebates or whatever that are offered by suppliers.

Mr NAIRN—I guess that is my point: the companies have to provide certain information, they can be audited at any stage by the tax office, so that information is available if an audit has taken place anyway, isn't it?

Dr Wilson—It is whether that information is shared through to the ACCC.

Mr NAIRN—So what you are saying, when you say 'amend company reporting', is to allow the Taxation Office then to give whatever the ACCC wants, because the tax office can go and audit any company's books.

Mr Stewart—Company reporting law, I think, isn't it?

Dr Wilson—The situation that is envisaged is that when the retailers made an approach to the Queensland government at the end of last year to retail packaged liquor in Queensland, they said they will sell it at a three per cent margin, and that gained much press coverage. This was obviously a good move by the retailers. The reality is, because of their buying power rebates, they were not offering a three per cent margin at all. The margin was going to be substantially more, but because their books could show that it was only going to be three per cent before all the rebates and everything else were taken into account, the public was misled.

CHAIR—Are you sure of this? Are you able to prove this, Dr Wilson, or is it an assumption on your part?

Dr Wilson—It is well established that the margins operated by major retailers on their buying price are well in excess of three per cent. Across the board they are at 20 to 25 per cent. No retailer marks up a product by three per cent before the administrative costs are applied, but they were able to present this figure.

CHAIR—All right, thanks very much, Mr Nairn. Senator Forshaw.

Senator FORSHAW—Thank you. Can I just clarify, you have referred in your submission at page 3 to changes following the amendments to the Liquor Act in 1992, and that you are now facing greater competition from other outlets such as bars and the like. I gather they are not allowed to retail packaged liquor at the moment.

Dr Wilson—That is correct.

Senator FORSHAW—That is correct, but are they—

Dr Wilson—If they are a holder of a restaurant licence, Senator, yes.

Senator FORSHAW—Could you just quickly paint the picture for me. What are they? Are they all bars and restaurants that must serve a meal in order to serve liquor, or does it include separate taverns or bars that might essentially just sell liquor?

Dr Wilson—Senator, there is a general licence which allows you to sell liquor and you can sell your packaged liquor, and then there are other licences of the restaurant licence class which do not allow you to sell packaged liquor. In Queensland since the deregulation of the Liquor Act in 1992, a general licence has become more easy to come by.

Senator FORSHAW—Yes, I note you say that.

Dr Wilson—And now there are cases where general licences have been given out to what we would possibly term, in our language, not much more than bars, whereas the concept of a bar on the corner like a cafe had never existed in Queensland prior to 1992.

CHAIR—Have you opposed that as it has gone through successfully, the opening up of these places?

Mr Stewart—Yes, Chairman. It is not a policy we agreed with in 1988, 1989, 1992, 1995 and 1998, or now.

CHAIR—What is the evidence of what your consumers have to say about this?

Mr Stewart—They do not support it. Very few of them are keen on the idea.

CHAIR—Consumers do not support it?

Mr Stewart—Yes, they do not support it because they turn out to be non-viable.

CHAIR—So there is nobody in the bars. Is that right?

Mr Stewart—No.

CHAIR—There is nobody who goes to these bars?

Mr Stewart—No, not significant numbers.

CHAIR—Is this sustainable in terms of the figures? If we asked some of these people who organised them to produce their figures, do you think they would support what you say?

Mr Stewart—Yes.

CHAIR—I do encourage you to remember that this is a parliamentary inquiry and that it has privileges, but also you are asked not to mislead. So that is why it has got to be on a factual basis.

Mr Stewart—Senator, I will present my own if it is needed. I have one that I would describe as falling into this category, and I can guarantee you that—

CHAIR—Right across Brisbane where these have opened up, people do not go to them?

Mr Stewart—No, not in sufficient numbers now for them to be viable. That is our case to the state government, that because they have allowed these to open, the operators are forced down the track of irresponsible hospitality practices to try and get some trade. It is really a silent issue—

CHAIR—But they are not permitted to sell packaged beer at the moment?

Mr Stewart—Yes, they are.

CHAIR—They are, are they?

Mr Stewart—Yes, Senator, if they have a full general licence.

CHAIR—Okay. I am just trying to get this clear in my mind because there are some changes that have been implemented in New South Wales. I may stand corrected on this but there have been proposals, for instance, to make it easier to sell liquor without a meal where there is a traditional restriction that applies, moving more towards the European style of cafe where you can have a cup of coffee or a glass of wine rather than have a full meal.

Mr Stewart—Can I briefly clarify for you. I think what the 1992 act did was take away 29 categories of licence that we had, which was virtually licensing everything out—a fishing boat or an individual type of licence—and bringing it back to eight general categories, the principal of which was the general liquor licence which in the old days you would have called a hotel. The others were all restaurants, cabarets, whatever. This is the new style of thing. The one you are referring to, Senator, is the on-premises variety. For example, in Queensland its primary purpose is to make meals available and sell liquor with meals, but they may sell liquor to people in numbers representing up to 20 per cent of the seating space in their restaurant without a meal. That follows the type of legislative change in New South Wales. The cabaret licence is designed to trade with entertainment and liquor through to later hours of the morning than the general licence can do. But in all other areas the general licence was intended to be the provider of accommodation, entertainment, gaming, packaged liquor sales—the full spectrum of community liquor trade.

What I was referring to earlier, Chairman, was that the general licence prior to 1992 brought with it enormous prescriptive responsibilities. It was actually defined by the Licensing Commission how much floor space each premises had to have, what length the bar counters had to be, toilet numbers, car spaces—every detail. All that was produced and that was the package that brought you the right to basically sell bottles, so you had to make that capital commitment. What has happened since 1992 is that that requirement has been removed, and you can now put a general licence in on much smaller premises, and seek to have conditions put on it that you may be exempt from some of those requirements. That is what is happening, that this whole new spectrum has entered the market with a general licence and they are not proving to be viable. That was my earlier point.

CHAIR—We have to move along. Can I just follow up on that. Basically, what you are saying is that the recommendations you made here are those in the public interest, you say. In terms of your opposition to these bars and so on, if they are not publicly supported and the consumers do not go there, then you are right in your assumption. But if you have opposed that and the general public in Brisbane think it is a great idea, then you are starting to develop a bit of a track record of opposing things, protecting your own turf, which is right and proper, but the public may not necessarily support that.

Senator FORSHAW—This is the thought running through my mind, and maybe I can play the devil’s advocate for a bit.

Mr Stewart—I am trying to get a handle on it.

Senator FORSHAW—This argument goes on in New South Wales all the time between clubs and hotels. Hotels have been allowed to get into the poker machine market, and the argument is always about who is losing what share. One proposition that can be put is that hotels in this state have a pretty substantial monopoly, or close to a monopoly—even though they might all be family businesses—over the sale of over-the-counter liquor on premises, for consumption on premises. At this stage it does not appear likely that Woolworths, Coles and Franklins are looking to get into that side of the business, and therefore is it a bit more competition for your industry in terms of the sale of packaged liquor? Is that a real threat ultimately, given that the primary part of your industry is to get patrons into the premises to consume alcohol on the premises? Or am I wrong in that?

Dr Wilson—No, Senator, you are right in that if retailers were to sell packaged liquor because of changes in social habits, et cetera, we anticipate 56 per cent of the state’s hotels would go broke within five years as a result of that because most of the margin in hotels is coming from packaged liquor sales.

Senator FORSHAW—Okay. Has that also been affected by the changes in the law over the last 10 or 20 years with drink driving where there might be greater consumption of alcohol at home rather than in a licensed premises?

Dr Wilson—You are right, Senator, there are a number of effects of changing social habits which are to do with drink driving. In Queensland the biggest effect, which has been discovered by surveying our members, is the clubs being given access to gaming machines of superior numbers and lower taxation in 1992. Basically the licensed clubs were able to make substantial amounts of money out of their gaming activities, and they could then subsidise food and drink. That led to a major downturn in the Queensland hotel industry from 1992 through to a couple of years ago, when the tax rate and the number of machines in hotels were altered slightly.

Senator FORSHAW—Let's not open that argument up too widely. I am very familiar with it in New South Wales.

Dr Wilson—No, we do not have enough time in the day, Senator!

Senator FORSHAW—I know what the club's argument is, too, in terms of their non-profit status and all that. But let me understand this: is the position in Queensland similar to New South Wales in terms of hotels being able to have gambling or poker machine outlets, or is it more restricted? What is the position?

CHAIR—You have got the machines now, haven't you?

Mr Stewart—Yes, Chairman, we could spend all day on that, but with gaming generally—and I speak as a former national president of our association, having dealt with this in every state—there are no rules that are the same or even begin to be the same. Our experience here was a total wipe-out for hotels until—as Dr Wilson mentioned—about 18 months ago there was a change in the rate of taxation, both for hotels and clubs, and the number of machines they could have was increased, and it is now considered to be at a reasonable level, and I cannot say any more than that—a reasonable level. I think if Clubs Queensland were here they would agree with me. We do not have the same relationship with the clubs that the New South Wales industry does.

Senator FORSHAW—My last question is, looking overseas—and trying not to look at the UK or the US as we seem to do quite often, in some of the material before us—certainly from my own experiences in travelling in, for instance, Europe, liquor is sold in supermarkets everywhere, and it is not actually like it is mainly in Australia where the liquor outlet is often an attachment to the supermarket but rather it is in there amongst all of the other products. A simple question: why should we be any different out here?

Dr Wilson—Senator, if I may answer, in our submission to the Queensland national competition review, we made a substantial submission on the social harm that comes from alcohol. Let us remember there are liquor acts in every state only because alcohol is a product that requires regulation for the betterment of society. The substantial research that we commissioned for our review indicates that the greater the availability of alcohol in a community or our society, the greater the harm in terms of crime, domestic violence, alcoholism, lost work and so on. There is a loose but consistent correlation between those two.

CHAIR—Could I just ask you if you could send the evidence of that to the committee. I think that is interesting. Who did the research on that?

Dr Wilson—Brannock and Associates, social consultants in Brisbane.

CHAIR—Were they consultants to the AHA on that?

Dr Wilson—They consulted to the Queensland Hotels Association for that, but we would be more than happy to turn over their reports to the committee.

CHAIR—Thank you. Please continue.

Senator FORSHAW—I just wanted to put that to you to see what the response was.

CHAIR—Just on that question and before handing over to the senator, why wouldn't the same deal apply though, that the penalties that are imposed for anybody who sells to minors would still exist if they bought it through the supermarket?

Dr Wilson—Mr Chairman, I think it is the scale. If a supermarket, part of a major chain, sold to an underage person, I cannot see the major chains having to close their stores all over Australia for a week as a penalty, but a hotel could have its licence cancelled—if it was not a first offence—which would close down with all the other shops.

CHAIR—It could have penalties such as being unable to sell liquor out of that retail store for 12 months.

Mr Stewart—That would not worry them too much.

CHAIR—But what do you have in terms of overseas evidence that selling through supermarkets has led to the situation that you are claiming?

Dr Wilson—In the documentation we will give the committee, Mr Chairman, we have cited all of the overseas papers that we used to frame the perspective.

CHAIR—Do they show that if you sell through supermarkets you have got a greater likelihood of underage people buying it through the supermarkets, rather than through liquor stores or hotels? That is really the nub of it, isn't it? You are basing your premise on why supermarkets should not have it because you are more able to control the situation.

Dr Wilson—Mr Chairman, if I may expand on your question, it is a cultural thing. It is whether or not alcohol is viewed as just another item in your grocery trolley for the week. It is what message is sent out by the community, to the people of the community, as to whether alcohol is a product that deserves special treatment.

CHAIR—This is a new line.

Senator FORSHAW—Can I just say that was something that was part of the thinking behind my question. It is a fact, I would argue, that in Europe—particularly if you go through France and Germany—there is a different sort of approach to the way in which alcohol is consumed as an everyday item. I do not want to be too general about it, but it is a fact that you can buy your red wine with your cheese.

Mr Stewart—Senator, can we perhaps just deal with these interstate and international issues. What Dr Wilson is referring to is the change that would take place if we had a change in our state legislation here. What is significant is that we have the legislation. Queensland governments have decided over successive generations to go with this model, and we say a change to that would be drastic in its effect. In New South Wales and other places you have had a gradual change; the liquor stores and so on were introduced historically, and also the requirements were not put on the hotels for the same sort of capital commitment as happened here in exchange for that privilege. If we want to go overseas we can talk about how, until relatively recent times—certainly in most of the socialist countries—governments owned and controlled all liquor outlets. They may appear to be supermarkets but in fact they are not.

CHAIR—We do not necessarily find them an interesting model. We are more interested in free markets.

Mr Stewart—Yes. It works. It works for the government.

CHAIR—I think we had better press on and turn to Senator Boswell, who I know is keen to ask some questions.

Senator BOSWELL—Mr Chairman, I think this is a very important issue. How many outlets have you got in Queensland?

Mr Stewart—Hotels, Senator?

Senator BOSWELL—Yes.

Mr Stewart—Twelve hundred.

Senator BOSWELL—And even in the most minor town?

Mr Stewart—As far as we know, everywhere you could call a town is serviced. It is a very rare occasion that the local pub, if you like, is finally closed completely in a town.

Senator BOSWELL—But even ignoring the local pub, which is the smallest you could get, you would have the pub that would double up as the grocery store too.

Mr Stewart—That’s right. There are different circumstances. Every town is different.

Senator BOSWELL—What is your break-up over sales between gaming machines, bar sales and liquor sales? And let’s throw in accommodation just to round it all up.

Mr Stewart—Senator, pre March 1997 the answer would have been 80 to 82 per cent would have been off-premises sales.

CHAIR—You are almost due for a cap according to the NARGA requirements.

Senator BOSWELL—And that was the bar sales?

Mr Stewart—That is on our total sales.

CHAIR—Yes, but isn't that a logical conclusion? Here you are with 82 per cent of the market—

Mr Stewart—No, Chairman, I did not say that.

CHAIR—Tell me what you exactly said.

Mr Stewart—I said 82. I was asked the question about the share of my business that it constitutes. I said 82 per cent of my business generally is packaged sales.

CHAIR—Right, I understand, but in terms of the share that you have of the total liquor market in Queensland, do you know what it would be?

Mr Stewart—Total packaged liquor market?

CHAIR—Yes.

Mr Stewart—Off premises—we have already answered the question—90 to 92 per cent.

CHAIR—Just taking it down, what if you were arguing that there should be a cap on the retail stores because they have got—it depends if you take dry goods as in the A.C. Nielsen approach—close to an 80 per cent market? Here you are with a much greater market share. What if we had an inquiry and it was argued that you have got too dominant a share and it should be divided up? People are saying to us that the problem with this inquiry is that you are going to set a precedent right across the board. Have your members thought about that?

Dr Wilson—Mr Chairman, we made that recommendation for major retailers and if we defined a major retailer as an individual entity that would have more than 10 per cent of the market, there is not one entity in the Queensland hotel market that has 10 per cent of the market. So there is no entity that could be called major that can dominate. When you have got 1,200 hotels all competing and no-one with more than 10 per cent of the market, there is no—

CHAIR—It is still one organisation though, isn't it?

Dr Wilson—Certainly not. They are individual businesses.

CHAIR—Yes, I understand that.

Dr Wilson—The major retailers, Mr Chairman, can buy hotels. Coles, through Liquorland, have bought five hotels in Queensland. They are welcomed into the association. They are more than welcome to buy hotels and responsibly serve and responsibly sell alcohol under the same conditions that everybody else does.

CHAIR—Thank you. Yes, Senator Boswell.

Senator BOSWELL—Mr Chairman, you are hijacking my questions.

CHAIR—I am sorry.

Senator BOSWELL—What was your break-up? I asked a question and we got diverted.

Mr Stewart—Sorry, we were talking statewide pre any effect of gaming revenue—80 to 82 per cent would be the average hotel.

Senator BOSWELL—No, you misunderstand me. What I said is, what is your break-up or what percentage of your profit do bottle sales, bar sales, and gaming represent?

Mr Stewart—Profit or turnover?

Senator BOSWELL—Or turnover—profit—

Mr Stewart—There is a big difference, Senator.

Dr Wilson—Senator, we have a table or a break-up on page 4 of our submission which shows the size of our hotels and our gross margins. The proportions you are talking about, Senator, are different for small, medium and large hotels, but in all categories of hotel, the profits from packaged sales are a substantial proportion of the profits of the overall business. There is not much profit from across the bar sales, but of course there is profit from gaming income.

Senator BOSWELL—So that represents a very large percentage of your turnover and your profit.

Mr Stewart—Yes, and traditionally, Senator, most businesses subsidise the overheads and the expenses of the rest of the business.

Senator BOSWELL—I have been to a lot of hotels. I used to stay in them when I was in the bush when I was travelling. But if bottle sales were transferred to supermarkets, what is your calculation?

Mr Stewart—The calculation that was done based on the A.C. Nielsen figures that we were asked about before was roughly 67 per cent.

Dr Wilson—We have estimated 65 per cent would go. Because most of the profit is coming from our packaged sales in hotels, we estimate 56 per cent of hotels in Queensland would fold within a five-year period.

Mr Stewart—So 65 per cent of our trade would move across.

Dr Wilson—56 per cent would fold in a five-year period. It is an independent economic analysis carried out by the University of Queensland.

Senator BOSWELL—The local hotel in a country town is not only the watering hole, but is the social centre of the town, and many towns that I can think of at the moment are held together by the hotel. How do you now set up your stand-alone liquor stores?

Mr Stewart—It is an application, Senator, to the liquor licensing division. The applicant must be a general licensee within five kilometres of the proposed site of the shop and run a public need case.

Senator BOSWELL—How many can you have?

Mr Stewart—Three.

Senator BOSWELL—What happens if the other publican wants three and you cross over?

Mr Stewart—There is no right to three; that is the limit that can be granted to one premises. In actual fact what happens is you go through a public need test which includes the public objection process. So you could have the situation where the shop is not permitted by the process. Quite a number of those have occurred.

Senator BOSWELL—Are they licensed?

Mr Stewart—No, they are part of the hotel licence, so it is an extension of the premises. What the state government decided—and it has been upheld, as I said, by three different governments now—was that that was the most responsible way for them to provide a more convenient access, in their view, to packaged liquor, at the same time as maintaining a responsible control of information.

Senator BOSWELL—Are those stores profitable?

Mr Stewart—There is a very wide range. It depends completely on their rent and location. Their turnovers range from $6,000 a week to probably $30,000 a week, and they work on a very low gross profit. The whole industry does, for that matter, in bottle sales. You have only got to look at our retail pricing. We compete with each other so aggressively that we do have very low margins. It is then a question of what rent you are paying. For example, I have one in Peregian Beach, which has until recently had no hotel facility. It was serviced from the hotel at Coolum. It is very low rental because it is in a stand-alone shop in an almost remote area, versus one that might be in one of the major Westfield shopping towns in Brisbane, which is obviously paying a very high rental which does not necessarily mean that it is any more profitable. So it is really a very difficult question. Local conditions prevail.

Mr JENKINS—There are a couple of recommendations about retail tenancy and some recommendations which you have made asking the ACCC to look at the effect of state legislation. One of the problems we have, of course, is constitutional problems—state jurisdiction. Arising out of the reading about fair trading, the recommendation of that committee was to have a retail tenancy code that would have underpinning under the Trade Practices Act. The government rejected that on the basis that they believed it was not within

Commonwealth jurisdiction because retail tenancy was a state matter. Likewise, I am wondering whether you have investigated what the jurisdictional problems may or may not be of the ACCC being asked to investigate the effect of the state legislation, given that the reason the National Competition Council is able to is because it operates under an intergovernmental agreement.

Dr Wilson—If I might respond, the same agreed legislation between the states which gives the National Competition Council an entre could be changed to allow the ACCC to have whatever input was necessary, I would suggest.

Mr JENKINS—I just want to briefly return to the four recommendations that Mr Nairn referred to about retail buying practices. The submission refers to an article in the *Bulletin* and does not give any examples. But the implication of what you are putting to us is that the ability for a retailer to get lining fees, as you describe it, et cetera, is in direct relationship to their size. But I put it to you: aren't there different promotional activities that suppliers offer to your outlets? For instance, wouldn't one of the wholesalers assist with display and things like that, and isn't that akin to what you are complaining about?

Mr Stewart—Perhaps, Mr Jenkins, what we are referring to here, I think, is the almost permanent allotment space as distinct from what may happen as a week to week promotion. The sort of things I showed you earlier here I may well be getting promotional support for. One of my suppliers may get greater share of that two page spread, but that is for that week. That is for the Easter 1999 period of trading, over that seven days, not a fee from them to put their product in my ad exclusively for 12 months and nobody else's, or for me to carry their product in the shop, which is what we were intending to refer to with lining fees. It is a question of access. From my point of view, I am certainly not a big enough operator, and no-one I know of in Queensland is a big enough operator, to say to our suppliers—for example, Carlton or Castlemaine—'You shall not be in my premises and I shall not carry your product unless you pay me a fee for shelf space.' It is not an option for us with the wine companies—or the spirit companies, either.

Mr JENKINS—So what you are suggesting is there is that line at which promotional support becomes an unethical practice.

Mr Stewart—Well, it is not promotional support. I would suggest to you that lining fees relate to access to the shelves. I could very well argue the converse. Let's say, for example, that I did say to Castlemaine Perkins, 'I won't put your product on my shelves unless you pay me a fee,' they would say, 'No, I won't pay you a fee,' but in practice out there this is exactly what happens in the retail sector, with the major retailers. If you are big enough—that is what we are saying—is buying power going to allow you to do that, extract that fee?

Mr JENKINS—Doesn't the present trade practice legislation cover that sort of practice?

Mr Stewart—We do not feel so. The trade practices legislation we have seen, bearing in mind we are working from the hotel perspective over many years, particularly dealing with obvious bigger suppliers, tends to be driven—and rightly so—towards consumer protection firstly, and then towards regulating and policing manufacturers. The retailer is not, in our view, dealt with sufficiently by the Trade Practices Act; either it is not regulated well enough or is not given the opportunity to have a view on the manufacturer and his practices.

In the days of the Prices Surveillance Authority in particular, we were never given the ability under the act to submit for consideration on wholesale price increases, for example, from our suppliers, which were subject to review by the PSA. We had no standing before it, so we could not explain to them why certain price increases were being sought. We knew why, and it was not because the cost of goods had gone up; it was because of the promotional activities that were going on selectively, and we had evidence, but there was no opportunity to present that because the legislation is not driven in that direction. That is one of the changes we would seek.

Mrs ELSON—Mr Stewart you state that:

Major retail buyers regularly engage in activities that have been described as bribery, blackmail and extortion.

Can you elaborate a bit further, or is that hearsay? Or do you have any evidence that that goes on?

CHAIR—And do you want to go in camera to tell us about it? You have the advantage that you have parliamentary privilege here and we can clear the room.

Mrs ELSON—Yes. The reason I asked that is, we have been travelling all over Australia and we do get those comments made quite often but nobody has actually given us—

CHAIR—They did yesterday. We had somebody.

Mrs ELSON—Yes, that is right. One did go in camera, didn’t they—yes.

CHAIR—So we offer you that opportunity, if you wish.

Mrs ELSON—Or you could submit it through to the committee.

Dr Wilson—Certainly. The association has a wide membership and members have reported instances to the association. For me to say them here becomes hearsay. They could say them to your face, and I am sure that they will be more than prepared to cite their experiences in terms of how they were treated.

Mr JENKINS—That would be useful.

CHAIR—That would be good. We have had some examples in the liquor area, in particular, so that is why we are interested.

Mr Stewart—If I could ask, Chairman, where does the inquiry have further hearings?

CHAIR—They will be in regional Queensland, I think in the first week in July.

Mr Stewart—We could perhaps make sure that there are people—

CHAIR—Having said that, we have not had permission to extend our inquiry yet, so I am foreshadowing. But that is what we want to do. So there may be a possibility to look at that, because we would be particularly interested in that.

Mr NAIRN—Or an individual could provide a confidential submission.

Mr Stewart—We have seen some evidence ourselves, but again we are not in a position to present it. But as that was the case, we were fairly, we thought, conservative in our approach in just saying that we recognise that that has been an accusation made in the print media.

CHAIR—Is it a burning question, Senator Forshaw?

Senator FORSHAW—You might take this one on notice. In relation to your assertion that if the major retailers are allowed to enter the market and sell packaged liquor you would have a substantial loss or closure of businesses, can you provide any information as to what has been the impact in other states following the move by the retailers on the hotel industry?

CHAIR—I think that would be interesting for us as well.

Mr Stewart—We can attempt to, Chairman. I think the problem would be that it is so long ago that it is historical, and that was my point earlier; that the industry has grown up.

CHAIR—It is still interesting for us.

Mr Stewart—If we can find something, we will.

Senator FORSHAW—I am just wondering if there is any information.

Dr Wilson—There is some limited material, Senator, but you must remember that when it was introduced in New South Wales and Victoria over 20 years ago, most of the alcohol was purchased in pubs—there was very little drinking away from the pub and at home—and there was a much smaller percentage of overall sales of packaged liquor compared to the 1990s where it is 75 or 80 per cent. So the environment is different, but we will pull together the information we do have. But, as Mr Stewart says, I do not imagine it would be very enlightening.

Mr Stewart—We will do our best.

CHAIR—It can be enlightening for us. Thanks very much for your presentation, gentlemen. Obviously you have put a lot of work into it. We have heard your comments regarding what it would mean, the impact on stores, the problems of leasing costs versus the majors, the questions that you have got in terms of supply and the favourable arrangements that appear to be made, and obviously we will follow some of those up. Also of interest are the controls that you are able to exercise in terms of underage drinking, which I think is a valid point; the cultural differences that exist between countries and the fact that you have a situation where you are independently owned and operate like small businesses, so even though you are part of the AHA or the Queensland Hotels Association, you do not operate like a chain. I would like to thank you for being here and for your frankness, and I would appreciate if you could forward on to us the answers to some of the questions we have asked and we may look forward to hearing from you again.

Mr Stewart—Thank you, Chairman.

Dr Wilson—Thank you very much.

[10.14 a.m.]

BALDOCK, Mr Ian Frank, Executive Director, Queensland Retail Traders and Shopkeepers Association

SWAIN, Mr Randall, Secretary/Business Development Manager, Queensland Retail Traders and Shopkeepers Association

CHAIR—I would like to welcome Mr Ian Baldock and Mr Randall Swain. The committee prefers all evidence to be taken in public, but if you would prefer at any time to proceed in camera, the committee would consider that application, but we should warn you that the Senate may at a subsequent time decide that that evidence be made public. The committee has before it submission No. 251 dated April 1999. Are there any additions or deletions that you wish to make to that submission before us?

Mr Baldock—No, Chairman.

Mr Swain—No, thank you.

CHAIR—I now invite you to make your opening statement and we will follow that up with questions.

Mr Baldock—Thank you. Mr Chairman, members of the committee, good morning and welcome to sunny Queensland. As stated before, my name is Ian Baldock and I am the Executive Director of the Queensland Retail Traders and Shopkeepers Association. I am also the Chairman of NARGA and the current Chairman of COSBOA. With me today, as mentioned, is Randall Swain, Business Development Manager of the QRTSA. Mr Chairman, initially I would like to make comment regarding some of the matters that have been put to you by other organisations and subsequently reported in the press.

One such issue is the market, and what it is. I must admit that I read with some amusement Woolworths' claim that the figure of market share is more like 43 per cent rather than the 80 per cent that we claim. For a start, in fact we do not claim it. They are A.C. Nielsen figures, figures that have always been used by everyone in the industry, including Woolworths, as the market share figures applying to the retail grocery market, which is the market that we are talking about. There are no other definitive figures other than total retail sales, and for A.C. Nielsen, as I understand it, to try and establish a different market with takeaway food and fruit and vegetables, et cetera, is, at best, despite their survey and so on, a semi-educated guess.

Principally, of course, that is due to the fact that there is no central distribution system that covers the majority of outlets, as in fact it does within the food sector of retailing. We also state that the agency that should be looked to to provide further information on this matter to you, the committee, is the Australian Competition and Consumer Commission. They have been involved in this issue of what is the market for retail grocery on several previous occasions.

The second issue we would like to address is a reported statement to you by the Australian Consumers Association that we—in this instance both NARGA and QRTSA—have not given due consideration to consumers in this debate. Nothing could be further from reality. We are very concerned for consumers. We know from past experience that when the major retailers have been successful in eliminating a competitor, their prices go up. Why, for example, are consumers penalised in Kenmore compared to Woodridge, by being charged more for the same product in the same company supermarket? It is simply because of the lack of competition in one area compared to the other.

We also fail to understand their statement that consumers in regional and rural areas would suffer if a cap was placed on the market share of the major retailers. Chairman and members of the committee, this, we submit, is totally and utterly incorrect. It is not the major retailers who support to any great degree local causes, or buy locally to the degree of an independently operated supermarket or—and very importantly—support the farming community with credit during times of drought or low commodity prices to the degree that the independent sector does.

Plus the major retailers are, in the main, only located in major population centres. Here in Queensland, for example, there is no major supermarket in Longreach or Blackall or Miles, just to quote a few places. Which of the major retailers thought about consumers when they put up the price of milk in New South Wales following deregulation of the dairy industry in that state, and pocketed $60 million in additional discounts? Nothing, none of that, was passed on to consumers. If we follow and, worse still, allow the openly stated policy of total deregulation that the Consumers Association has put forward, then we would suggest that choice and the incentive to give consumers a good deal would be substantially reduced.

It is our fervent belief that consumers will benefit more by ensuring that competition remains strong and intact. If we allow the continuation of the monopoly of the major retailers, then what may be the potential situation when two or three organisations control all the supply of any commodity, plus what would happen to employment? If we look at recent Australian Bureau of Statistics data, we see that, excluding the top 1,000 companies, national revenue growth grew by 1.96 per cent in the year 1997 to 1998, and jobs grew by 4.11 per cent, whilst amongst the top 1,000 companies revenue grew by 7.9 per cent but jobs fell by 1.4 per cent. NARGA's submission contains further evidence of the loss of jobs of every one per cent increase in the market share of the major retailers. If we have any concern at all for the issue of unemployment in this country, then that in itself is a reason to seriously consider NARGA's and QRTSA's proposal.

Mr Chairman, could I state here that the QRTSA has put forward a second proposal to that of NARGA, and that is to cap total retail sales or market share. We have proposed for your consideration that no one entity should control more than 20 per cent of the market. On reflection, and given the other evidence in our submission, especially where Coles Myer are currently conducting trials of some 12 different retailing formats, we feel that 20 per cent is in fact too generous a figure. With your leave, we would like to retract that percentage and replace it with one of 15 per cent.

Chairman, in conclusion, could I just take this opportunity to congratulate the committee for, as I understand it, a recent decision to extend the period of hearings so as to talk to people in Tasmania and regional areas. I think it is one that will be welcomed by people in those areas. We certainly, just from our perspective, Mr Chairman, would be very interested in advice from you at some stage as to where and when. Chairman, that concludes our opening remarks.

CHAIR—Thanks very much, Mr Baldock. Just in terms of your comment about going to regional areas, it was the committee's decision that we would go to regional areas. We have not had the formal approval of the parliament yet to do so, but we are optimistic that that will be the case, and we are discussing whereabouts in regional areas we will go. We plan to go to Hobart and some of the regional centres, probably in Victoria, New South Wales and Queensland at this stage, depending on the availability of one of the Prime Minister's aircraft. So we will see.

Mrs ELSON—Mr Baldock, you stated in your address that you were concerned about the squeezing out of the market of the smaller independent retailers, and my concern is also with rural and regional Australia. Do you have evidence in Queensland that things such as predatory pricing have been happening? If say a Coles, Woolworths or Franklins comes into a regional area, have you seen evidence that they squeeze out the independent grocery chain that remains there?

Mr Baldock—I would have to say that we have not any direct evidence of that in Queensland per se. Certainly there has been evidence of related activity. For example, I think it is well known that the major retailers promote—and here in Queensland where it is something that has to go before the Queensland Industrial Commission—and continue to put in applications to extend trading hours. That in itself, then, when in some instances they have been successful, is one of the causes of independent retailers going broke, closing up.

The last time that happened to any great degree was in 1994, and we, with the Meat Federation of Australia, conducted a survey through our membership to endeavour to identify stores that had closed and ones that had closed as a direct result of extended trading hours. I cannot remember the exact figure now, but I am sure my colleague probably does. I think it was somewhere in the region of about 350 stores that were identified 12 months after that event. Now, that is not a direct result of a major retailer going into a particular area but certainly it is a result of related activity that is carried on by the major retailers. I think also you have a gentleman appearing before you this afternoon who I think may well be able to provide some direct evidence of that, and that is Mr Joe Natoli.

CHAIR—We had a fairly colourful submission.

Mr Baldock—I would imagine so.

Mrs ELSON—Do you have any figures in Queensland—retail figures? I notice your membership is 2,200 at the moment. Has that drastically fallen off or increased over the past five-year period?

Mr Baldock—In terms of our particular membership it has remained fairly constant. At one stage, I think going back to about 1992, we were around 2,500, which was the highest that we have been, but if you go back for example to 1989 it was about 1,600. But for the last few years it has fluctuated anything between the 2,000 to 2,300 mark, so it has been reasonably constant.

Mrs ELSON—Thanks, Mr Chairman.

Mr JENKINS—Mr Baldock, you have raised and commented on the definitional problems that are confronting the committee. You refer to the A.C. Nielsen survey which you say has been what the industry has used. But in saying that I suppose I am going to have to ask you which industry. I think this is one of the things that the committee is trying to come to grips with. If I look at the list of 105 items or whatever it is that the A.C. Nielsen survey looks at, I cannot think of a retail outlet that I go into that only carries those items, but I can think of a lot of outlets that have some of them and do not have others.

The other thing that confronts the committee, of course, is that many of the allegations about practices that are seen to be unfair or wrong from the 'majors' deal with lines that are outside of the A.C. Nielsen survey—meat, fruit and veg. Whilst I understand you making points about other people raising these definitional problems, it still gets back to one of the things that the committee is going to have to have a look at, because if that definition were to be used for any proposed cap, we have to be sure that we will be able to put in place wording that was sustainable, or that it would achieve what the people proposing it to us are setting out to achieve.

Mr Baldock—As far as the A.C. Nielsen information is concerned, that is information that was taken from data supplied by the major retailers and others. That sector of the retailing industry is in a sense very easy to track because it is all through a distribution system, and of course a big majority of it is scanning, so the data can be more easily captured. It is the retail grocery market that in fact we are talking about and that is the market that is tracked by the A.C. Nielsen data and published twice a year in *Retail World*—in around about June and then at the end of the year—from that data. We have not been talking about anything else. Whenever figures are quoted by anybody to do with the supermarket side of retailing, it is always those figures. Woolworths, Coles, Franklins—they themselves use those figures. They use them when they are talking to suppliers, I am sure, in terms of the amount of market share they have and so on. That is the recognised yardstick by which the retail grocery market determines market share.

I can see some dilemma from the committee's point of view, and that is also a reason why we put forward a secondary proposal. But I hasten to add that we very much favour the original proposal of the cap of 80 and so on. That is why we put forward a second proposal, because in fact if you did it on the basis of total retail sales, then there is no argument in terms of the definition of one market as opposed to another.

Mr JENKINS—You had the 20 per cent figure and you are revising it today to 15. What would you say the whole Coles Myer group's share of the retail sector was?

Mr Baldock—I certainly do not say I am necessarily accurate but I think it is around the 17 per cent mark. Woolworths I think is about 12 per cent, and of course Franklins is smaller again.

Mr JENKINS—Can we go to the problem of the use of market share as the cap. You have supplied as an attachment an extract from the Liquor Control Act 1987 from Victoria where the cap is actually on the number of licenses—so a cap of eight per cent of licences—but that really does not tell us what a very smart aggressive competitor might be able to do with eight per cent of licences converted into market share. Terry McCrann did an article discussing the use of market share as the cap, and—comments about the chair aside, which were a bit unfair—it did raise this matter about if it got to a market share cap level was there going to be somebody standing at the door saying, 'Look, sorry, something has got to be done because through competition or through practice this corporate conglomerate has reached over the level that's been set'? Do you see that there would be a dilemma in that; that market share could develop because of the success of the corporate entity?

Mr Baldock—I am not quite sure what your question is but if your question is do I think that Terry McCrann is right, obviously my answer is no. I think it is quite a ridiculous statement. Certainly when a cap is reached overseas that then instigates a form of inquiry into that particular situation to establish and ascertain 100 per cent that the cap has definitely been breached. Then the offender, no matter what their entity may be, is given an instruction by that government body as to what they have to do. We have had examples—and I think we have given some to you—where in the United States, the so-called home of free enterprise that does have a similar system, there have been situations where companies have been requested, and then forced, to close stores. One recently in one of the states had to close I think 10 stores; in another instance they had to close 15.

Admittedly we see that that is probably a likely scenario, but, let's face it, the major retailers are certainly astute operators and I would certainly give them credit for that. They would look to those areas—and they have them—where they do have stores that are unprofitable, they do have stores that are too small. Our belief is that there would be independent operators willing to take over those stores if that situation was to happen. There would be a continuation in terms of the operation of a business for that community. I certainly do not see it changing but its ownership would change because they have reached that cap.

Mr JENKINS—A lot of what has been put to the committee I would describe as actions that would be characterised as unfair conduct and rely more on the behaviour rather than the entity's dominance. Some of that behaviour could be described as misuse of market power, I acknowledge, but the point I am trying to make is that does not necessarily relate to the size of the market share or things like that. The Trade Practices Act is the piece of legislation that should cover those practices, but it is evident from the number of people who come forward to us that for a variety of reasons that piece of legislation is either deficient in the way it has been put in place or is deficient in the way it is used. Either there should be a stronger watchdog body that can take action and be well resourced to take those actions, or there should be better ways in which those that are aggrieved could use the trade practices legislation, could be educated about that legislation, or could have access to that legislation. I am wondering if you would like to make comment about the present TPA.

Mr Baldock—I certainly agree entirely with what you are saying. We have not had a great number but certainly there have been instances in a variety of areas that have come to our attention that in turn we have passed on to the ACCC. One of the difficulties always seems to be to be able to prove intent. If you cannot prove intent, then in each of those instances the matter has not been proceeded with. It could be a situation where it was by accident or it was not realised, et cetera. Of course, it is extremely difficult to prove that the intent of the action was in fact to drive that competitor out of business, or to make it difficult for that competitor, and so on. So any things that we personally had have not been proceeded with by the ACCC simply because of that fact. So, yes, it is deficient and, irrespective of what the committee may recommend ultimately to government, and whatever government then decides to do with respect to our major consideration, that is to cap the market share of the major retailers, that is an issue that should be looked at as well.

Mr JENKINS—I take it you would agree that the use of the act should be on the basis of an outcome test rather than a purpose test?

Mr Baldock—Yes.

CHAIR—Can I just ask you, Mr Baldock, how would you judge the public interest?

Mr Baldock—I believe the public interest is in a variety of things, some of which we have commented on. Number 1, I think, is to consider the unemployment considerations. Again without going back and quoting those figures, there have been figures quoted to you in our submission and in NARGA's submission and I think the high level of unemployment is something each and every Australian needs to be concerned about, and the fact that as market share grows for the major retailers there is a loss of employment opportunity. We had that researched. It has been researched by COSBOA. It has never ever been refuted by the major retailers. It stands unchallenged as a fact. I think that is probably one of the most important considerations.

The second is, as I mentioned to you, I think, consumers. There is a wide variety of things with respect to consumers, some of which I have mentioned.

CHAIR—When consumers are going out to buy their groceries, what factors do you think they would be most concerned about?

Mr Baldock—I think there are a number of factors from their point of view including, I think, factors of location, price, convenience, and safety, which we are seeing happen more and more today with night trading.

CHAIR—Let me ask you in terms of the Queensland market as we have it at the moment: for the average consumer, do you think if you use those criteria they would say they are being better served than they were 10 years or 20 years ago in terms of price, choice and range of product, et cetera?

Mr Baldock—I think it is probably fair to say, Chairman, that their answer would be yes, but I do not think that has anything to do with perhaps the question that we are talking about today, that is simply because the market has evolved and in both—

CHAIR—Can I just stop you there for a moment, Mr Baldock. Isn’t the very thing this inquiry is about public interest? Surely it must remain important for this committee to say, ‘Are the needs of the community being met now in terms of those factors?’ According to your criteria they are currently being met: people are better off than they were 10 or 20 years ago. Of course, looking forward, what is going to be the situation?

Mr Baldock—That is the very concern we have: that is, what the situation will be for consumers in looking forward.

CHAIR—Why do you think that will worsen in, say, 10 years time?

Mr Baldock—Simply because, as the major retailers become even more dominant, as I mentioned in my opening address, there will be situations whereby, having driven out the competition, they will increase their prices. There is no question about that.

CHAIR—According to your figures they have 80 per cent of the market now. If that was the situation would there not be evidence that is what they are doing right now? I would have thought the argument we have received to date from NARGA is the reverse; that they are continuing to undercut the local retailers in price to force them out of business. It is not as if the three majors are in collusion. They seem to be very much competing against one another. Why should we assume that the price is going to go up?

Mr Baldock—Simply because, as you said yourself—and certainly it is correct—the major retailers are undercutting; they are using predatory pricing activity to undercut the opposition. When they then undercut the opposition to a degree that affects the business of that opposing entity, then our belief is the prices will go up. They will raise their prices and consumers will be worse off.

CHAIR—If one of them—Coles, for example—increases their prices across the board, why wouldn’t Franklins and Woolworths be saying, ‘Here’s the go, boys. Let’s increase our market size’?

Mr Baldock—I think they will increase their prices, too. I mean, they are interested in profit.

CHAIR—All right. Mr Nairn.

Mr NAIRN—Mr Baldock, what is the relationship between the Queensland Retail Traders and Shopkeepers with the Australian Retailers Association? Is there any?

Mr Baldock—No relationship.

Mr NAIRN—No relationship at all? You are not members? Within your membership do you have any large retailers, members of the Queensland Retail Traders?

Mr Baldock—Certainly our membership is in both food and non-food. It is roughly 55 per cent of food operators and 45 per cent non-food. On the food side we certainly have some large supermarkets, ones that are certainly currently competing head-on with the major retailers.

Mr NAIRN—But none of the majors are members of your association?

Mr Baldock—No. They are all independent.

Mr NAIRN—They would be eligible to be a member?

Mr Baldock—No.

Mr NAIRN—They are not eligible? What, you have restrictive trade? Surely not!

Mr Baldock—It would be difficult in the sense that we do not have any restriction; an entity only has to be carrying on business in the retail industry.

Mr NAIRN—So Coles, Woolies and Franklins could join?

Mr Baldock—They could.

Mr NAIRN—Yes, okay, there is nothing preventing them from joining your association, right. Can I just come back to this A.C. Nielsen thing because it really is greatly debated. Effectively you are extrapolating the yardstick you are relying on and saying, 'This is something that has been measured by A.C. Nielsen,' and the companies have accepted that for a particular purpose, I think, over a period of time, because it is easy to track 100-odd scanning items. Therefore the extrapolation by the almost hundreds of people who have put submissions in is that that 80 per cent then applies to the whole retail industry, because that is what is happening in all of these submissions. So what effectively has occurred is that yardstick has been extrapolated to the whole lot, and I think we have seen quite specific evidence to indicate that you cannot extrapolate that right across the board.

We are then stuck, if we follow the sort of recommendations you are putting forward. I know you have two recommendations now. You either say you cap at 80 per cent the dry packaged goods market, because that is what it is, which would effectively allow the big chains to get 100 per cent of the market of fresh fruit and vegetables, meat and all sorts of other things, or you try and have some other cap which seems almost impossible to actually define. So I am not sure how we put that actually into legislation. Can you just comment?

Mr Baldock—It certainly would be difficult to define—I agree with you—and that is part of the reason why we have stuck to what can be defined. But that has always been—as I mentioned before—the yardstick used with respect to talking about market share of the major retailers, the independent sector and so on. There has been the retail grocery market which, yes, principally is packaged grocery.

Mr NAIRN—Not principally—it is.

Mr Baldock—Yes. That still shows a tremendous dominance by the major retailers and still is, we believe, the way to go.

Mr NAIRN—Can I just also ask you about the effect on rural and regional Australia, which I have a particular interest in as I represent a rural and regional seat. My great concern in providing a cap is that, if the major chains were forced to close or sell stores because they wanted to take up new stores elsewhere that would take them over a cap, the first stores they would look at closing or selling off would probably be stores in rural and regional areas because they will be, because of volume—a bit like service stations—the lowest profit areas. You mentioned before that if that occurred there would be independents there willing to move in and take over, and that is probably true.

My concern is the psychological effect, I have to say, and that is a very relevant thing in rural and regional Australia. Take a town like Narooma in my electorate, which has a Woolworths store. Narooma is trying desperately to get extra doctors into the region, and if that Woolworths store closed, I can just see the town marketing what they have got to offer to try and attract doctors and other services that have been lost. I think that would have a big effect and that is of concern to me. Would you like to comment?

Mr Baldock—Obviously it is difficult for me to answer as to what stores and where the major retailers would choose to close if in fact the cap was applied. I do not necessarily think it would be simply a case of them closing stores in regional Australia, because there are a number of suburban stores that may not be as profitable as in fact those in regional Australia. There are areas where there is a store ready for refurbishment—has needed it for a couple of years and it is on the program—and it could well be one of those that closes rather than a store that perhaps has been not long established in a regional community. So I do not necessarily feel that that would be a total option without any other consideration for the major retailers.

If then—and let us say the scenario that you talked about—the Woolworths store closed, I believe it would only be for a short period of time if in fact it closed at all, and it would change hands to simply another name. I do not think the facility would go and it certainly would not go. When purchased by an independent operator, it would simply change its name in the same way there have been a number of name changes go on throughout regional Australia because of the purchase of independent operators by the chains.

CHAIR—Have you got any examples of where the majors have pulled out of a site and they have been replaced in that site by another comparable operator? I know that in my electorate where the majors have pulled out, we certainly have not had anybody of the same size in there, and in fact one major site that is in Caringbah is now a kind of very low budget discount centre. Certainly one of the reasons for complaint that people have got about that Caringbah shopping centre is the fact that Woolworths pulled out. So just to support what Mr Nairn says, that is an implication that—and the local member would be blamed unless there was something comparable—'You guys wanted this to happen, you forced them out.'

Mr Baldock—You blame everybody else.

CHAIR—That is right. It comes back to us.

Mr Baldock—Mr Chairman, there is one that readily comes to mind and that is in Townsville where Woolworths closed a supermarket there. It lay idle for some considerable time and an independent operator by the name of Mick Churchill, a member of the Festival IGA banner, has reopened that particular supermarket. He has moved in, remodelled it, done it up, put in new equipment and so on and reopened that store. That is the only one that I can easily just bring to mind now, but Mr Grant Somerville, who is the general manager of Foodlink, is in fact very much closer to that kind of situation than I, and he may be able to provide more information. But that is certainly one that comes to mind, along with other new ones.

CHAIR—Fine. We would be interested to know where the majors have pulled out and what has happened.

Mr Swain—Mr Chairman, if I could just interrupt and answer a bit more on Mr Nairn’s questions in relation to the less profitable stores being closed down in rural centres in particular, one of the three large retailers appeared in a trading hours case throughout 1997 and half of 1998, and one of their top executives in Queensland in fact said that some of their worst performing stores are in the suburbs of Brisbane, and that they should not be there but they still are, for whatever reason that may be. He named, I think, two or three that, given the option, he would shut down tomorrow because they are not performing. None of those were in rural areas.

CHAIR—Thank you. Do we have comments? Senator Forshaw.

Senator FORSHAW—I should just indicate at the outset that as a senator from New South Wales I do get around the state a bit, and I am personally concerned about what is happening to businesses, particularly small businesses, in rural and regional areas. So I am not unsympathetic to these concerns. But what worries me about some of the material we have been given is that it seems that when we talk about it—people talk about the independents versus the big three—we are really talking about independents who are medium sized operators, in some cases chains, versus the big three.

Why, for instance, isn’t it a reasonable assumption that some of your members, the very small ones, the ones that might be family owned corner shop enterprises or whatever in rural and regional areas, are not suffering because of the market share that the independents hold and in fact would like to enjoy? They just happen to be at the bottom of the ladder. Are you able to tell me, for instance, whether or not the independents have a far more noble attitude to the lesser independents, these small one-employee or no-employee operators, than the big three might have to your group?

Mr Baldock—Senator, I guess your question is quite appropriate in the sense that there would be those occurrences whereby let us say a more corner/convenience store is in a rural community and the larger store in that community is in fact an independent.

Senator FORSHAW—Or in a suburb too, not necessarily in—

Mr Baldock—Yes. I think the difference is that generally speaking there are two avenues through which they can buy product to service those outlets. The support services and so on are in fact given to both entities, and the smaller ones are usually encouraged to try and grow and to eventually become that bigger one, either in that town or perhaps in another town, in terms of the possibility of being assisted financially to be able to do that, to be able to grow into another business, which is not quite the same in terms of the dominance of the major retailers in the activity towards the independent. It is more to try and reduce the competition. And there is still the competition there—don't get me wrong—but it is in a different way, and the smaller stores are often encouraged and helped by virtue of the systems and procedures and so on that are in place by the banner group operators to in fact grow themselves.

Senator FORSHAW—I do not have any figures for this at the moment, but wouldn't it be a reasonable assumption that the group that has really been suffering—and we can extend this to a whole range of areas, not only grocery retailing—in this country in the last 10 or 20 years, whatever it is, are those family small businesses? They could well have been the victims of a whole range of changes—including some of your other members.

Mr Baldock—I could not argue with that, Senator. You are right.

Senator FORSHAW—That raises this whole issue of why should we be singling out a particular sector of the retailing industry and looking after them, as it were, against competition from another sector. You have got 2,200 retailers as members of your association. I would venture to say that a substantial proportion of them are of the very small category size. Is that correct?

Mr Baldock—Yes, that is correct, there certainly are quite a number of them, and—your comment is correct—it is far more difficult today operating a store that might be a Mom-and-Pop store with no employees, or a family type operation, because of the various changes that have gone on within the retail industry.

Senator FORSHAW—So whatever we do about Woolworths, Coles and Franklins, if we were to do anything, may have absolutely no impact upon their future prospects.

Mr Baldock—That is one of the reasons why in fact we have put forward the second reconsideration in terms of total market share, because we are now seeing a situation where the major retailers are going into the type of operation that traditionally, up until recently, has been the province of independent operators, family operators and so on. They are going into cosmetics, they are going now into convenience stores.

Senator FORSHAW—That is interesting. We have not got the time to explore all of that, but we have had some other evidence with respect to, say, butchering, where it was put that the reverse is happening; that you are actually seeing some improvement in the market share for those small operators because of the way they have changed the nature of their business and so on. I want to raise this with you. Yesterday we had evidence from the Shop Assistants Union, which covers a large number of the employees in this industry, and they gave us some information with regard to the western New South Wales region, which is a fairly extensive region. You can have a look at this, if you like, and come back to us if you have any further comment.

They pointed out that in that region, in 11 major towns—Bourke, Cobar, Dubbo and so on—there were 28 supermarket stores, of which 10 belonged to the big three and 18 were independents. In the majority of those towns there was no Woolworths, Coles or Franklins. One can at least deduce from that that in that large region a substantial number of towns are serviced by independent operators and not by the big three. How does that sit against the argument that what we have got here is the big three taking business away from independent operators in rural and regional Australia?

Mr Swain—If I can make a comment in relation to that, it really relates back to the very small stores compared to the medium sized independent. Very rarely do you find a chain of independents where one owner controls three, four, or five stores. In Queensland there are two or three companies that do that. So, by and large, you are talking about a large independent who might turn over $1 million, $5 million a year, compared to a Woolworths which turns over $2 billion, $3 billion, $4 billion a year, and there really is no comparison. Whilst that one Woolworths may compete with an independent or a large independent, overall, as a chain, there is just no comparison between the two.

Senator FORSHAW—But is that relevant really if we are going to focus upon what is happening in rural and regional areas of Australia? Isn't it just as relevant to say, 'Look at the town of Bourke, look at the town of Cobar, look at the town of Gilgandra, look at the town of Narromine, look at the town of Nyngan. In each of those major towns the supermarket that operates there is an independent, and it presumably has almost a monopoly share in that town'?

Mr Baldock—But I think to some degree that enhances our argument, because what it is saying is that if in fact you did not have a relatively strong independent sector, you would not have services in those towns at all—

CHAIR—Hang on a minute—

Senator FORSHAW—But you would have to be able to show that all of this is at risk and is in jeopardy; that they are all closing down.

CHAIR—How could it be at risk in terms of the independent in—say, Nyngan for example. I do not know who is there. How are they at risk if they are operating in a—

Senator FORSHAW—There are two operators at Nyngan.

CHAIR—Are there? I mean, if you do not have Coles or Woolworths or Franklins in there, how are they at risk?

Senator BOSWELL—I can tell you that.

Mrs ELSON—I could tell you that one. We're Queenslanders. We can tell you.

CHAIR—Okay. Have you finished that?

Senator FORSHAW—Well, tell us about Queensland. It would be helpful if you can provide us with some—

CHAIR—I think Senator Boswell and Mrs Elson might—

Mrs ELSON—We will tell you why.

Mr Baldock—Chairman, I am sorry, there were three conversations going on. I did not hear what the Senator said.

Senator FORSHAW—I am deliberately being the devil's advocate here on this issue at the moment. I would think that the argument would be a lot stronger if you were able to say, 'Look, here is a list of towns in Queensland or New South Wales, in regional and rural Australia, where all of these medium sized independents have closed down and have been replaced by Woolworths or Coles either in that town or in the neighbouring town through a new store.' But I have not seen any evidence to that effect.

Mr Baldock—What we are saying is that in fact the ability of the independent sector to be able to service new and growing areas, to service existing areas such as regional Australia where there are no chains, is under threat, is likely to be reduced, even though that individual business may be operating reasonably well. We are talking about the total entity, the whole independent sector, which is under serious threat.

Senator FORSHAW—That could be through a myriad of factors.

Mr Baldock—It is.

Senator FORSHAW—That could be due to the overall economics in rural Australia.

Mr Baldock—It is a number of things, but this is one of the principal—

Senator FORSHAW—You cannot blame Woolworths necessarily for that.

Mr Baldock—No, but what we are saying is that there is no Woolworths in that town—is there—that you have been quoting? There is no Woolworths, there is no Coles, there is no Franklins. It is not big enough for them. It is the independent sector, the independent retailer that is in there servicing that community, supporting that community. But because of what is happening in other areas throughout Australia the ability of that operator to be able to buy correctly, to be able to service that community, is under threat, and if the people in that community do not perceive that they are getting good value from that independent operator, they will drive somewhere else a hundred kilometres away to another centre where perhaps there is a major retailer, and take their business with them, which is a threat to the economic ability of that town to sustain itself.

CHAIR—Perhaps we might offer the opportunity for Mrs Elson to have a quick question on this and then we will go to Senator Boswell.

Mrs ELSON—No, I think we had better give it to Senator Boswell. I have had mine.

CHAIR—Senator Boswell, do you want to make a comment on that particular issue?

Senator BOSWELL—Ian, 86 per cent is a pretty significant figure, and you are now down to 14. How low can you go and sustain an independent wholesaler which locks into the independent retailers? You are the lowest in Australia.

Mr Baldock—Yes. I would not like to put a figure on this, Senator. I mean, it could be five per cent—

Senator BOSWELL—No, you are the same as everyone else—no-one will—

Mr Baldock—or seven per cent. But of course your point is well made in the sense that the wholesale operations that supply the independent sector also rely on volume, in the same way as major retailers do, to try and buy as good as they can, to sell at the keenest price they can to the independent. Of course, the lower that volume goes the more difficult it will be. Certainly that is a very good point because it brings into question then the independents' ability in fact to be able, as I mentioned earlier, to continue perhaps in some of these towns if they cannot get things at the right price, if that means their consumers have to go elsewhere to shop.

Senator BOSWELL—Davids are an independent company. They, like Coles, Woolworths and Franklins, in the long term are dependent and reliant on their shareholders for their continued existence. At what point does a critical mass go? No-one is prepared—and I have asked everyone this—to put a figure on it, so you are not out of the ordinary there.

Mr Baldock—I am glad I am no different.

Senator BOSWELL—But the point I think the chairman is making is why will these stores close if there is no other chain in there? The answer I think he is looking for is that if you have not got an independent wholesaler that can sell with a critical mass then he will not ever be able to service these smaller shops, and then the smaller shops will go out of business and that is why they will leave the towns.

Let me get back to another point. This capping has some problems. Let us assume that Coles go out of a town. Doesn't that give a free trip to Franklins? Franklins just go in where Coles are. They have nine per cent or 14 per cent of the market. The phone call goes, 'We've got to get out of this town, how about you coming in?' and we are just transferring from Coles to Franklins. I mean, Franklins are at 14 per cent and they have a long way to go to build up to 25 per cent. How does that happen?

Mr Baldock—It is possible.

Senator BOSWELL—So all we are doing is transferring—

Mr Baldock—I could not say it would not happen, but our proposal is that no one entity has control of more than 25 per cent of the market. So that allows growth.

Senator BOSWELL—All right, so we lift Franklins from 14 per cent to 25 per cent. Where is the advantage there? I am sure that would happen because Franklins would be the ones that would be able to. Because they are a public company and they can dip into public funds, I think you would end up transferring from Coles to Franklins or something like that. But, anyhow, that is just a problem. The other problem I have is this creeping acquisition that has shifted 2.8 per cent of the market by the majors buying the independents out.

Mr Baldock—It is over $1 billion retail—

Senator BOSWELL—Yes, it is 2.8 per cent of the market. It is a considerable share of the market when you are fighting for market share. You represent the storekeepers. What would the attitude of the storekeepers be if one of the majors went and offered them 18 times turnover and they were not allowed to sell? Would they accept it or would they—

Mr Baldock—If there were a situation in place where they were not allowed to sell, why would they offer it in the first place?

Senator BOSWELL—They would always be able to sell, but were not allowed to sell to Coles, Woolworths or Franklins, which would take them—take Franklins—over, or take—

Mr Baldock—Senator, certainly it is a hypothetical question, but what would be the point of Woolworths, Coles or Franklins, if they could not buy it, going to try and—

Senator BOSWELL—No, they can buy it at the moment. What I am saying is that we could prevent this, as a committee—I am not saying we will. The options are there. But if the option is there for us to go to Coles, Franklins and Woolworths and say, 'You're not going to buy any more of those stores. If the independents want to sell them they have to find an independent operator to buy them,' what would the attitude be of the storekeepers if we prevented them from selling well over the market price? As you would acknowledge, the chains do pay a fair bit over the market price.

Mr Baldock—But that would be a situation where one event takes place before the other. Let us presuppose the committee decided that they would impose a cap or, sorry, impose a restriction on an independent operator being able to sell his or her business to a major chain. Then why would the major chain make an approach to try and buy that business? I mean, if that becomes the law, that becomes the law. That is it, end of story. So I do not think it would create a problem.

Senator BOSWELL—The question is: do you think that your members would accept they would be excluded from a very high offer?

Mr Baldock—In essence, yes, because of the principle involved, because none of them individually would know whether their store, if you like, was going to be one to qualify for a major retailer coming along and making some form of ridiculous offer. So because of the principle involved and the need for the independents to stick together, I believe they would support that.

Senator BOSWELL—How many grocery shops and butcher shops and greengrocers have closed in Queensland over the last five or six years?

Mr Baldock—I cannot answer that. All I could say in answer to your question, Senator, is that when we did the survey back in 1994, those 350 stores we identified that had closed—and that was a period of 12 months after the fairly dramatic extension of trading hours—were a mixture. I will defer to Mr Swain in a moment because he might be able to remember the figures more accurately in terms of the break-up between those which were butcher shops, convenience stores and so on. There were a few non-food type operators but principally they were in the food field. Can you remember that, Randall?

Mr Swain—The figures we have on page 9 of our submission show that there were 362 which closed as a result of trading hours. There was a real variety. There was no set pattern. Certainly the National Meat Association has very up-to-date figures on butcher shops which have closed and I think they have figures which go back about 10 years. But as for greengrocers and things like that, there is no set pattern to our survey which shows there was 20 per cent or anything like that. It is also somewhat difficult when you get names like 'Pete's Shop' coming back on a survey form. You do not know whether it is a bait and tackle shop or a bread shop or a convenience store, or whatever it might be. It does become somewhat difficult to define what that is.

Senator BOSWELL—Why do you think Queensland has lost more market share than anyone anywhere else?

Mr Baldock—I think perhaps one of the reasons is that we have had a situation, Senator, in Queensland where there has perhaps not been the full support by the wholesale operations. I think the problem is partly—and I am sure every committee member knows this fact—that QIW, which was the entity purchased by Davids, had lost the plot along the way and had become far more concerned with respect to dollar return on investment and so on. Obviously they needed to—but without giving due consideration to the independent sector. I think that, in turn, has formed the growth of Foodlink. As I mentioned earlier, the general manager will be before you next. It is a unique type of operation that does not exist in any other state. Now, I think they were assisted by the fact that the wholesalers had taken their eye off the ball, and I think the major retailers seized what they obviously saw as an opportunity.

CHAIR—All right, thanks. We would like to thank you for your presentation. We have had you here for a fair while, but obviously it is particularly interesting to us because you represent such a significant number, and are the target group that we are looking at, and the implications for that. So thank you for your submission, your presentation, which has been extensive, and the way in which you have answered the questions. We appreciate your coming.

Mr Baldock—Thank you for the opportunity.

CHAIR—I wonder if we can have a break for a couple of minutes at this point.

Proceedings suspended from 11.19 a.m. to 11.24 a.m.

ANTCLIFF, Mr Jeffrey Robert, Director, Retail Enterprises Pty Ltd

ANTCLIFF, Mrs Joanne Marie, Director, Retail Enterprises Pty Ltd

BERRY, Mr John Terence, Executive Chairman, Retail Services Ltd, Foodlink Ltd, Australian United Retailers Pty Ltd

SOMERVILLE, Mr Grant Milton, General Manager, Foodlink Ltd

CHAIR—It was the Queensland Hotels Association which slowed us down first off, and then we have been delayed, so I apologise for that. I would like to welcome Mr Grant Somerville, Mr John Berry, Mrs Joanne Antcliff and Mr Jeff Antcliff. The committee prefers that all evidence be held in public, but if you need to, you can make a request that you go in camera. The only warning, if you do go in camera, is that the Senate may at some time in the future decide to make the evidence public.

The committee has before it submission No. 193 dated 25 March 1999 and submission No. 36 dated 20 March 1999. Are there any alterations or additions which you wish to make to these submissions at this stage?

Mrs Antcliff—No.

Mr Somerville—No.

CHAIR—Thank you. I would now invite you to make your opening comments, followed by questions.

Mr Somerville—Thank you, Chair and committee members. A lot of the information that has been provided in our submissions has been duplicated in the QRTSA submission. I would like to approach my opening remarks from a purely grassroots point of view. In terms of my membership of Foodlink—300 plus independent retail operators ranging in size from large regional supermarkets down to small corner stores—and the effect of the major chain dominance in creating a situation where the smaller retailer is being forced out of business and therefore the ability for the consumers to be adequately provided for is a great fear. I have had 14 years running my own supermarket before joining Foodlink, and the camaraderie, the personal interaction between shopper and retailer, is a very important part of the Australian fabric.

The larger supermarkets get, the smaller operators do not have that ability because their market share is falling and they do not have that ability to look after smaller regional areas and also smaller domestic areas within the large cities. We provide service for young people in terms of providing them jobs. We provide a service for the older people, people that cannot get to the large supermarkets; they ring and we drop around the litre of milk because they were not able to get into the store. Those sorts of basic services are very important and that we provide the fabric within this nation to continue that sort of operation. I mentioned jobs. There are surveys that suggest that where a chain store opens up there is a reduction in jobs in surrounding areas, and the figures 1 to 1.7 are the results of surveys.

So basically, we need the fabric of the smaller operators to maintain the services to the community. The smaller operators, be they in retail or be they in other businesses, provide a lot of other services to the communities. The fabric of local Rotary Clubs, Lions Clubs and so forth is made up by small business operators and, if they are not there, those sorts of things are not happening. Those service clubs help the community at large, in general. So effectively we need to maintain a situation that enables small businesses to prosper. Certainly, placing a cap on the three larger retailers will not affect their ability to produce profits for their shareholders, but at the same time it will provide the environment to allow small operators to be part of the economic fabric.

The other thing that we ask, of course, is, should the capping go ahead, at the same time we need some sort of sensible rationale with regard to the development of larger supermarket shopping centres, and request that there be an economic study as to whether a new proposed supermarket is really necessary for that particular area, and whether we need to look at that quite closely. Chairman, thank you.

CHAIR—Thank you. Mr Berry, do you want to make some comments?

Mr Berry—In our group that we service there are over 700 independently owned retailers, and our turnover this year will be approaching $1 billion. That is their retail sales. We operate from five kilometres south of the Papua New Guinea coast halfway to Sydney and as far west as you would like to go; keep driving as far west as you like and you come to a little town called Beduri. There is one operator there, one of ours. If you go into Aramac, there is one operator, one hotel, half a dozen people, and it is an independent. Likewise, you can go to places like Mackay. We have got an operator there who is doing $300,000-odd a week, very effective, very hard. They work very hard, these independents.

It is a worry to see what is happening within the market share of the industry and it is the supermarket industry that we have got to be talking about. The supermarket industry means the box of groceries that people take home, whether it be fresh food right through to fresh meat, whether it be the delicatessen product, or whether it be the branded product. I started work in 1954 and that was with a company called BCC Stores, who were the first people who started self-service in Australia in 1921. So I have been born and bred in the supermarket industry. My father ended up being managing director of that company. Woolworths decided that they would move into the supermarket industry and so they hit the market there, and in 1957 did a Part A and took over the public listed company of BCC Stores; that is how Woolworths got into the supermarket industry. We have now watched them grow to the point where they have got to 40 per cent of the market. On the independent side, I got involved with independents during the seventies, and then of course came back into it during the eighties.

The total market, as you know, varies from state to state, but overall is 80 per cent nationally. If you want to look at Queensland you are talking 86 per cent of the big three. What we have got to look at is the domination of the chains, why it is happening and how can we stop that domination if we believe it is unhealthy for a country. I am telling you I sincerely believe the market share that we are seeing, and the total retail dollar, as well as the supermarket industry, is unhealthy. When you start to pull out the way the supermarket industry operates—but, unfortunately, in the 10 minutes that we have to speak to you, one cannot give you the history of the supermarket industry and the way it really does work, but in essence let us consider a few areas.

Senator Boswell asked why did Queensland only have 14 per cent independents and 86 per cent in the chains. Let me just take you back to the seventies. Briefly in the seventies the chains had very little market share in Queensland, very little market share in South Australia, very little market share in Western Australia. In Victoria you had Coles controlling the market share down there. In New South Wales you had Woolworths controlling the market share and in Sydney you had a company called Franklins, which was then privately owned, which had 37 per cent of the actual Sydney market share. At the end of the seventies when they wished to expand, you had population growth in Western Australia, population growth in Queensland, negative population growth down in South Australia.

I am telling you now, if you are heading up a public company and you are out there to increase your market share, you are going to go to the markets that are the easiest ones to show you the growth that you want, and profits. Hence, Queensland became targeted, because it was easier for New South Wales and Victoria based companies to come into Queensland. So through the eighties we had an enormous growth of the two chains, Coles and Woolworths, buying into the independent market in Queensland.

The dollar support that retailers or industry require is a very important recipe or factor within the growth of any industry. When you have bankers that only give money on bricks and mortar and you have independent retailers who rely on cash flow, then it is very difficult for them to receive the funding that is required to grow and continue to grow. In certain country areas you will find a lot of independent retailers actually own the real estate. They have a far better opportunity of being able to obtain the right sort of funding. But when you get into the highly populated areas, such as the south-east Queensland area where we are now, we as industry people advise our retailers not to own real estate in the store they are operating, for the simple reason that as growth of population occurs you get movement of market. If they have their money tied up in real estate they will be lucky to receive a 10 per cent return, but a very good operator will be able to receive at least a 30 per cent return before interest and tax on the money they invest in their own businesses. Hence we tend to get them to not own their stores. We can see this now happening as a trend in so many other industries. For instance, all the banks are selling all their branches. Admittedly they are closing a lot too, but they are not becoming landlords. They wish to remove themselves from that sort of investment.

Over the years, as this all happened, we then had these companies creating a situation where they are driven by the stock market to where they now have to feed the beast. If you divide our industry up into three categories you have the aggressive retailer, you have the top-up market and you have the convenience market. Everywhere you go to buy groceries—or supermarket provisions, as we know them—you go to one of those three areas. The aggressive retailer is the chain or the independent who satisfies the total basket of goods that the housewife, the consumer or the family requires. We have many independents that do that. Primarily now you will only find them in country towns and unfortunately you will find they are now being raided by virtue of what we call chequebook expansion.

At 9.30 this morning I had a phone call from one of these independent retailers who operates a store 30 minutes from where we are sitting right now and, would you believe, one of the chains has offered him twice what his business is worth. He said to me, ‘What am I going to do?’ That store is worth $1½ million and he has been offered twice that.

CHAIR—I presume he is not complaining.

Mr Berry—That is a very good question, but the point I am making is that chequebook expansion is what is happening because each of those three chains is after market share to satisfy their share price. Market share is the part that the investors of the institutions look at. If you look at the institutional investors now, they are criticising FAL in Western Australia because they see its market share being level, if not dropping slightly, whereas they see the market share that is being published—and by the way, the market share that is published is the Nielsen figures; they do come from *Retail World*. We are involved with *Retail World*. It has been going for 50 years and we started a method of measurement 20-odd years ago which became the only method of measurement we had.

You have to realise that a retailer will not tell you what their volume of sales is but a manufacturer or supplier will tell you what quantity they supply. That is the only way we could get a measurement of market share back then and now that continues on. Of course, with electronics you have scan data, which gives you a better idea as to what is sold versus what is purchased. It is because of these dominations and the way they can control and threaten suppliers as a business grows; likewise if it is a chain operation, the threats they can place on suppliers are enormous.

In 1914 the USA Congress realised this and they brought in the act which was the start of the antitrust acts which were upgraded in 1936 to the Robinson-Patman Act. I am sure you are all aware of that legislation. Nobody can sell to a reseller at a different price to what every other reseller has the opportunity of buying at. The only variation you have is volumes but any retailer who buys at that volume, regardless, therefore buys at the same price throughout the United States. In Australia we think we have that in our restrictive trade laws but we do not have the bite or anything that the antitrust laws have in America. It is through this Robinson-Patman Act and ongoing antitrust laws that we have that we see the strengthening of the various markets.

Earlier we were asked if we knew of any examples of the controls going into monopolistic situations. In California there was a supermarket chain called American Stores. Their competitor was Lucky, together with half a dozen other competitors. American Stores took over the Lucky supermarket chain, so the Attorney-General of California, using the antitrust laws, said ‘You cannot do that unless you divest yourself of 60 Lucky supermarkets’ and they had to, otherwise it did not go ahead. It is this sort of legislation that we have to consider so that we are creating a level playing field. It is the level playing field factor that we require.

We, as independents, can mix it with the best guys at any stage, in spite of the fact that we pay more for our product, because of the sales tax legislation that exists and hopefully will be abolished soon, which will start to level that out. We pay more because we have the middle man going through to handle it. The only way we can get volume discounts is to have the volume through a central warehouse.

CHAIR—I understand. Mr Antcliff, would you like to make your contribution?

Mr Antcliff—Thank you for the privilege of addressing the joint parliamentary inquiry on retailing. My name is Jeff Antcliff.

CHAIR—I will just point out that the submissions are taking a reasonable amount of time, so could you summarise your submission.

Mr Antcliff—Sure. For the last two years my wife and I have owned an independent supermarket called Buy Right, Caboolture, which is one of the state's most competitive regions. Prior to that I was working for a major retailer on management levels for 14 years. You have obviously seen my submission, and the reasons I am calling on you to cap the majors is laid out in the submission. Through the course of your inquiry Dr Darryn Abraham from Access Economics postulated that if all the retail trade was forced out of large stores back into smaller scale stores, consumers could end up paying as much as a quarter more for their groceries.

Instead of proposing an unproved economic theory, may I suggest we deal in facts. Milk has been deregulated in the Queensland market since January this year. The theory behind deregulation was to make the sale of milk to the consumers more price competitive. In fact, upon deregulation the cost price to retailers was significantly reduced as the processors battled for market share. Consumers, however, saw no discount pricing from the major chains at all. Only progressive independent retailers met deregulation in the spirit it was intended.

CHAIR—It also could be true to say it was only partly deregulated—a market which is not fully deregulated—in terms of the milk at the farm gate.

Mr Antcliff—Yes, okay, at the farm gate. At our store we have frequently placed milk on promotion and are currently selling milk, one of the most staple products, at up to a whopping 19 per cent below the major chains in our local area. Last week two Queensland milk suppliers announced a 6c a litre price increase. Pauls' price rose immediately, however Dairy Farmers' price increase is not effective until Monday next week. I was appalled at the profiteering behaviour of at least two of the major retailers in our local area, who passed on the Dairy Farmers increase two weeks prior to its taking effect. I note that this unethical behaviour is actually now being investigated by the ACCC. In Queensland it has taken independent retailers to show leadership and integrity in the deregulated market. The facts show Dr Abraham's theories to be ill conceived and thoroughly flawed.

Furthermore I would like to confirm a comment from Ian Baldock. The A.C. Nielsen figures are quoted and are used by major retailers when discussing market share figures to their management level. I have been there on many occasions and those are the figures that are used, so when I hear different figures being used by the chairman of Woolworths I have to question that. On his 75th birthday Winston Churchill said that what will separate the leaders of tomorrow from the leaders of yesterday will be their ability to manage change, to lead in a world of crumbling traditions and inadequate institutions, to not only understand the world as it is, but as it might some day be.

Your deliberations are more than an inquiry into excessive market domination of three retailers. This inquiry has the opportunity to help manage a change that says what type of nation we wish to live in. It is a decision between economic rationalism, the flawed national competition policy, and real people. Thank you, chairman.

CHAIR—Thank you for your spirited presentation, and now for a spirited Queenslander. Senator Boswell.

Senator BOSWELL—John, I have known you for many years but I have always had difficulty in knowing exactly what your business is. I think you control the advertising, you do not run a wholesaling business, but you are somewhere in the market. I have never seen a business like yours anywhere else. Could you just describe to the committee how you fit in to the retail market?

Mr Berry—Sure. First of all, I believe everyone has the right to own their own business. Secondly, as I have been associated with public companies in the past, I realised that independents needed to have a support mechanism behind them equal to or better than any public company's head office. So we set out to do exactly that. We started off with about 60 stores 10 years ago. We now have 700. What we do is we arrange all of their promotional activity; we wheel and deal contracts of supply, finance wherever we possibly can; we do store plans for them, et cetera. We become their head office.

Senator BOSWELL—Do you take head leases out?

Mr Berry—Only in certain instances have we done that, and that is where we operate a pure franchise operation. In a pure franchise situation, we can sit down and argue the definition of a franchise operation versus a licence. The independents primarily operate under what I call a licence banner agreement. A licence banner agreement means that you do not control the actual retail space, but if you wish to do a franchise operation such as a McDonald's or any other true franchise—such as Nightowl, which is the one we worry about—we then take out a head lease so that we can control the site.

Senator BOSWELL—You said you heard someone offering one of your stores 100 per cent more than it was worth. If we are going to address chequebook acquisition—and we can—do you consider it reasonable to prevent people receiving the highest possible offer they have for their business?

Mr Berry—Senator, nobody can stop a family group accepting the best price they can get for their business. I have rubbed shoulders with so many retailers over the years—that is the trouble when you get into your sixties and you have been around the industry as long as I have—and there are so many of them who say to me, 'John, I have just had one of the chains'—and this is a Victorian friend of mine—'offer to buy me out.' He said, 'It's a million dollars more in goodwill than I can possibly ever get. My family have grown up. But, more importantly, the advice I get from my financiers is that, because we own the real estate and it is in a country town, if I have Coles in there as the tenant, the price of my real estate is capped at eight per cent. If I have an independent in there as a tenant, the value of my real estate is capped at 12 per cent, so I not only get a million dollars more in goodwill, but my family is looked after by virtue of the value.' I now come back and I say, how can we possibly answer that?

Two of the biggest areas of concern we have are predator pricing and chequebook acquisition. Predator pricing occurs and is one of the hardest things—and that is where I keep reading this—to get goodwill, but we can do something about it. With predator pricing a chain can go into a marketplace—or anybody who has a large multiple operation—and they can then price and price and price because they are using profits generated in other locations, until such time as their competitor is on their hands and knees, because they are only having one source of profit.

Chequebook acquisition is where market share is driving them through the share market, in particular, and as a matter of fact I would endorse what is being said here about Retail World. If you have a look at Woolworths, when they floated, in their document for the float, they used the Retail World market share as their basis to show the world and the investors how big they were. So now for them to stand up and start talking percentage of food in the stomach, they are just looking for any other way to take the pressure off.

Senator BOSWELL—That's good, but you did not answer my question.

Mr Berry—What I believe has to happen, Senator, is we need a finance thing. If you want to pay a formula—let's say we use 10 times turnover, let's say that is the value, for the sake of this exercise—then the purchase price can handle the repayment of that finance, but if it suddenly becomes 20 times then it becomes uneconomical on today's current financial market. If perchance that independent is able to obtain finance—help—over a longer period of time at a good, acceptable rate, then you will find that you have got a level playing field again, because the public company structure is such that they have a different situation on finance.

Senator BOSWELL—Can I ask you a dirty question.

Mr Berry—Never stopped you before.

Senator BOSWELL—Did you tell your mate to sell or hold in there? Do not answer the question. It was an unfair question. What you are suggesting is a small business bank.

Mr Berry—Correct.

Senator BOSWELL—And that is an option, I suppose, but I do not know that the Treasurer would—

Mr Berry—Let me also say, Senator—just interrupting for a moment—one of the reasons why we have the domination occurring is because the stock exchange is being driven by institutional investors who have so much money to invest every month, every day, every week, from superannuation funding, so they are driving the stock exchange, the stock exchange is driving the executives of the chains, or any other people on the stock exchange, so the whole thing fires. That superannuation is also coming from small business people. Why don't we have a percentage of that superannuation fund put aside to help small business development? There is a starting point. Bearing in mind that I go along to bankers regularly and say, 'I want to help fund Grant Somerville or Jeff Antcliff,' and the banker will say, 'What is their cash flow factor?' 'Here it is.' 'What is their real estate?' 'Here it is', and then I will say, 'Well, what's the value on their business, because they own no real estate?' and would you believe the answer is, 'Zilch'? And they can be highly profitable because they still really do not give lending on cash flow. They talk about it. They say they do, but in reality they do not. That is where I think the problem is.

Senator BOSWELL—Mr Berry, I have heard on numerous occasions about this guy in Mackay. I have never been to his—

Mr Berry—Hatfield?

Senator BOSWELL—What is the magic that he has got? Does he go out and sell to the farms and deliver?

Mr Berry—No, not at all. He mixes it with the big guys. He is the second generation. They are just very good, professional independent retailers and they love their industry.

Senator BOSWELL—Well, if he has the magic formula to compete and do $300,000 a week—which seems phenomenal—

Mr Berry—We have got a few others.

Senator BOSWELL—Well, that is a huge turnover. Firstly, why doesn't he share his secret and why can't it be duplicated? I have never been to this store, but if he can do it, why are we losing so many small business people? I mean, he is right in Mackay. It would be very competitive.

Mr Berry—Very much so, yes. You have Woolworths, Coles and Franklins—you have got two Woolworths and two Coles. I think you all know the area.

Senator BOSWELL—I know the area but I cannot—

Mr Berry—Senator, I can tell you now that if you get a good retailer who is an independent who can get hold of finance, we can put him into a marketplace and he will definitely not only survive but will take on the big ones and fight. The reason is that you get personal, hands-on retailing—as Jeff Antcliff could say, having come from the chains—versus an instruction that comes out to managers. They really do not have that same personal approach.

Senator BOSWELL—Well, in that case, if you are right, Woolworths should be in trouble, not you.

Mr Berry—No, the difference, Senator, with respect, is that we cannot find the funding to build these stores. Let me just say this to you—and it is a very real thing: following the

1987 crash, by 1991 it was impossible for us to obtain any leasing for new plant and equipment for an independent retailer unless they had more than twice the value that they wished to borrow in bricks and mortar—more than twice—because every time you spoke to a banker, they all lost money during that 1987 crash on leasing, because they were leasing to everybody prior to the rush of the eighties. Consequently, there are those sort of problems.

Now, the guy you are talking about in Mackay happens to be the second generation. He also has children coming through and they therefore are professional retailers. The majority of independent retailers are people who have been paid a super fund payout. They suddenly say to themselves, ‘Oh, I need to buy a job,’ and they then go and buy themselves a supermarket. They are not professional retail people. The ones who are professional are the ones we can show you: Derrick Cornett who operates out of Bribie with a group of stores, the Hatfields, and so it goes on. But the list is not a really big list, and that is really what it is about. Then somebody comes along with a chequebook with a few zeros—

Senator BOSWELL—So you are saying with training and finance there is no need for market gain?

Mr Berry—Correct.

Senator BOSWELL—We have had evidence—I was going to raise that—and we are getting—

Mr Berry—Give the ACCC some bite.

Senator BOSWELL—We did that when we changed the market test and that prevented Coles taking over Foodland.

Mr Berry—Right.

CHAIR—Does it need some bite in terms of just simply capping and market share, or what else? I do not want to hijack Senator Boswell’s question, but I think it is interesting for us.

Senator BOSWELL—That is fine, Mr Chairman.

Mr Berry—I wish I could give you an answer to save the destruction and the will of small business people generally. I hate the word ‘small’ because every time you think of that you are likening it to a corner shop, and that is not what we are talking about. The definition of small business people is somebody who owns their own business. That is sad because a lot of them are really good, successful and large business people in their own right. I wish I could give you the solution. I believe, though, that the ACCC never appears to be able to win a court action in a lot of these sorts of instances that we are talking about. I talked about the Safeway one the other day. Therefore, somebody has to sit down and look hard at the legislation as to why those things are escaping the net. Professor Fels and his team, I know from the conversations I have had with them over the years, really liken it to the Americans going to the Vietnam War—one hand tied behind your back—and it is very difficult.

CHAIR—We will follow that question up.

Senator BOSWELL—We are getting very conflicting advice on what happens around the world. What appears to be happening is that someone says something, someone else looks at their submission and then they say what the previous people said, and so it goes on, and then it becomes part of the vernacular. We had a person from the American antitrust law area—or whatever they are—over here on a sabbatical with the ACCC. If my memory serves me correctly, he said that the Robinson-Patman Act was just about to be abolished; it was not effective and it never had been used. Am I correct in that, Mr Chairman? Is that your assessment?

CHAIR—That was my memory, too.

Senator BOSWELL—When we got on to market shares he was saying there was no predominant retailer in America. There are predominant sectors.

Mr Berry—In areas, that is right.

Senator BOSWELL—And it might go across two states or three, but not right across the States. We seem to be getting conflicting advice of what is happening on market share and we have the ACCC checking this out. When it comes to what you are saying—diversifying—yes, I have seen the ACCC force people—in the amalgamation of abattoirs and so forth—to divest; but that is not just as they are trading along and the ACCC go in and say, 'You're out.' It is when one group buys another group. Yes, I have seen the ACCC say to AMH, 'Drop Mackay and drop Burrum.' I have seen that happen. But what you are asking, I think, is something that has never happened in America. We were told that the antitrust laws were used four times in 100 years. One was the break-up of Standard Oil, one was the break-up of Bell Telephone and there were two others.

Mr Berry—Senator, with respect, this is a little book that I got hold off. The antitrust laws I also believe have been a little bit cumbersome and difficult to see. This is a book that was written by a British civil servant for British business people on the American antitrust law. When you read through that, there are more reasons in there, or feelings, that, by having that Robinson-Patman Act and the other parts of the antitrust laws, you are changing the ground rules or putting down a level playing field for everybody, so therefore there is not a lot of court action, admittedly. I can mention a couple: Moreton Salt is one, and Standard Fashion Patterns is another that was used in the antitrust acts back in the thirties. But what happened was that everybody knew the rules. You take our industry, the supermarket industry. The independents put together their buying power. For instance, out of Davids Ltd—that is our group; we are their single largest customer in Australia—we send in a cheque every Monday in excess of $3 million-odd. Every Monday that company gets paid on behalf of our independent retailers with a guarantee on that debt. We do that so we have bargaining power and we make sure that our volumes come through. Our total volume in that buying power out of Davids—excluding the ones that we pay for—is over $300 million now. That is out of one warehouse. That is out of Queensland alone. You asked a question about what you need in critical mass. You need a $200 million warehouse withdrawal base on today's dollars before such time as a warehouse can be a profitable situation.

Senator BOSWELL—$200 million?

Mr Berry—Yes.

Senator BOSWELL—Is that for the warehouse or what is in it?

Mr Berry—No, that is warehouse sales, invoice sales out. If you are playing with anything less than that, you are out of business.

CHAIR—We are heavily over time. Mrs Elson, a brief question and then obviously the gentlemen to my right will want something to say.

Mrs ELSON—Mr Berry, I will try to keep this brief, but I do not know how I am going to. You have 700 stores, right? Is there any control in those stores about further development? I will go back to a scenario: I live in an area that is the fastest growing area in Queensland and has been for the last seven years. Sometimes I feel independent groceries are their own worst enemy. As someone who shops independent because it is convenient, I am finding it more difficult. In the area where I live, within a seven-minute drive anywhere there are 15 independent grocery stores. As the suburb develops a supermarket goes there. I have all these little supermarkets on my way home from work that I could call in to—which I have done for many years—but I am finding it more difficult to shop there because of the competition between all of these little independents, and their product quality is going down. They have out-of-date stock—

Mr Berry—None of them is making any money, that's right.

Mrs ELSON—That is right. I just wonder if maybe there should be a cap somewhere on the independents. What has happened in my rural towns, also, in the last four years is that there has been one very successful independent grocer—and I think you said in Aramac there was one really successful one out there as well.

Mr Berry—He is not particularly successful, but he is the only one.

Mrs ELSON—In fact I can say two rural towns in my electorate had only one—very successful. A food chain saw that it was successful, so they came in and opened another one. The people in that town actually go into Ipswich to shop now because there was no extra development or population in that town, so those two had to share the market. They had delis and so forth. There are no delis there now because there was no turnover once you shared it. They are being forced to go and shop at big supermarkets. I just wondered if we should be looking at the independent grocery industry also and saying, 'You are forcing people to go and shop where it is fresh rather than where it is convenient.' I would rather shop where it is convenient.

Mr Berry—Mrs Elson, I hear what you say. I do not know the areas you are talking about, but they—

Mrs ELSON—Logan City, Beenleigh and Beaudesert.

Mr Berry—Right. What happens in many instances is that because of the strength the chains have in market domination nationally—not just in a state but nationally—they have enormous thrust with the advertising dollar, the banker and the real estate developers. If you go to properties where the chains have gone in, you will see rental rates that will just blow you away when you compare them to the rentals that the independent retailer—whatever their business may be—has to pay to subsidise that chain being there. Consequently, in the smaller town areas where you have got a development occurring, you will find that, as one development opens up here—and they are small developments—all you are doing is shifting the dollar between this development and that development. Therefore, the shire or the council planning or whatever—

Mrs ELSON—That is right. I think it is the council planning.

Mr Berry—They are the people who should have the responsibility for making sure there is an impact study done before they just willy-nilly allow a development to occur.

Mrs ELSON—I agree with you there.

Mr Berry—Because all you are doing is splitting it, and that is what is creating a problem. It is not the fact that that independent is trying to do his own thing. If we then add to that the factor that in these little areas, if they have not got a certain volume going through, obviously the whole thing falls over. And, because he is the major tenant in a small size, he will be paying enormous rental relative as a percentage to his retail sales. Now, if you wish to compete, this will give you an idea—sorry to take your time.

CHAIR—Briefly, Mr Berry. We are out of time.

Mr Berry—Yes, I am sorry. If you wish to compete in traditional groceries you have got to be selling them at 12 per cent GP—that is packaged groceries. Your rental factor will run at two per cent, your electricity will be running just over two per cent, your wage factor is over nine per cent. So therefore you are broke! Okay? Therefore, you must have a very big fresh content. So if you go to a chain store or any of our successful independents, only 60 per cent of their business is done in traditional, otherwise they cannot compete.

CHAIR—Aren’t you arguing against the McNair figures?

Mr Berry—Yes. But what I am saying, though, is that it is this cost factor of rental as a percentage of sales. When you go to the small developments, instead of rental being two per cent, you will find rental running at eight to 10 per cent; therefore, prices go up to cover that. He has not got the volume of throughput, because we have too many square feet of retail per head of population.

Mrs ELSON—How do these independent grocers get bank finance? You were saying before it was difficult to deal with the banks, but why are the banks risking their money in high risk areas like the one that I was just giving you a scenario of? Most of these businesses that I have talked about are going to the wall, that I am talking about.

Mr Berry—I would like to go and see the specific area, but I think you will find it is because they have got a lot of real estate; they will not be getting their money on cash flow, I will tell you.

Senator BOSWELL—Mr Chairman, could I just ask one question. It will take about two seconds.

CHAIR—No. I actually believe it is appropriate that we ask our colleagues on the right.

Senator FORSHAW—I was interested in the statement you made that we are not really looking here at the mum-and-dad stores. And there is a whole range of questions I could ask you, but—why not? You were listening to the earlier discussion: is there some flaw in the assumption that larger independent stores that have 10 employees, such as Mr Antcliff's, are not in turn doing some damage to the mum-and-dad stores—that has been happening for years—and that what we are seeing here is a much larger impact but the same principle?

Mr Berry—I hear what you say, thank you very much, Senator. The mum-and-dad store can be the little tiny corner store which we traditionally call a mum-and-dad store. What I am saying is that store, which is probably doing $5,000 a week turnover, is being replaced by the convenience sector, by the independents. You are seeing that happening all the time, whether it be the Nightowl, the 7-2-7, or the 7-Eleven groups, et cetera. You have to look at the market because the market is sectionalised into three. As the Woolworths and the Coles take control of the aggressive—and there are not enough areas of population for them to open up a new one—they have now moved into the top-up with the Woolworths Metro stores and the Coles, et cetera. Now Coles are moving into the convenience stores with their tie-up with Caltex. So they are now expanding and expanding. They have got nowhere else to go because they only want to go where they are profitable, in high population areas. So they are now expanding, hence petrol being sold, and so it goes on.

Senator FORSHAW—Thank you.

CHAIR—I would like to wind it up. Is there a burning question?

Mr NAIRN—Mr Berry, you spoke of 700 stores. How do they relate to the 320 Foodlink?

Mr Berry—Australian United Retailers have the 300-odd stores out of Foodlink, 100-odd stores out of Four Square and another 200-odd stores out of Foodstore—different banner groups.

Mr NAIRN—Who deals with Davids? You?

Mr Berry—We are all under AUR.

Mr NAIRN—All under AUR?

Mr Berry—Yes.

Mr NAIRN—So you are the contact with Davids to buy for all of those stores.

Mr Berry—Correct.

Mr NAIRN—Each of the operators is paying you to do that, or are they paying Foodlink and then Foodlink pays you? Who pays whom?

Mr Berry—Basically the three groups—Foodstore, Four Square and Foodlink—are three marketing arms, each run with a board of directors who are independent retailers, and they develop their own marketing strategies within a marketplace. Combining the three together, using the contracts that we have in place by RSL and Foodlink—because it all started with Foodlink—Davids supply them through the contracts we have in place.

Mr NAIRN—Do you have any problems in your dealings with Davids, given that Davids have basically got a monopoly in the market that you are operating in?

Mr Berry—Davids have more problems with us, or we have more problems with Davids? Which way do you want me to answer that?

Mr NAIRN—Either way. It is an interesting scenario in the way in which we are looking at market share and various things. Effectively, the independent operators are dealing in what could be classed as a monopoly circumstance because Davids have the monopoly for all of those independents. They would argue that it is not in their interests to operate a monopoly because, if there are no independent operators, then Davids will not have the critical mass and all that sort of jazz. But still, in pure terms, it is almost a monopoly.

Mr Berry—There are two, don't forget. If Davids do not perform well enough with us, we have got the choice of going to AIW which is owned by Woolworths, or we also have the choice, because of our volume, to go to any one of the other international warehouse people who have already done their sums and they can open a warehouse for us and operate very quickly, if we so desire. That is Brambles, et cetera.

Mr NAIRN—They are not doing that now, though, are they?

Mr Berry—That is correct. What about FAL? FAL has got to get themselves exposure one of these days on the east coast.

Mr NAIRN—Yes.

CHAIR—Thank you very much. Mrs Antcliff, is there anything that you would like to add?

Mrs Antcliff—I would like to give you a practical example of how we are operating in our local community in a way that the chains cannot. On Wednesday night my husband was late home from work. His reason was that he had to drop one one-litre carton of milk to one of our regular customers who is housebound; she had forgotten on her phone-up order that week to add milk to her list. So he did this and when he got to her door she asked him to change a light bulb. In fact he changed three light bulbs for her. And there is no way that a major chain is going to go to the customer's house for one litre of milk, charge no delivery fee—just the cost of the milk—and change her light bulbs for her.

CHAIR—Thank you. I wish you lived around the corner from me, Mr Antcliff. Thanks very much. I think we have all found it very interesting. I am sorry, to those waiting in line, for the committee going over time.

I think probably John, because you have had such lifelong experience, that you know all aspects of the industry, and I think we have found it very interesting to tap into that knowledge and we appreciate your openness and frankness with the committee. Obviously it is not easy for this committee. We have had commentators from both sides of the equation. Terry McCrann from the *Telegraph* is beating us over the head already, and we have got a commentator on the radio who has been at it again this morning from the other side. So put yourself in our position.

I think, in terms of the legislative requirement—giving teeth to the ACCC—you might want to go away, given your experience in the industry, and think about it and write us a note saying—as if you were sitting here as one of us, and given all your experience as an independent person who is just looking after the interests of the average Australian—what you would be putting forward, in all sensibility. What would you think is going to be acceptable to the Australian parliament, the government, going all the way through? I do not want you to comment on that now, but if you would just give it a little bit of thought and write a note to Andrea, who is the secretary, so that we have the benefit of that. We really do appreciate your experience in the industry, and I apologise to those behind but obviously we found it particularly interesting.

Thank you all for coming, we appreciate it, and I hope you keep on delivering the milk around the area and changing those light bulbs, Mr Antcliff. Thanks for coming Mrs Antcliff and also Mr Somerville. Thank you.

[12.11 p.m.]

COPEMAN, Dr Richard Charles, Coordinator of Consumer Food Network, Consumers Federation of Australia

LANG, Professor Tim, Professor of Food Policy, Centre for Food Policy, Thames Valley University

CHAIR—I would like to welcome Dr Dick Copeman and Professor Tim Lang. The committee prefers that all evidence be held in public but, if required, we can go in camera at any particular time on request to the committee and we will consider it and then make our decision. We should warn you that if that is the case the Senate may decide at some future point that the evidence be made public. We have before us submission No. 172 dated March 1999. Are there any additions or deletions you wish to make at this point?

Dr Copeman—No, I do not. I do not know whether Professor Lang has anything he wishes to table.

CHAIR—This is not your opening statement, it is just for the submissions.

Prof. Lang—No.

CHAIR—I would now like to invite you to make a brief opening statement and then we will proceed to questions.

Dr Copeman—Thank you, Mr Chairman. The Consumers Federation does have concerns about the increasing dominance of a small number of firms over our retail sector, particularly for food. I suppose there are three points of main concern. The first is price, the second is accessibility and the third is some policy issues, which I will come to. While we acknowledge that the growth in supermarkets probably has benefited consumers by lowering prices over the postwar period, we feel that the concentration has got to such a stage that that mechanism is no longer likely to be operating. In fact, we feel that, once we get to an oligopolistic situation, the checks on prices will no longer be as strong. We feel we have almost got to that stage now. Certain evidence shows that where you end up with one supermarket and no competition from the other members of the triumvirate, the prices are considerably higher.

I suppose our main point, however, relates to accessibility and convenience. We do feel that smaller traders, smaller food stores, are going out of business because of the dominance of the big three, and that this impacts on a lot of consumers who do not have access to private motor vehicle transport. Even for those who do, sometimes for the elderly it is difficult to drive and park and get to a more distant supermarket than it is to access a local food store in a suburban area or in a country town. We feel that has other impacts on the community in general, of which consumers form a part, in terms of taking away from that sense of community and knowing retailers, being able to talk to and know people in their local community. That is a very important part of the food shopping experience for a lot of consumers, and that is something that is largely dying out for Australian consumers. It is becoming a very impersonal experience. You rush in and rush out, and you really do not talk to anyone you know. It is another chore to be done, rather than what used to be a fairly pleasant community experience.

The third point relates to some of the lobbying we have been doing as the active organised part of the consumer movement on issues such as genetically modified foods. We have found that we have come up against a brick wall of collusive unanimity amongst the supermarkets on some of these policy issues, so that when we try and lobby one chain on a particular policy issue we get referred to the policy of the Australian Supermarket Institute. It seems that the major three big chains are all having the same policy on some of these important issues, such as the advent of genetically modified foods. We understand that in recent weeks that solidarity may have begun to break down, but we have looked to other countries—and Professor Lang will no doubt comment on this—where you have six or more chains and it has been easier for some chains to make a policy differentiation than others on some of these emerging issues.

Food irradiation is another one of concern and the whole adoption of selling organic produce is another one on which we feel there is a disappointing unanimity amongst the performance of the big three in this country. We would like to see a bit more heterogeneity, a bit more true competition on some of these issues. I think that is probably the summary of our submission.

CHAIR—Thank you. Professor Lang.

Prof. Lang—I was asked to come because I co-authored a study in Britain through a research institute, the Institute for Public Policy Research, which looked at a not dissimilar situation that we have in Britain. That was four years ago. I was asked if I would be prepared to share those findings and the debate that has evolved in Britain, because it is always useful to learn from each other’s countries. Secondly, I ought to declare that I sat on the last Conservative government working party on low income consumers and I sit on the present government cabinet office working party on access to shops, so I am coming here not just as an academic but as someone who is involved in the rather messy politics and policy of this area, as I am sure you are aware.

With that preamble, I would just like to quickly state six issues that I think have arisen in the British debate that is now rolling over into the European Union. The first is a definition of the market. We all talk about the market. How do we define it? One of the points that essentially our inquiry for the Institute for Public Policy Research argued is that there is a gradual bending of the geography for the definition of a market into, say in your case, defining the whole of Australia as a market, whereas from the consumer’s point of view it is maybe a travel to shop sort of notion within two, three, four or five miles, depending on how one lives and in what sort of circumstances. So the first is the geography of the market.

The second is the business, straightforward economic policy issue of how you control concentration and the issue of competition policy. There we essentially argued that competition authorities all around the world appear to be defining markets in national terms when they should be inventing and thinking about more local definitions of competition. We proposed a travel to shop sort of definition of maybe five miles and that we should be encouraging competition authorities, academics and intellectuals to begin reorienting economic policy to enable a much more realistic notion of competition policy for the next century.

The third is a critical issue of market efficiency. We essentially argued that anticompetitive behaviour is being badly served by competition authorities. The fourth point was the issue that Dr Copeman was referring to, among others—the issue of price, where essentially we were arguing, looking at the data of low income consumers, that the argument that oligopolistic companies use, which is that their competition drives down price and that therefore must be good for consumers and particularly low income consumers, just is not true. Countless studies done in Britain—I myself have co-authored a number of them—have shown that low income consumers are precisely those consumers who are penalised by the concentration into hypermarkets.

I am afraid I do not know the figures for Australia but in my own country there are now 1,000 hypermarkets, defined as over 25,000 square feet or about 4,000 or 5,000 square metres of selling space, now sell over half the food sold to the British. In other words, if you think about it, 57 million people are actually only shopping in 1,000 units. This completely restructures economic activity. It means whole townscapes are being physically restructured. In Britain—and I do not think it is quite the same here but it has echoes—there is now an immense debate going on, started by the last Conservative government and carried on by the present Labor government—into what sort of townscapes do we want; want sort of urban and rural space do we want; what do we mean by civic life. This is something that I find utterly fascinating. It cuts right across politics in a really exciting way, where you find unanimity can emerge across political differences.

The fifth point is a very complex but very important point of externalities, that again hypermarket corporations tend to argue that they are very good on price, as I have said, and there is tremendous support for that. You can buy tins of baked beans and bread very cheaply if you go to the hypermarket, but essentially when you are doing that, firstly, as our studies showed, you are actually being, dare I say, bamboozled into judging a few what are called known value items—KVIs—thinking that because you are getting a cheap price on bread therefore everything in the shop is cheap. One must actually be very cautious about that. Most consumers carry a mental map of about 20 items of KVIs, whereas in fact most hypermarkets carry about 20,000 items.

The sort of thing I would like—if I can be so arrogant and bold—is for your joint select committee to recommend that maybe we need to be asking for better price indicators that actually convey the reality of total baskets, not very narrow baskets. The key point about externalities is that the environmental costs which basically the state—that is, you and I as taxpayers—pays are not included in the price at the hypermarket. We are paying as taxpayers to invest in new roads and we as consumers are having to go to work to buy a car, to then use it to say, 'Isn't it wonderful? I've been able to go 15, 20 kilometres to be able to save 5c on a loaf of bread.'

That is, in formal economic terms, an externalisation of the cost from the supermarket and the food system on to you, the consumer, and there is an extremely important issue about the externalisation of health costs; that governments around the world tend to judge the efficiency of their food system by the lowering of the price to consumers. In my own country you can see that the average expenditure of income has gone from about 30 per cent of average income in 1950 to now just below 10 per cent. You can say this is an indicator of success. It then means we can buy cars, we can buy TVs, videos, and oil, that will speed up the economy, but the reality is that we are paying under other budgetary headings—environment, transport, health. The 57 million British people spend about £70 billion a year on food, give or take a few million. They spend another £10 billion to pay for just coronary heart disease, another £1½ billion to pay for food poisoning, and so on. In other words, one needs to be very careful not to be seduced by the cheapness of price into assuming that is the total bill.

The final point is, as an observer and an academic looking at the world of consumers and consumer policy—but I also declare that I used to work in the consumer movement—there is a very important shift in the consumer world all round world, here in Australia just as much as everywhere else, namely that consumers are asking and judging their food not just on price terms. They are asking about quality, they are asking about social and community issues—exactly the points that Dr Copeman made. So on those six issues there is now vibrant debate at the highest level in Europe that it might be useful for this committee to be aware of.

CHAIR—Thanks very much, Professor Lang and Dr Copeman. I find your input as specialists particularly interesting. This is the type of thing we have not really had before from overseas, except the gentleman from the ACCC, from the States. So your input is very much valued. I do not know whether you are aware of the Coopers and Lybrand study as well that was released at the Property Council conference on the Gold Coast on Monday, which said that 60-odd per cent of the Australian community would prefer that their shopping was not done in supermarkets, that the main street—

Prof. Lang—It is exactly the same in Britain.

CHAIR—I found that interesting. I think Mr Jenkins has some questions for you.

Mr JENKINS—I think it is fortuitous that you are actually in Australia at this time and are able to come before us, and we are very grateful for that opportunity. As I understand it, the Office of Fair Trading or the Director-General of Fair Trading in the UK has announced an inquiry into what used to be the Mergers and Monopoly Commission, whatever it is called now.

Prof. Lang—The other way around—the Monopolies and Mergers Commission.

Mr JENKINS—I was trying to learn that, and now they have changed it to the Competition Commission. That is by the by. It is interesting that in the terms of reference of that inquiry they have a definition of what is the beast that they are going to look at. It has been based on the square metreage of retail sale and things like that, which is a slightly different tangent to what people have been putting to this inquiry about the basis of market share or the basis of size based on market share. The other thing of interest is that you have injected another notion of market based on region, whereas everybody who has come before us up to this time has perhaps been using the definition of market share or market that is Australia wide—

Prof. Lang—Can I interject?

Mr JENKINS—Yes.

Prof. Lang—If you think about it, you are absolutely right. That goes on everywhere, in the United States, in Britain, Europe, Denmark—it does not matter where you look—and Australia also. If you think about it, it is actually completely absurd. Are you seriously saying that if you did not want to shop at Woolworths—the reason is none of our business—in order to be able to choose where you shop, you would have to travel interstate to go somewhere else? The whole notion of it is frankly ridiculous, and I think if you look back at the origins of antitrust laws in every country—the US antitrust laws, our own monopolies and mergers laws and your own, too—and the origins of the sorts of inquiries you are doing, going back over the decades, it has always been to try and suit the public interest, to suit the consumer, and we seem to have lost sight of the reality of shopping.

It is excellent that your inquiry has women in it, because these sorts of inquiries are mainly done by men, and men do not tend to do the shopping, so we actually tend not to ask the obvious questions. As the chairman, Mr Baird, just said, if you go and ask consumers around the world, it is quite remarkable the consistency with which they are saying they are actually aware that their time is being taken from them. The rhetoric of supermarkets getting bigger and bigger and the size of their units getting bigger and bigger is that this is convenient and that is good for us. The reality is that it is taking more time.

One of the elements of our study that attracted most interest was evidence from the British government's own micro-economics time surveys, showing that the British consumer is now spending longer shopping in 1990 than she or he did in the 1960s. Instead of being able to shop in the middle of your life, in the course of your daily life, you now have to create a dedicated time in which to go shopping—getting in the car, sitting in a traffic jam, then walking round the tin can on the edge of a motorway out of town, having to then whiz round very fast, but then having to come back. If you do total time budget surveys, the time has gone up. So the whole definition of convenience has been altered, not just the whole definition of the market.

Mr JENKINS—Recently there was a study that indicated that there was a movement back to the strip shops in Australia.

Prof. Lang—In big towns?

Mr JENKINS—Yes. Obviously a lot of your work is centred around the way in which we would look at what is for or against the public interest. I got the impression from what you have said to us already that it is a fairly broad and sophisticated definition of public interest that would look at different sectors of the community as much as just a narrow definition?

Prof. Lang—That is a very good question. A lot of people in Britain in this debate that I have been trying to reflect for you have taken me to one side on occasions and said, 'Do you seriously want to go back to the 1950s? Don't you remember how ghastly it was to have shops with restricted choice? Don't you remember how wonderful it was when Sainsburys, Safeways'—these companies that are now these mega-corporations—'came into existence or became very large?' Of course not. I am over 51. I remember that time only too well. I remember the advantages of the big supermarkets emerging and essentially breaking the power of farmers, breaking the power of food manufacturers.

The point now we have to address is a very different question, which is have those previously useful power breakers become themselves the new food baronial class, if you want to see it in those terms? I think that is the policy choice we have to make as societies. We have to say, 'They have served us very well, but are they not now just getting a little bit too powerful?' Do we not need to rethink what is meant by a good shopping system? Do we not need to listen to these complex and sophisticated messages such as Dr Copeman was reflecting here in Australia, saying that consumers actually do want planners, economic policy and competition policy authorities to restructure the criteria by which we judge efficiency—not to lose sight of the advantages of market efficiency but to say that the 21st century is going to require a much broader and better definition of what we mean by efficiency. That the notion of efficiency must not just be judged very narrowly upon price, because that is not listening to consumers.

Mr JENKINS—A lot of what have been loosely called 'the majors' and their equivalents in the UK would say that what they are doing is providing an efficient mode and providing the customer with what they want. What you are really saying is that if you take a narrow view of their private input they might be able to sustain a case, but if you take it in totality, because they are making decisions that public authorities will not make—proper decision making—we are missing out on that part of the equation.

Prof. Lang—I think that is right. That is a fair point and well put. I am a policy man. My job is to look at policy. I think, with respect, your inquiry has to be up front, to be honest, in that Australia faces a policy choice. You currently have three companies—although there is some disagreement about this—that have attributed to them about 80 per cent of the market. Even if they and some others would argue it is less, it is still a formidable level of concentration. Imagine, 20 years ahead, what will it be? Two that have that percentage? In Britain and in Europe this is certainly happening—you are getting border hopping. British supermarket No. 1—now No. 2.—Sainsburys, has been buying out supermarket chains along the whole eastern seaboard of the United States. The ex-No. 2—now No. 1—Tesco, has gone into and bought up in Hungary, the Czech Republic, and has bought the largest supermarket chain in northern France. It is now selling it because it has not integrated it very well. Maybe in Australia, because this is a vast continent, that might be not an option for your supermarket chains, but what if they vertically integrate?

Mr JENKINS—But the nature of the beast is probably going to change. Internet trading might change it.

Prof. Lang—That is true.

Mr JENKINS—I am old enough to remember that when I was young the closest person that was a grocer still wore the white coat and he got the biscuits out of the box and things like that over the counter. It worries me that the nature of using the market share that we are doing goes back to those days when that was actually all those people sold.

Prof. Lang—No-one is arguing that. What we are arguing now is that using the new technologies, using consumer demand, a more diverse food system is both desirable and possible and that you need to be very aware of the immense power that any company—not just the big supermarkets—can have through the contracts and specifications system. Essentially Australian farmers—who are very individualistic, as I know only too well, and are deeply proud as a body, with lots of justification—are essentially controlled entirely by supermarket chains, so the buyers of supermarket chains are in fact now the most important people in the food economy.

Mr JENKINS—Mr Chairman, just a final question.

CHAIR—Yes.

Mr JENKINS—If I was to listen to you about all the studies that you have been involved in and all the work that is ongoing and the fact that there has been this announcement of the Competition Commission having a look at supermarkets and whether a monopoly exists and whether it is acting against the public interest or not, I might come to a conclusion that any regulatory or legal framework that is operating in the UK has been an absolute failure. I suppose the question I would ask is: is that really the case, or are there some aspects of the regulatory framework and law that have been very positive and have provided protection or made competition act in the public interest?

Prof. Lang—It is a very good question. Essentially this is a legal problem about the terms of reference that a competition authority has to judge market efficiency by. Very strongly now in Britain there is a feeling—and that is why the Labor government that was elected two years ago has changed the Monopoly and Mergers Commission into a competition authority, and I think the Conservatives would have done exactly the same—that we need to have tougher, more interventionist competition policy in order to be able to cope with the growth of oligopolistic behaviour right across different sectors. It is not just food, but cars—you name it—the same phenomenon is occurring. Essentially the economy, in different sectors, is looking like an hourglass where it is dominated by a relatively small number of companies.

CHAIR—It is the multinational nature of the car manufacturers, mergers, airlines, Star Alliance, et cetera.

Prof. Lang—Absolutely.

CHAIR—

Mr NAIRN—Dr Copeman, who is the Consumer Federation of Australia?

Dr Copeman—The Consumer Federation is the peak body of the grassroots local consumer groups.

Mr NAIRN—How do you come to represent them?

Dr Copeman—It is a federation with about 80-odd members Australia-wide, group members representing generic consumer associations, the National Council of Women, some Country Women's Association state branches, the Home Economics Institute, dietitians and some community legal centres. It is a broad mix of people. It has, in a sense, devolved into a series of issue based networks—telecommunications, finance, housing and so on—and the food network is now based here in Brisbane, and I am the coordinator of that. It is a sister organisation of the Australian Consumers Association, which has a higher profile because it is the product testing magazine producing body, whereas we cover the grassroots. It only has subscribers as members. It does not have other member organisations.

Mr NAIRN—Thank you. My other question is to Professor Lang. A lot of the figures we have been given in this inquiry about the market shares overseas have used almost exclusively the US and the UK, which I have argued are not good examples because they are huge markets compared to Australia. In the UK the figures are thrown up as 45 per cent of the top three—if you take Greater London with a population of about 18 to 20 million, I think, have you any idea what the top three market shares are in Greater London area?

Prof. Lang—I am smiling because I do happen to have those figures. That is one of the key things that the APPR report did. We essentially caused the furore that we did because we provided for the first time square footage of sales areas by region. In British law—I do not know what the law is here in Australia—a monopoly inquiry can be triggered by 25 per cent of market. No British supermarket chain holds anything like 25 per cent.

Mr NAIRN—Nationally?

Prof. Lang—Nationally. Looking at the south-east proportion—

Mr NAIRN—Is that the dry goods definition or total?

Prof. Lang—Total food sales. Yet when we looked at, say, the whole of Wales—which is off on the left on the map—or Scotland—at the top of the map of the UK—or the south, you found that by square footage of sales, say, Tesco would have 25 per cent of square footage of sales. Any shopkeeper knows that one square foot or one square metre of sales in a tiny village store will not sell a quarter as much as the same square footage of sales in a hypermarket in a big town. So because the companies refuse to deliver or publish the actual value of their sales by region, all that we could get was the square footage of sales. Therefore it was extremely likely that, even if you looked at the whole of London or the whole of Scotland, you have got one or two companies already having over 25 per cent of sales.

In other words, the point that was made—and it is important in economic terms and competition policy terms—is that it is actually economically advantageous to start looking by region or by more local definition of what you mean by market, because then you can see where a company like Tesco has further opportunities for growth. It was concentrated in London and in the south but had great room for advance in the Midlands and Wales, for example. Actually, stockbrokers got very interested in that side of the report saying, 'Well, here is very important market information.' The competition authorities also got very interested because they began to see that maybe there needed to be a new geographical definition of what we mean by market.

Mr NAIRN—So what you are telling me is that probably the top three could have 75 per cent plus market share of the whole food market in a region like Greater London.

Prof. Lang—Yes, absolutely. One of the recommendations I would love to see you come out with is that you would like to have better regional sales and local sales information. That is highly commercially confidential. I am not stupid; I know that this would be problematic, but if you are to have a competition authority doing the job that sort of information must be made available. It would be an extremely useful recommendation for you in Australia to be able to make, to suggest that—even if it is given privately—that sort of information needs to be made available to people such as your good selves.

CHAIR—We have taken note of that. Just two quick questions, Professor Lang. So the definition is the broader total sales, because it is quoted quite often here, 'Look at the UK model' and we have 80 per cent, and the 80 per cent figure here is on the dry goods component. So I understand that you include everything in.

Prof. Lang—Yes.

CHAIR—The other thing is that, with your nostalgic look back on life as it was, doesn't that fail to recognise the changed role of women in the work force who just do not have the time, and have to rip into the supermarkets? It is a changed world. I do not know what view you have on that, but you just tell my wife to go out there and work through the various shops when she just does not have time! Isn't that a component?

Prof. Lang—I was smiling. The records of these sorts of hearings never show, 'Witness smiled,' and I always regret it on these occasions. I have to say I just sat through hearings as an adviser to a select committee in Britain, so I am privy to what is going on—on a different matter. Yes, it is a very important question and, as a policy man, my answer is very simply, that is precisely why you need to be rethinking what you want planning to be about. In food policy there is one fundamental issue one always asks: does the food go to the people or do the people go to the food?

At the moment with hypermarketisation what we tend to have is the worst of both worlds. The food is travelling further and the people are also having to travel further. I am cautiously suggesting in the debate in Britain that we need to think about relocalising food supplies in the way our predecessors in the 19th century did. This morning I have just come from Melbourne. I went around the Queen Victorian market. That was put there really because that's where people worked. It has now become almost a tourist attraction.

In other areas of the world, as in New York, people are beginning to think maybe we need to be opening up markets where people work, so that people can very quickly go and shop in their work time. We need to be having, in workplaces, chill cabinets and refrigerators, so that people can do their shopping when they are at work, rather than them having to go home and then, on a Saturday morning with the kids screaming and shouting, make this dedicated shopping trip. So in the policy world, looking 30 years ahead, there is a very different scenario emerging of what shopping might look like. Some of it may be home shopping, Internet shopping, and some may be very different, much more localised and work based shopping.

CHAIR—I think the ice-cream might melt on the way home to Beaudesert in the summer. Just finally, Dr Copeman, are you aware the Australian Consumers Association wrote a fairly stinging letter to this committee saying that they were not going to provide an input, they were not going to appear before us, because they saw it as a waste of time?

Dr Copeman—I have become aware of that in the last few days. I am not quite sure of their reasons for doing it. They have provided me with information about evidence on price benefits from the supermarkets. I think this indicates that the consumer movement may have divergent views. But I have certainly since hearing that gone back and checked with a number of our constituent groups, such as the National Council of Women, the Dietitians Association and several local, state consumers' associations, and they have all certainly backed the submission that I wrote to you on behalf of the federation. Our members were quite amazed that the Australian Consumers Association—

CHAIR—So were we. 'This is not in the interests of the consumers' and we are all wasting our time. But thank you, I think it was a very interesting presentation. Thank you, Dr Copeman.

Senator BOSWELL—Mr Chairman, don't I get a question?

CHAIR—On this occasion, no. I will have to draw it off.

Senator BOSWELL—You know we've got a spare man in here now.

CHAIR—Thank you, yes. I had noticed the National Party have increased their numbers by 100 per cent so it is going to look like stacking. I'm sure you wouldn't do that in Britain, Professor Lang. It was great that you could come along and we just thank you for that. I would also ask, if possible, if you have some information that you think might be relevant to this committee, if you would not mind sending it to our secretary—not the whole law according to Great Britain over the last 50 years, but some of the key relevant findings would be interesting as we struggle with this issue.

Prof. Lang—I will do that.

CHAIR—Thank you very much.

[12.48 p.m.]

THORNTON, Mr Alan George, President, Buderim 2000

CHAIR—The committee prefers all evidence to be given in public. If you want to go in camera please ask the committee and we will examine it, with the warning that it may become public at a subsequent time. The committee has before it submission No. 129, dated 20 March 1999. Are there any alterations or additions you wish to make at this stage?

Mr Thornton—No.

CHAIR—Please make your opening statement.

Mr Thornton—May I just give this to you.

CHAIR—Is it additional information?

Mr Thornton—Yes, it is.

CHAIR—Do you wish to make any changes to your submission in any way?

Mr Thornton—Would you mind adding that to it?

CHAIR—All right. Thank you very much. Is it the wish of the committee agree that this be accepted? There being no objection, it is so ordered. Please go ahead.

Mr Thornton—Mr Chairman, Senators, I am not used to addressing eight such eminent people.

CHAIR—We are just your ordinary folk—some of us.

Mr Thornton—I represent Buderim 2000. I suppose what I am going to try and do is put a different slant altogether on this meeting and, at the end, hopefully tell you what devastation the supermarket will do to our village which has grown into a town. Before I start, I notice one of the previous speakers mentioned Winston Churchill. I was in the House of Commons when he made his last appearance—most moving. The House of Commons was absolutely full and I wondered if anyone had told them I was coming. Winston Churchill appeared and every member of the House rose—all parties. He was there for 20 minutes and then he left, and they all rose again. It was quite a moving thing. Winston Churchill actually wrote about the Common Market. He believed in a free trade area, a common market. He never, ever wanted a European common community. His speeches have been misconstrued since then.

CHAIR—Mr Thornton, I would draw you back to your particular concerns in Buderim, mainly because of the time constraints.

Mr Thornton—Okay, sorry about that little bit of trivia.

CHAIR—No, it was quite interesting, but time presses on.

Mr Thornton—It was Senator Boswell's office that sent me this—or somebody gave it to me and said, 'You must go.'

CHAIR—We are very glad you are here.

Mr Thornton—I want to focus on the destruction and destabilisation of Buderim, which was a village and now has a population of 28,000. We are situated on a mountain. We are the largest growing town in Queensland, with a growth of 9.7 per cent average over the last five years, except for three or four areas which have grown 60 per cent—very small—twice as much as Maroochydore.

Senator Boswell and other senators, I have briefly read a lot of the information. I am not an expert on small business or grocery, I am just a bloke off the street who has been sent to deliver a message. We have a long way to go in rectifying this situation that we have in Australia at the moment. When I read the 87 per cent share that big business has over small business I, like many other people, was shattered. In Buderim we have eight fairly major supermarkets surrounding us. Four have already been approved and will happen. So within driving distance, a maximum of 17 minutes, we have or will have 12 major supermarkets, one of which will be the largest in Australia.

We do not need a supermarket in Buderim. We have one single road which goes across our mountain. It is 200 per cent over its design factor and we cannot widen it. It is too narrow, unlike the Bruce Highway, which is 20 per cent over its design factor and you can widen it. We have six mini-supermarkets on the mountain; three on the immediate top. They serve us well. We do not want any big business there. We do not need it. The people do not want it. We have made this clear over the last six years, since 1993, to local, state and federal governments, and nobody can help us. It would seem that government might like to contribute to fight Saddam, but they do not want to fight Woolworths. Have Woolworths got more power than Saddam Hussein?

CHAIR—Probably.

Mr Thornton—Yes, probably—definitely. I have referred in many of my arguments or debates to the level playing field, which literally resembles the Himalayas. It is not very level at all, and the goalposts resemble corner posts, they are so wide apart. Where has democracy got to in Australia—government of the people, by the people, for the people? Eighty-five per cent of the people of Buderim do not want this supermarket and 90 per cent of the Chamber of Commerce—

CHAIR—On what basis do you quote that figure?

Mr Thornton—We have done surveys.

CHAIR—Are you able to provide us with a copy of that survey?

Mr Thornton—Actually there is a press release there which was done by market research, and it indicates that in there. But we have done our own surveys, with counts and rallies. I might instance the fact that on 27 February we had a rally, the second rally, and 1,200 people came out in the pouring rain and stood there for half an hour, and then marched up to the proposed site and back again, 200 people cheering it from the footpath. That is an enormous amount of people.

CHAIR—Mr Thornton, there are two of us on this committee who took strong objection and took part in protests against the monorail in Sydney, and we took the decision that we would not ride on it. I am from one side of politics and my colleague from the Senate, the right-hand side here—is on the Left. I went on it once. But isn't that what is open to the people of Buderim? If they feel so strongly, they can say it. Is it Coles or Woolworths?

Mr Thornton—We frightened Coles away, we think, but Woolworths are there now.

CHAIR—Can't they say, 'We, the people of Buderim, feel so strongly that I will commit, and hold my hand over my heart, that I will not go there at all in my lifetime.'

Mr Thornton—I would love to think that would happen, but you know what people are like.

CHAIR—I interrupted. Sorry.

Mr Thornton—You sort of interrupted my train of thought, actually. I have got a note here. KPMG apparently were on Channel 9 Extra a couple of nights ago, stating that strip shopping is back, and they have instances in Brisbane, Balmoral, Stafford and a couple of other places which I did not get, which have successfully gone back to strip shopping. Rents were a third cheaper, they were able to pass them on to their clients, and it is pretty successful. I spoke to an architect two days ago who has just come back from America on a trip to investigate supermarkets. I think 69 were sold last month, or in a recent month, and he said that they were taken to visit a huge supermarket where they have taken the roof off, put a road through it, and they have got the shops each side again, so they have got their strip shopping back. So this is a trend happening in America. We have always been known to be 20 years behind. Shouldn't we stop the ball rolling now and get on the bandwagon and do what they are doing and go back to strip shopping?

The executive summary in our submission shattered us, and we found it quite ridiculous that 87 per cent of the food and grocery market was controlled by the big three, four or five. We think this is ridiculous. Conversely, the 20 per cent the other way. For whatever reason, the government has let this imbalance get to this stage. I just can't believe it. What have people been doing in Canberra over the last 10, 15 years while this has happened?

Mr NAIRN—This is the federal government you are talking about?

Mr Thornton—The federal government, yes.

Mr NAIRN—It has got nothing to do with local government or the state government?

Mr Thornton—All of you. I am just the bloke off the street. Anyhow, honestly, I find it quite unbelievable that this has happened—even more so when I read the other figures provided by NARGA. We are down to 45 per cent. I have tried all levels of government and we have not had much success. Getting back to Buderim, we have an enormous traffic problem, and this particular development will wreck it. We will have a traffic gridlock of enormous proportions. I actually got a letter from Mr Bredhauer, our transport minister, saying that, as long as Maroochy Shire Council keeps approving developments in Buderim, the traffic is going to get worse. Nobody wants to do anything about it.

Main Roads in Gympie say that, when another development comes across the council desk and they are asked about traffic, they will say, ‘Another 96 cars a day won’t hurt on Burnett Street.’ The same group have employed the Snowy Mountains Engineering Corporation to do a study on the Bruce Highway between Caloundra and Maroochydore. On one of their maps they have actually said that the road running through Buderim is an overly excessive traffic volume road through the main shopping centre, and they are gaily approving another supermarket—no problem—and ruined Buderim.

CHAIR—Okay, I think we get the general impact of that.

Mr Thornton—The late Russ Hinze actually knocked that on account of traffic, as have several councils before in other developments. I would like to just comment on one or two things from NARGA.

CHAIR—I think we are well across the NARGA submission—more than well across.

Mr Thornton—Okay. There was a point I wanted to make. They have recommended ‘a mandatory economic and social impact statement for all new shopping centres or significant retail developments—

CHAIR—On greenfield sites.

Mr Thornton—Of retail sites. I would agree with that, provided it is a completely independent opinion, one not paid for by Woolworths or Coles, and the same should apply from an environment point of view. We should have an independent national traffic consultative committee—likewise for the others—who are not afraid of saying the right thing and prepared to go into court and be recognised by the environment and planning court as an authoritative body. The big problem we have had is that you cannot get a traffic consultant or any other consultant to go to court and say the right thing because they are all employed by local councils, and state and federal governments. They are frightened of losing work from those sources. They are not going to say the truth, in my opinion.

CHAIR—That goes for a number of areas. I think we have got the general impact of what you are saying, Mr Thornton, of the impact on Buderim. It may be useful if we proceeded to questions, unless there is some burning issue you would like to draw our attention to.

Mr Thornton—I would just like to run through this economic impact study that we did on Buderim—of our own doing—just very quickly.

CHAIR—Was this done by an independent person?

Mr Thornton—It was done by me and not recognised by government.

CHAIR—If it is in writing perhaps you could give us a copy.

Mr Thornton—It is in writing, but I think other people might be interested.

CHAIR—It is really for the committee. We are not concerned about those who are in the audience, as much as we like them.

Mr Thornton—Okay. I can let everybody know that it will wreck Buderim. Seventy-one per cent of all business turnovers will drop, 43 per cent say they will be destroyed and go bankrupt.

Senator FORSHAW—It will become a public document—

Mr Thornton—Yes, I realise that. I thought other people might be interested in it.

CHAIR—We would be. Is it okay with you if we have a copy of that?

Mr Thornton—You have got it there.

CHAIR—This is it here, is it?

Mr Thornton—That is right.

Mr NAIRN—That has become a public document now. It will be available to everybody.

Mr Thornton—That is fair enough.

CHAIR—All right. We will have that available to everyone. Thank you, Mr Thornton. I now ask members of the committee if they have got some comments? Senator Forshaw.

Senator FORSHAW—What is the population of Buderim now?

Mr Thornton—It is 28,000.

Senator FORSHAW—And what has it grown from in recent years?

Mr Thornton—Ten or 15 years ago it was 10,000 to 12,000. I have lived there for 30 years.

Senator FORSHAW—Why has it grown that much?

Mr Thornton—Because it is a popular place to live, I guess. It is one of the nicest places in the world. If I might answer that by saying that, in a not-so-long-ago survey by

British Airways of their international travellers, they asked: where is the most beautiful place or preferred place in the world to live based on the country, stable government and climate?—all that sort of thing. They published 10 and Buderim was at the top of the list.

Senator FORSHAW—I suppose the only obvious thing that follows from that—I appreciate the arguments that your community can put against this development; I am not going to question that but I will have a look at it—is that somebody looking at it from the outside might say that, if the community has doubled or more in size in a short period of years, then it is only logical that somewhere along the line you are going to have a major supermarket chain thinking, ‘We have got to put a supermarket where the people are.’

Mr Thornton—Exactly.

Senator FORSHAW—That is not to dispute all the planning issues, the appropriateness of the site and all that.

Mr Thornton—No.

Senator FORSHAW—But it is a bit like the argument about Sydney airport: we need another airport, but no-one wants it.

Mr Thornton—Let me make this point: we actually represent over a quarter of the Maroochy Shire population. Everybody wants to live there. But the supermarkets do not recognise the fact that we live on a mountain. We have only one main road geographically and we cannot get a proper bypass because of developments being approved across any other possible route. They do look upon numbers, and it can only be described as corporate greed in the boardrooms—‘There’s 28,000 people there. We’d like to feed them, to get a bit of the market.’ But, as I say, we do not need it when we can drive seven minutes down the road to a choice of 12—and that is the people’s opinion.

Mrs ELSON—Mr Thornton, I am very glad you are before us today. I can sympathise with you. I have a very similar situation in my electorate. I know Buderim quite well. I have a sister and brother-in-law and a few family members who live there and I visit quite often. I know the area you are talking about. It is identical to Mount Tamborine in my area. I think it is known as the most beautiful place in the world too. So we can be very parochial about that. A lot of the angst in your submission is with the federal government. Being in parliament, I know how we stopped the other development at Mount Tamborine. Like you, I believe there are certain places in this world which you do not touch, and Buderim and Mount Tamborine are two of those places. But we did stop the development up on the mountain; and, in the same way, you can stop yours.

All governments are here because of the will of the people. We respond to that will. Your angst is with local government. As a federal member I fought with the people in my electorate to stop the supermarket there because we have supermarkets which are seven minutes away, as you said, in other areas. If the people are not getting behind you and supporting you as such, how can the federal government step in and say, ‘Mr Thornton doesn’t want this and we’ve got to back Mr Thornton,’ if the other 12,000 people on your mountain there are not doing anything? Surely your local council, like ours, responded against the will of the people. Did that not happen?

Mr Thornton—You tell me. Nine councillors voted for this supermarket in the first place.

Mrs ELSON—I know how councils work.

Mr Thornton—Eight of them don’t even live in Buderim.

Mrs ELSON—I know. That is how councils work.

Mr Thornton—This is how it happened. We have been fighting it ever since. I think I have gone down every avenue barring getting it declared a sacred site, and somebody said they had tried it. We have tried everything, and the people are behind me.

Mrs ELSON—Have they stopped the development?

Mr Thornton—No, they have not.

Mrs ELSON—The council approved it?

Mr Thornton—On Tuesday of this week they approved it. We have put in an injunction and we will fight it.

CHAIR—What was the vote on the council?

Mrs ELSON—Your local council does not vote but the others around vote for it.

Mr Thornton—In the original application which came up from Coles, nine councillors voted for it, eight of whom do not even live in Buderim.

CHAIR—How many voted against?

Mr Thornton—One of our local councillors. It was hopeless; they did not have the numbers. The development side of the council had the numbers.

Mrs ELSON—An identical thing happened in my electorate. We took it to the local government. The minister for local government in your state can intervene; they can support you even further. But I can talk to you later. I do not think we should take up this time.

Mr Thornton—What has happened now is that we tried to get the council to change their stance in court, which they said they would like to do but they are frightened of going to court because of compensation. This dreadful ‘injurious effect’ legislation frightens the lot of them. The word ‘compensation’ comes up and they will approve it.

Mrs ELSON—I am only too happy to help you, Mr Thornton, with some other avenues later, but I do not think it is appropriate here.

CHAIR—Our tape runs out in one minute. This is an appropriate time to thank you for coming down, Mr Thornton. We would encourage you to see the movie *You've Got Mail* to see how you can take on the giant—although I would not necessarily recommend that solution to your problem. Good luck! Thank you for coming down and for your patience. Next time I drive through Buderim I will think of you and see how successful you have been.

Mr Thornton—Let us hope the Aborigines declare it a sacred site.

CHAIR—Thank you very much.

Proceedings suspended from 1.08 p.m. to 1.50 p.m.

NATOLI, Mr Joseph Anthony (Private capacity)

CHAIR—We welcome Mr Joe Natoli. In what capacity do you appear before the committee today?

Mr Natoli—I am representing my family business, Natoli Bros. I am also here as a Maroochy Shire councillor representing the people of the Maroochy Shire. I ran very strongly on business and small business issues, and 64 per cent of the population voted for me on those issues. I also through my submissions represent the Queensland Fruit and Vegetable Traders Association.

CHAIR—I think we have seen your submissions, Mr Natoli. The committee prefers that all evidence be made in public, but if you require at any stage during the proceedings to go in camera, you can ask the committee whether they will consider your request. The only problem is that the Senate may at some stage require that the evidence be made public. We have before us the submission No. 255 dated April 1999. Are there any additions or alterations you wish to make to that submission?

Mr Natoli—Yes, I do. I was not aware that Alan Thornton was going to be making a presentation here, but I would like to tie in the issue with Buderim, in that it does relate to parts of my submission, and there is some additional—

CHAIR—This is one of the areas that is covered by you, the Maroochy Shire Council?

Mr Natoli—It is in terms of my previous submissions that I have made, which act as my main submission, on the oversupply of retail space.

CHAIR—Is it the wish of the committee that it be accepted? There being no objection, it is so ordered. If you would like to distribute that to us, that would be great. So that is it with additions?

Mr Natoli—That is it.

CHAIR—I would now like to invite you to make an opening statement and we will follow it up with questions. I apologise for our late start.

Mr Natoli—I do appreciate that today is a very important day for you and that it is important that those here before you have the opportunity to at least get their message across.

CHAIR—We had heard of your reputation before we ever got to Brisbane actually.

Mr Natoli—I am not one to hide behind closed doors and I have gone before the fair trading inquiry. I was on the micro-business consultative group that the federal government put together. I have had a long association, I suppose, in terms of taking on a lobbying role against extended trading hours. I suppose my submission is purely trying to establish that we do have a problem in this country. It is a long established problem and in a lot of cases it is not that easy to understand the problem. The dynamics and the matrices are very complex and difficult for most ordinary people to understand. It is a combination of tactics and a combination of events that have impacted on small businesses in this country. I have heard today the term ‘predatory pricing’, whatever that means. I have tried to establish through my submission a clear definition of what I believe predatory pricing is.

Extended trading hours has been another area where I believe market share has been won and it has been very orchestrated with, I believe, collusion on the part of the Property Council of Australia and its members, as well as the Retail Traders Association, especially here in Queensland. I can demonstrate that collusion—

CHAIR—The Tourism Council, too, I think.

Mr Natoli—And the Tourism Council. But the first two were purely the ones that have been in charge of these campaigns. In 1994 the RAQ drove the campaign and in 1996 it was driven by the Property Council of Australia. Subsequently, when things got a little bit out of control, they got pushed out of the way by the RAQ, and basically concluded the campaign on their behalf. There has also been a proliferation of shopping centres, and there is no doubt that this issue again exacerbates the combined problem for small retailers. There has been an unfair competitive environment. There are extraordinary deals on rent, outgoings, positioning within shopping centres, for instance, and also there is a distortion of traffic flows within shopping centres.

The reason I say ‘distortion of traffic flows’ is that over the years since extended trading hours have come in there has been a move to have direct access to most of the major retailers. I experienced the situation in Maroochydore where that occurred. I was led to believe that new entrance was a last minute requirement by the Maroochy Shire Council. At the time I was not a councillor. It was a last minute request as an emergency exit for fire reasons; it would also be used as a major trolley ramp so that trolleys would not go through the main shopping centre. From day one that door had been used by Coles to allow access to the public at all times. That door has in the end distorted the traffic flows and has meant the end of the Jewels supermarket, which had 2,000 square metres.

In my submission today that I have there, you will read an article that includes, ‘Coles supermarket’—as Alan Thornton mentioned—‘will be the largest supermarket in Australia. It will be 6,000 square metres of space.’ Jewel’s supermarket—which was the first supermarket for their group in Queensland—could not survive in the same environment that my own family, only recently, after five years in tortuous circumstances, also vacated, but in this particular case we chose to leave without taking up our option to renew our lease.

There are also issues such as the labour hiring tactics of the large supermarkets that have to be addressed. In a lot of cases they are structured very cleverly to make sure that they do not contravene the Industrial Relations Act. You will get management structures—2IC, 3IC, 4IC—with the proviso that they will one day advance up the ladder. The ladders are very long. One gentleman here has given me an account over the years of his son having worked extremely long hours—in excess of 80 hours a week—and he is still only paid a salary. These are some of the things that small businesses are facing; they have difficulties being able to compete fairly.

There has also been the combined influence of political party affiliation with large businesses, and editorial integrity with the print media I believe has been at risk as well. I believe that there have been regulatory changes, at both federal and state level, and I know that even in local government the pressures of big business associations are very difficult to deal with. A lot of local governments do not have the skills to deal with those sorts of pressures, and often the will of the large companies prevails. There is no doubt that they are very organised and lobby extremely well. In terms of extended trading hours, I have experienced that influence with the previous Goss government as well as with the Borbidge government.

So both sides of the political fence were also basically on the side of large business. When you read *Hansard* and when you listen to the rhetoric of the coalition when it argued against extended trading hours in 1994 it would make you believe the opposite. Borbidge said that as soon as he was elected he would wind back the hours in Queensland, and even though the campaign that we ran was a minimum budget campaign, and we exposed the campaigns of the very slick machine of the Property Council as well as the RAQ, in the end we could not get past the line.

There are a lot of problems that I see; political ideology is one of the big things. There is no doubt that obviously economic rationalism and change towards allowing things to happen without regulation is not only here in Australia but right around the world. One of my submissions that I put today—again an article from England—testifies that problems exist right around the world; it is not just in this country.

The other thing is that there are very few definitions, or definitions are very unclear. When you talk about some of the things that I have mentioned before—predatory pricing and how we define predatory pricing and how we define the impact—in a lot of cases I have been told that you have to prove collusion before you are able to get the ACCC to act, and it is very difficult for small businesses to be able to put those sorts of cases together. You have to look at the intent and you have to look at the impacts, and the impacts do not necessarily always happen in the big picture. It will happen in a defined area within a supermarket or a shopping centre. It can happen within one community; it can happen in a region.

So how do you define where a company does have market force and is misusing this market power? I think that is a very important part. The experiences that I have had over the years have shown me that, no matter what I want to do or where I went to look for help, there was no help for me; I was on my own. Basically small business people have felt exactly the same way.

CHAIR—Did you go to ACCC? Sorry, you are making your opening statement.

Mr Natoli—I went through to the Prime Minister at the time. I wrote to Paul Keating. I got a response from Senator Chris Schacht, who was representing the minister.

CHAIR—He is on this committee, but he is obviously not here today. Did you actually go to the ACCC?

Mr Natoli—Alex Somlyay, my federal member, went to the ACCC. There is a newspaper article that attests to the fact of inquiries to the ACCC in terms of that. In relation to the collusion with extended trading hours, no, I have not. As I was going through my material recently it came to my attention that to prove collusion is one of the most difficult things, and it would only need an organisation like the ACCC to prove it. But I will get to that point in a minute. What I need you to understand is that it can be a very lonely world out there for retailers when they are under pressure. No matter what tactics they employ there is no reason that we should allow a major company or a large company to dominate or use tactics unfairly to the point where it is to the detriment of another retailer.

If the playing field were level then we would make sure that would never happen. I had a situation when Big Fresh opened its doors in the Big Top, where I had a business for about eight years prior to their opening. They previously took one of my senior managers and a number of my staff—under the threat that they would wipe out our business and that the staff would lose their jobs. They went around and scouted for my staff; they took a handful of my best staff. Those staff knew the insides of my operations; they used a lot of their in-built knowledge. I thought that they would be loyal to my company, but they turned that around and worked against me. They understood the areas of our strengths and our weaknesses.

It is unforgivable when the opening special is eggs at 69c a dozen and then, all of a sudden within a couple of days, the price of eggs right around the coast goes down to about 30c a dozen. Coles were selling their large eggs at 30c a dozen. Big Fresh had extra large eggs at 33c a dozen. I bought the usual 6,000 dozen eggs—that is what I used to sell a week. I used to buy them by the pallet loose and people could help themselves. My cost price was about 80c a dozen—people had the saving because they had to pack their own eggs—but our regular price was around $1 to $1.29 a dozen. That was, I suppose, an incentive for people to come and shop in our shop. I gave away one whole pallet of eggs to charity just to prove that it is totally unfair to be put into a situation where they were allowed to sell their eggs 500 per cent below their recommended retail price.

It is just absolutely unbelievable that a federal government can tell me that they do not have any regulatory powers to prevent that from happening. They saw it as fair competition—a bit of an opening special or whatever. I had two choices as a retailer: (1) to allow it to happen and lose market share, see my customers just walk away; (2) if I wanted to match them then I was going to pay dearly—the cost of having to drop my price. I was caught with stock and, of course, in the fresh food industry you cannot sit around forever waiting for things to improve; you have to move that stock onwards.

A classic example with Big Fresh was that I often tested them to see how vindictive they were. I have dealt with and I have competed against Coles. When we were in Nambour I was proud to believe that our family had the ability, back in the mid-eighties, to force Coles to reduce half of their fruit and vegetable section to half size. That came about because we were good operators and they could not compete under normal circumstances. The managers were responsible for their budgets and they had to be accountable. What he did to be able to save face was to reduce the size of the fruit and vegetables. He also put nuts and a number of other confectionery items there as replacements.

But things changed in the nineties and the chain stores became more aggressive. I was part of a cluster group and we used to work together as a number of small retailers. We used to buy one full-page ad every Wednesday which went into the local newspaper. The stores ranged from Beerwah right through to Nambour and my three stores as well as another one at Pacific Paradise. We advertised collectively and we had four specials which we ran. They were good specials. We worked together on a Monday to gain the specials and then we would sell those specials. But we had to give that away once Big Fresh opened because as soon as I got back to our store I found out that Big Fresh had positioned in a key centre large stacks of the same lines that I had bought—the four lines—one after another, all under my price.

Every week that happened. We had to give that away because we just could not win this battle in trying to have a fair competitive environment. Many occasions every day they would cross-check our prices. There would be days when Big Fresh managers would be clustered in front of our store. Of course, if you see the ‘Big Fresh’ uniforms, they are the nice little red and white checked shirts and with the hats—nobody could miss them. It is fairly demoralising when you see them come into our stores and pick up the fruit and throw it back into the shelves; it is almost like a parade in front of the principal. If your shoes are not clean they would virtually tell you to go and clean them. It felt like my days at boarding school. These people came there and denigrated my business by their very presence in the way they conducted themselves in my store.

I resisted the attempt to have to bring in force or whatever. We did whatever we could within the fair environment, but it was not a fair environment. I can remember one day we advertised sultana grapes at $1.79 a kilo, only to find that Big Fresh had them advertised at $1.99 a kilo. What an embarrassment it was for them to be seen in the paper to have a price that was higher than ours, because their policy was that whatever our price was it had to be lower. When I got back from the markets that day, they had already dropped their price to $1.69 and I said, ‘Let’s have it out. Let’s see how far we can take it.’ We did and within two hours they had their sultana grapes at 49c a kilo. I paid $1.20 a kilo for those sultana grapes and they were selling them at 49c a kilo. By the end of that afternoon they went up to 69c a kilo.

It came back to us—remember a lot of their staff worked with a lot of my staff before they went and worked for Big Fresh—so I knew what was going on. They were going to hurt us for a couple of days just to teach us a lesson. That is the way they treated us. That is the fair environment I had to compete with, with my family: 71 years in business—from my grandfather who migrated to Australia, who had the opportunity to go into business, and built these businesses up over years. That is the sort of competition that we were facing that we had never faced before. In the history of this country never has this threat to small businesses been greater, especially in the fresh food industry. Read some of the issues—Harry Watts in 1992. After two or three years of double-digit growth, the Stock Exchange was asking questions: ‘Where is your growth going to come from?’ Independent fruiterers, butchers and bakers and all those. There are billions of dollars out there—I think there was something like a $20 billion industry out there. That is where the growth was going to come from.

CHAIR—Do you have anything further? I am just keeping my eye on the time.

Mr Natoli—I realise that time is short. If you gave me the time I could speak all day. This is an important issue.

CHAIR—That is why we are here.

Mr Natoli—I, too, originally was a bit sceptical about another inquiry. It was only because Senator Ron Boswell asked me to come that I thought I would give it another shot. I appreciate the opportunity to come back and present this case. Small businesses have never been united behind one particular force. They have always been independent in nature, and I think that accounts for half the problems that they have had in this country. They have never been united. But they have always had government support over the years. Menzies said that big businesses can look after themselves; it is small businesses we have to look after.

We had the likes of Joh Bjelke-Petersen that looked after small businesses very well here in this state. He knew that it is where the strength of the economy was. But all of a sudden policy has changed and small business was not ready for that policy change, and we have fallen flat on our faces. A lot of us thought that government would support us. They have not. We were surprised. We never thought extended trading hours would come in Queensland, but they have. It took unionists like John Hogg that used to fight against extended trading hours and against workers having to work the long hours and whatever—and he changed. Why? I don't know why, but he changed his position. So did the Labor Party. And subsequently the National Party and Liberal Party coalition supported that stance.

The Knox inquiry allowed for public submissions, but it was not open to the public. You have got to ask yourself the question: why did we end up with a Clayton's inquiry? Because that is what it ended up as—an inquiry to get small business off their backs; that is what the end result was. I read the submissions that were put through to Sir William Knox, and I read his report, and I honestly could not understand how he could come to that conclusion. But that is history. In the end, the campaign that large business and the Property Council ran in this state here was an absolute disgrace to the integrity of the human race. When you have a look at the campaign that they ran, it was only when Rob Borbidge said, 'What has big business ever done for us?' that the $6 million campaign came out. If that is not collusion between two groups to try and achieve something, then what is? They had a lot to lose and a lot to gain if they were united.

If you allow me the opportunity, Mr Chairman, I can prove to you that there was collusion. They gained market share—it was a market share grab—in 1994. It was transferring the wealth from the majority to the minority. It happened; they did it. The Property Council represents the landlords. Why would landlords ever want extended trading hours? The answer is because most of the large retailers have got a very small base rental and the rest of it is based on percentage of turnover. When you have a look at the large supermarkets, there are many testimonies. They have stated that extended trading hours have delivered tremendous growth and tremendous market share. So when you consider what they had to lose, they had a lot to lose in market share; thus the landlords had a lot to lose in rent.

With the shopping centre that I was involved in, I can show you that in that period my turnover went down but my rents continued to go up because of the ratchet leases and rent revisions that we were stuck with; my turnover went down and the supermarket turnovers went up. The Coles supermarket outside my door is the second-busiest supermarket in this country, in their chain. The reason they have got that is that I was excluded from extended trading hours because of their side entrance door with direct access. I was excluded, even though we tried to—

CHAIR—You were excluded?

Mr Natoli—We were excluded.

CHAIR—Your store was excluded?

Mr Natoli—Absolutely—by Coles. I had to go public. They shut their doors to the main shopping centre; they could do that right at the beginning. They allowed the public to come through the side entrance doors at night time, to feed directly into Coles. It took 24 hours, but we got them to open those doors accessing into the shopping centre. Their intention was never to allow anyone within the shopping centre to participate. But when you consider where their location was and the one-hour quick carpark with direct access into their store—it has happened all over the place. The reason is that at night time it is the quickest avenue in and the quickest avenue out. I might as well be five kilometres down the road.

I tried. I had barbecues—I had everything—and I could not get people to come through the main doors. Other stores around me closed their doors. At night time, if you have ever seen a shopping centre when the neon lights go out, you don't want to be there. It is a very scary and secluded place for many people.

CHAIR—Joe, I might ask you if you could just conclude now, because we are well over time.

Mr Natoli—I do want to highlight just a couple of things. In my submission I demonstrate to you where Coles, for instance, have had orchestrated campaigns where they have had different pricing structures. When Robina opened they had one price for a particular product, there were 15 other stores that were targeted at a different level, and then there was a recommended retail price that was for the rest of the state. So in the same week you had three different pricing structures for the same specials. As you go through the submission documents you will realise that Coles advertise with their coloured brochures every week, and through that you go to on different weeks—11 stores, nine stores, six stores, 11 stores; they keep changing. Maroochydore was always in there because they were targeting me. That was one.

In fact, Chiqita bananas in the Brisbane markets provided me with the classic example. An ad by Coles on 12 August 1996 to 17 August 1996 had prices for 13 stores—most of them were on the south side. There was Mackay, Maroochydore, and I think Noosa was another one. In the same week they had some of the same specials in seven stores on the north side of Brisbane. You have to ask yourself why they did that. Mushrooms were 50c dearer on the north side at $4.99 a kilo; cauliflowers were 10c dearer at $1.47; pre-packed washed potatoes, 2.5 kilos, were also $1 dearer on the north side.

You have to ask why. What is the reason for this? I can show you where the supermarkets have been given special prices in the Brisbane markets. I have seen the prices where they paid $1.20 for beans. We all had different identification brands in the markets. I could read the brands—Woolworths brand—700 cases of beans on that one particular day. My price was $2 a kilo. I just asked them, ‘Can’t you do any better?’ and they said, ‘No, the price should be $2.50 because beans are short.’ The next day they were $2.50 a kilo. The special that Woolworths advertised for the whole week was $1.49 a kilo. Even if I wanted to sell them at my cost—$2 a kilo or $2.50 a kilo—I am losing money. I have got to freight the stuff. I have got to handle the stuff. I have got all my other running costs. At $2.50 a kilo, even though on paper it might look like I am not losing money, I am. But I cannot compete with $1.49.

The way that the markets are set up is perfect for these supermarkets to perform what they want to do. They get in before the independent retailers. They get their trucks out of the markets before we even can get in the gates; they are gone and already at their stores. A lot of the agents are threatened. The tactics are very clear. They are designed to make sure that they can dictate the price. I have tried to get the supply and demand markets brought into an auction system similar to the flower markets in Holland. There is nothing wrong with that system, but they do not want it because it does not suit their system. Their system is about being first on the list, getting first bite of the cherry and then, at the end, when the market is finished, they go in and dictate the price. Is that an open market? At the stock exchange, if I want to buy shares I line up at the door at the same time as many of the other major buyers. In fact, I cannot do business until the bell goes. When the bell closes business I am out of there, and so is everybody else. That is a true and fair market. But they have distorted the markets.

CHAIR—One could argue about the easy availability of getting some of the hot stocks depending on the availability.

Mr Natoli—It does not matter. A market should be fair for everybody.

Senator BOSWELL—Joe, we would extract more out of this if we were allowed to ask you questions.

Mr Natoli—Sure.

Senator BOSWELL—Is that all right, Mr Chairman?

CHAIR—I actually wanted Mr Nairn to kick it off.

Mr NAIRN—It seems, in reading your submission, there are really two key factors you believe created the circumstances: one is the trading hours, which this committee has no control over federally.

Mr Natoli—I realise that.

Mr NAIRN—We have no constitutional control over those sorts of things. The second is the predatory pricing. You gave the example of eggs, and said you wrote to the Prime

Minister and everybody else. You have included in your submission here a copy of a letter from Chris Schacht, who was the minister for small business at the time. It was to somebody else—Cut Price Deli—but I presume you got a similar one.

Mr Natoli—Yes, I got a very similar letter.

Mr JENKINS—It is further on.

Mr NAIRN—Is it?

Mr Natoli—Yes, there is another one. You will find it in volume 2.

Mr NAIRN—It is in two parts. It is a shame Senator Schacht is not here. I am intrigued by part of his answer where he said it would be inappropriate for the Commonwealth government to establish mechanisms that reduced competition such as the imposition of bans on selling products below cost. In my understanding of the Trade Practices Act that is predatory pricing, if something is being sold below actual cost. I just wanted to confirm that that was a similar sort of answer that you got.

Mr Natoli—That is basically a very similar answer to the one I got.

Mr NAIRN—Did you get an answer directly from the ACCC about that particular circumstance?

Mr Natoli—No, I did not.

Mr NAIRN—It was not easy to run that through the ACCC? You did not feel you had a case that you could—

Mr Natoli—I have done all these submissions here in my own time. I might have been the President or the Chairman of the Queensland Fruit and Vegetables Traders Association, but I can tell you we were not flush with funds. We did not have secretarial support. Everything was done by ourselves. All I can say to you is that I did not know the mechanisms. I went to my federal member. I hoped that I could have had support. Small businesses often do not know where to go.

Mr NAIRN—That is something which is coming through in this inquiry. It is this sort of difficulty, of taking evidence to the ACCC to be really able to get somewhere. It is an aspect that hopefully we will be looking at.

Mr Natoli—And I think a lot of definitions are very grey. It is not clear. When is predatory pricing predatory pricing? Like I said before, is it when it happens in my own shopping centre, or is it when it happens within a community, like in a region or in the state? What is the definition of predatory pricing? When does it occur? No-one can answer that. I do not have that answer.

Mr NAIRN—There were three points you raised in your submission: the trading hours, predatory pricing, and the approval of new supermarkets and shopping centres and things.

We had a submission here this morning from Buderim in relation to a proposed supermarket there. The planning aspects, once again, are not constitutionally a federal government matter. It is, in fact, a local government matter. You are a councillor on the Maroochy Shire Council.

Mr Natoli—That is correct.

Mr NAIRN—You have included a copy of a letter to NARGA from the mayor of Maroochy Shire. I feel that at local government level you are trying to ask the federal government to fix a problem that maybe local government has not got the guts to fix themselves.

Mr Natoli—Let us understand what has happened with Buderim for a start. Buderim is a neighbourhood centre. The problem with the supermarket is that there will never be another supermarket of 2,500 square metres that will ever be allowed because the planning scheme does not allow it. But Buderim itself has a very small table on top of a mountain and the rest of it falls away into different communities. Maroochydore is the key regional centre and it is only a five- or six-minute drive from Buderim to get there. The situation is that five consecutive local councils were pro-development. This council I am in is middle of the road; it is neither pro-development or anti-development. The problem we had was that there was a previous approval for a 6,000 square metre shopping centre development—approved by the previous council.

This council had to make a decision whether it could reverse its position in court and win it, but all the information we received was that we could not. Irrespective of that, we cannot refuse and cannot argue in court—because the Planning Act does not allow us to argue in court—against unfair competition. You are going to have a supermarket now, five to six times greater in size than any other supermarket or small supermarket in Buderim.

Mr NAIRN—That is another problem. It is a planning problem and a state problem. What I am questioning is that now we have many businesses and many organisations coming to the federal government and saying, 'We can't seem to solve these problems'—planning problems and trading problems—'so we want you to solve them by putting a cap on how much market share some of the big guys can get.' To me, it just does not fit.

Mr Natoli—I will put a situation to you. We are faced with national competition policy driven by economic rationalists.

Mr NAIRN—That has nothing to do with planning laws.

Mr Natoli—That is what the Premier told me at the time. Borbidge told me that under national competition policy he had been told by big business that there was no way they could stop extended trading hours. They were faced with losing hundreds of millions of dollars if they did not comply with the national competition policy. If that is not a way to get local governments and state governments to comply with the wishes of the federal government, then you have got no other mechanism. But I am not stating, and I have never stated, that the problem belongs just with the federal government. There are certain aspects where I am hoping that the state governments and local governments can come together.

There is a lot of work that needs to be done, but as we keep looking at these issues in isolation with federal government, state government and local government, we will never be able to coordinate and understand or resolve these problems because you will not know what the left hand is doing and what the right hand is doing. That is where big business has got every level of government wrapped around its little finger.

Mr NAIRN—You might feel that, but it does not get away from the fact that the bulk of the submissions to this inquiry—particularly from organisations like NARGA and various others—are saying, 'We will solve this by you'—the federal government—'putting a cap on market share.' It is something that has never been done anywhere else in the world; a cap on something which increasingly we are finding difficult to define, and what the cap should be, to solve what, in essence, from specific evidence provided to this committee, seems to have overwhelmingly come about through matters like shopping hours and planning issues and those sorts of things.

Mr Natoli—They are all interrelated. You have to come to grips with the interrelationships and the way that it compounds the problem. It is just not one issue. It is a combination of a number of pressures that come to bear on small businesses. But we in local government are under the new integrated Planning Act here in Queensland. Under precinct planning, we can now say that a particular area might only have a certain size supermarket. But there is not the provision, and local governments in a lot of cases do not have the planning documents and planning arguments to win these things in court. That is the biggest problem. It needs to be developed.

I have nine recommendations. I will not give you these recommendations here, but I will mail them to you because I think it is important that, if you can understand these recommendations as they come through, these are the areas that we collectively, as a country, need to deal with, otherwise we will never get on top of this problem.

CHAIR—Thank you.

Mr JENKINS—Mr Natoli, I was on the Reid inquiry and you appeared before us about 2½ years ago.

Mr Natoli—Yes.

Mr JENKINS—I think we genuinely made an attempt to try to use the experiences of you and many of your colleagues to put suggestions through. On the planning thing, we suggested that the government take to COAG the need for social and economic impact statements. As I understand it, the government did do that, so perhaps the committee needs to follow through to see what happened post that being brought up with COAG. I think we tried to put in place recommendations on the other things that you shared with the committee about problems with the landlords and things like that.

It was intriguing yesterday—and I think Senator Boswell will go to some of these matters—that the Reid committee used you as one of our case studies, and it was a fairly damning piece of evidence to one of the major supermarket chains, and that they were fairly blase about what I thought was a bad piece of publicity they had had, based on your experience when Big Fresh opened up. Usually I do not make these comments about the type of evidence we get, but I found that quite amazing. I would have thought, even just from the public relations aspect, that the fact that we used your experience as an example—and for it not to seem to be really a great worry to the organisation—was a bit of a problem.

Mr Natoli—That has always been the case, and unfortunately my outspokenness has probably affected my family's business. If you have a look at the figures that I put right at the end of volume 2, just to give you an indication, in 1994 our total customer turnover for those two weeks that I have identified here was 35,507 customers over that two-week period, with a total turnover of $169,738.03. In 1995 it went down to 21,195 customers, with a turnover reduction of about $60,000 down to $110,000-odd. In 1996, I had already lost one of my businesses, Nature's Way, because of Big Fresh. In 1996 I had the experience of the run-in with Coles. If you have a look at the figures, they purely show that in that particular year they did damage us a lot, because that was the only store in Natoli Bros. Our customer count went down to 13,816 with a turnover of $65,820.35. That is over a two-week period. I have got the figures here that I gave Industrial Relations as part of my statement. I have grouped them together because some of the weeks you have got there do not line up because of Easter, but collectively they have a much more accurate account, rather than the day-to-day correlation of the year before.

CHAIR—Thanks very much. I think we had better move on. We could have brief questions from Senator Boswell. We do have several submissions that follow you and we also have plane commitments, unfortunately.

Senator BOSWELL—Joe, I have asked Coles and Woolworths, and yesterday I asked Franklins, whether they would chase down prices in that predatory practice spiral. I have been given an assurance that they would match prices but they would never go below. When you got into this price war, I think the management was different, but what appears to be happening is that while the guarantees are being given by the management they are not necessarily flowing through in the directions being given to the store. I think that we have got to point out some of this evidence to the management because we are getting a conflict in what the management is saying and what is really happening out there. Again I repeat that the management of Coles is different now. When you were in this price spiral with the grapes, how many cuts did you take down?

Mr Natoli—It was almost like an auction. If you look at the shopping centre, the front of our business where we had the grapes, you could just see them—they actually came outside of their lease line. They were actually spruiking and telling people that they had cheaper grapes.

Senator BOSWELL—And they actually used your name?

Mr Natoli—People could see it. People were actually appalled by what was happening and they were coming to us and saying that they were appalled by what they saw as a real threat. This is big versus little. The people here—the Alan Thorntons—have got thousands of people marching in the street. We have had very strong support over the years in the area and, like I said, Ron, when I ran for local government I ran on small business issues and I had 64 per cent of the vote against nine other candidates. I have never been involved in politics. Two weeks before the nominations closed, I decided to run and that was it, and that was my primary focus. So people do support us. They often say that they have always disagreed with what these companies have done to us.

Senator BOSWELL—Answer my question. How many cuts did you take?

Mr Natoli—They would have probably taken about seven cuts.

Senator BOSWELL—And you went down with them?

Mr Natoli—I actually went below them because I wanted to see how far they would go. I wanted to prove to myself that they were actually vindictive and to point out that they would go to whatever lengths just to prove their point, and I proved it that day.

Senator BOSWELL—They were not matching you; they were undercutting you?

Mr Natoli—They were going below us.

Senator BOSWELL—And what happened with the eggs? Was that a similar situation?

Mr Natoli—With the eggs the other chain stores got into the game. It was not just Big Fresh versus Coles. Woolworths from Kawana got involved. It did not incorporate their other subregional stores, such as Caloundra, Nambour and Noosa.

Senator BOSWELL—But did they cut, and then you cut?

Mr Natoli—No. What happened was that Big Fresh's big special was 69c for a dozen eggs, and within two days it was down to 33c a dozen. They were extra large eggs. You could go there and buy unlimited dozens of eggs. I wish I had got the people from the markets to come and clean them out of eggs. The point I make is that, if they could afford to do it there, ultimately if they could not afford to do it in every store in this country, then is that fair? That is the ultimate test. The ultimate test is that, if they can only afford to do it in one or two stores, compensated by profits elsewhere, it should not be allowed.

Senator BOSWELL—Joe, why are you locked out of the markets? How can Coles get in in front of you? Have they got a special pass? How do they get in?

Mr Natoli—They have access. There are other operators that can get into the markets earlier, but they need to have either a sublease agreement or a lease agreement with the market trust to operate inside the markets. In other words, they are a tenant within the actual market boundaries. That allows them access to get into the markets. Woolworths are not a tenant inside the market, but their trucks are allowed to access the markets and they are allowed to have their stock leave the markets to their distribution point out here in South Brisbane. That stock would have been sold the night before; it would have been allocated to them before the markets even opened. How can you compete?

Senator BOSWELL—Your family has been in the game for 70 years. What effect on the markets is direct buying from the farms having?

Mr Natoli—Huge.

Senator BOSWELL—Explain it to us.

Mr Natoli—In the end it is no different, I suppose, from some of the stories I have heard with manufacturers. They enter into an agreement with these large—

Senator BOSWELL—No anecdotal stuff, just what is happening to the market.

Mr Natoli—What happens is they enter into an agreement to take all of their produce. They lose contacts with the market and over a period of years they are then basically forced into a situation where the supermarket giants start to regulate what price they want to pay. There is a honeymoon period, and then the hard numbers start to come in later.

Senator BOSWELL—What is happening to the market?

Mr Natoli—What is happening to the market is that a lot of that product—good product—that used to come into the market no longer comes to the market. It is diverted away.

Senator BOSWELL—So the opportunities are not there for the independents to get the good product.

Mr Natoli—No. It is the intention of the large retailers—they have made it very clear—to destroy the central markets. They did it in England. I am not sure if there are any articles in here, but I have read articles where in England the fruit markets there are just for farmers to get rid of their rubbish. My business has been based on top quality, and being able to put my skills against the skills of the big supermarket chain buyers does not exist any more. An auction system would allow that to change.

CHAIR—I think we really do need to conclude, otherwise we will not be able to hear the other submissions. We are now running half an hour behind schedule and we have flight commitments.

Senator FORSHAW—Thank you for your very detailed submission.

CHAIR—Yes. We all appreciate it. We thank you also for your experience at the coalface. This is what we want to get a handle on and obviously it has made an impact on the committee. We have noted your comments directly and we will be drawing on that when we call the majors back for session 2. Thank you for providing that material, and good luck with the campaign.

Mr Natoli—Just a question to follow: do I get the opportunity to come in for session 2 as well?

CHAIR—No. I think you have made your case. We had the majors up-front. They have made their case about how they are saving Australia. With all the information that we have gathered from travelling around Australia, we are armed to question them at length on some of their practices. The information that you have provided I am sure will form part of our evidence.

Mr Natoli—What about the issue about the collusion and the ACCC in terms of extended trading hours?

CHAIR—Collusion of whom?

Mr Natoli—Between the Property Council and their members, as well as the members of the RAQ, which were the large retailers.

Senator BOSWELL—If you have got evidence of that, we will refer it to the ACCC.

Mr Natoli—Okay. It is my understanding that the problem we have always had is we have never been able to prove collusion, either to protect or to win market share.

CHAIR—Obviously those who have had a particular interest in extending trading hours work closely together, but we are interested in hearing information that you have. Thank you for coming today. I appreciate it.

Mr Natoli—Thank you.

[2.44 p.m.]

PRITCHARD, Mr John Kemble Langley, Deputy General Manager, Queensland Fruit and Vegetable Growers

ROBINSON, Mr Ian Burnett, Consultant, Queensland Fruit and Vegetable Growers

ZIEBARTH, Mr Paul Douglas John, Chairman, Queensland Fruit and Vegetable Growers

CHAIR—I welcome Mr John Pritchard, Mr Paul Ziebarth and Mr Ian Robinson. I will just remind you of some of the ground rules: if you would like to go in camera please let us know and the committee will look at it, but we remind you that the Senate may require that evidence at some future date to be published. The committee has before it submission No. 203, dated March 1999. Are there any additions or deletions that you wish to make at this point in time?

Mr Pritchard—No, Mr Chairman.

CHAIR—I would now like to invite you to make an opening statement.

Mr Pritchard—Thank you. The Queensland Fruit and Vegetable Growers thank you for the opportunity to contribute to this inquiry. It is our intention for me to give a brief overview of our submission and then to hand back to you for questions. Mr Chairman, we have conducted an in-depth survey of a cross-section of growers from every region and every commodity in Queensland. This is including growers who sell only to the central markets, growers who sell to supermarkets, and those who sell to both. We also sought comment through articles in our industry newsletter through various committee meetings and commodity meetings. All local producer associations in Queensland were advised of this inquiry and were asked for their contributions.

It must be stated that many growers have major concerns about the dominance of the major chain stores. As it will be seen from our submission, experiences of growers have been decidedly mixed, with some having felt that they were not treated in a fair and businesslike manner, but with many other growers reporting good business relationships. One thing is certain: there is no question that there is a huge imbalance of market power between the major chain stores and growers. Our economic study indicates that many of our growers are financially on the borderline. Their problems are compounded by the fact that they are dealing in perishable commodity and if their product is rejected for whatever reason after initial acceptance, the financial impacts can be devastating. In many cases, because of seasonality, they only get one chance to profitably market their product. An example of that is mangoes, where there might be a three- or four-week period in which their product can be picked and marketed.

At this point in time, Mr Chairman, I would like to refer to page 16 of our submission, with reference to point (i), which states:

That in dealing with the fruit and vegetable growers the large retailers be asked to recognise the very considerable imbalance of market power which exists and to exercise appropriate responsibility in ensuring that business relationships are conducted in a fair, reasonable and transparent manner.

We believe that this is the key recommendation to our submission that best summarises the wide cross-section of views from our some 7,000 growers. The recommendations that follow on from that are more specific and we believe will assist to deliver this fair, reasonable and transparent business relationship.

Paul is a grower and has recently been appointed Chairman of Queensland Fruit and Vegetable Growers. Paul will act as our lead for questions. He will defer to me or Ian Robinson if required. Ian conducted the survey of growers and provided the economic analysis. While my role in QFVG is Deputy General Manager, my primary responsibilities are in the marketing area, with a very strong focus on the consumer issues. On that note, Mr Chairman, I would hand back to you and we would welcome your questions.

CHAIR—Thanks very much. We appreciate the shortness of your opening statement, for obvious reasons. May I ask Mrs Elson if she would like to start the questions.

Mrs ELSON—Mr Pritchard, you said that there were 7,000 growers. Has there been a decline in growers, say in the last five years? Have you seen farmers close down and walk away, rather than continue because they do not have their share of the market?

Mr Ziebarth—Yes, there has been a decline in grower numbers over many years.

Mrs ELSON—Would that be because of drought and so forth?

Mr Ziebarth—It is a compound of many effects. Some growers have diversified into other products, more profitable agricultural pursuits, cotton growing in the state and cane in some instances. Some have closed down because they were unwilling to make investments that were necessary to stay paced with the rest of the industry. A number of our growers, if you look at the demographics of our industry, are close on retiring so we have had a lot of farm consolidation in some districts due to growers retiring and being bought out by neighbours. It is interesting to note, however, that while the number of growers has declined, the production out of the state has actually increased.

Mrs ELSON—And out of those 7,000 growers, what percentage would be contracted to the major chains?

Mr Ziebarth—I would not believe that any of them would be contracted to the major chains. The concept of growing under contract is not one that I am aware of at this point.

CHAIR—I was interested in the recommendations. The series of points you make are interesting. Point (i) is kind of like a motherhood statement. I am sure that when they are asked, ‘Do you recognise the imbalance?’ they will say, ‘Yes we do,’ and keep on doing what they are doing. The code of conduct I think relates to point (ii), which has been brought forward to us before and is an interesting approach as well, and one which we should think about. In terms of training, I think frequent changes in personnel is also one of the things we want to talk to the majors about. We want to know a bit more about the training of managers in the stores and some of the approaches taken, which we heard about from the previous speaker.

Regarding return of product, I personally think you have a real case and it is worth pursuing in terms of the ability of the majors to return the product. I would be interested to see what happens overseas because they are obviously throwing it back to you if the market does not work out. With regard to open and transparent policy, I am just wondering what other areas you can point to in the Australian economy where you have such transparency that everything is made available, and no matter what you negotiate between the supplier and the buyer, everything is made public. Why should it be made available to you guys?

Mr Pritchard—Mr Chairman, I think a lot of this goes back to the fact that we are dealing with perishable products. The very nature of the marketing of fruit and vegetables is very complicated. From the farm gate to the consumer there can be many varied means of getting it there. There is a case in point, I recall, in the potato industry where the growers in Atherton deal with a cooperative. There is a local agent who then handles the product. Then it goes from him to the central markets in Brisbane where it is handled by another agent. Then it might go through to the retail system and eventually finds its way to the consumer. So in all that complexity I believe there is the opportunity for anything but transparency. I think it is important that the complexity of the marketing system be recognised in our submission.

CHAIR—I suppose each one would say, ‘Well, my industry is different,’ but the concept of that, when you have buyers and sellers, is how much you want everybody else to know.

Mr Pritchard—Could I just add that also one of the big issues for growers is the question of ownership: when does the transfer of ownership take place in that whole selling process. The systems are different. They can be different between tomatoes versus potatoes versus mandarins versus something else.

CHAIR—Right.

Senator FORSHAW—Every time they put a GST on it.

CHAIR—Which of course you will have the great advantage of having refunded in each process.

Senator FORSHAW—If you are still in business.

Mrs ELSON—We will help him stay.

CHAIR—We are bipartisan here. Then point (vii) deals with this question of cancellation, so you have return of product and cancellation of product. I think quality assurance has also been an issue which was raised before and I think it is a valid one. Then the code of conduct comes up in point (ix), which I think is pretty similar to what you are asking for in point (ii). I think that is a pretty interesting starting point you have there, and one which we will certainly take on board. My question is about the transparency point, which we have dealt with, but please go ahead.

Mr Pritchard—Maybe I could just say something about the code of conduct. I am not sure what the appropriate words are but I suppose what we are looking for is some sort of terms of trade. And could I suggest that it could probably be broadened beyond just the retail sector to the wholesale sector, because the central markets have been going through a process of deregulation. Paul has been very much involved in this process. Through this Senate inquiry and maybe under your auspices—

CHAIR—It is the Joint Standing Committee, actually.

Mr Pritchard—Perhaps you could be the driving force to bring into this code of practice the wholesale and retail sector and the growers.

CHAIR—I take your points on board and we appreciate the recommendation put forward. I know that Michael Forshaw has a question.

Senator FORSHAW—Looking at your recommendations and your submission, I note that you studiously avoid—which is understandable—taking sides at the end of the day on this question. We had the NSW Farmers Association appear before us yesterday and they were in a similar position. Many of their members have very good relationships with the 'big three'. Others, due to geography or product or whatever, may not have such good arrangements. As representatives of growers, therefore members of rural communities I would assume, is it a matter of concern to your organisation, your members, that what is alleged to be happening is happening, if you believe it is? In other words, taking off the grower's hat but looking at it from a members of rural communities' perspective and as consumers of grocery supermarket products, do you have a view about NARGA's complaints and Mr Natoli's complaints, or is that too difficult?

Mr Pritchard—No.

Senator FORSHAW—Is that clear, what I have just asked you?

Mr Pritchard—Yes.

Mr Ziebarth—I am clear on what you just asked and I must say it is probably asking us to change the role in which we are here.

Senator FORSHAW—I appreciate that, and that is why I was cautious in the way I asked it.

Mr Ziebarth—My private view as Joe Citizen would be somewhat different from my view as a chairman representing many growers. One thing I will say is that it is important to keep sight of the fact that we as growers are very mindful of our relationship with our end customers, who are the consumers that eat our fruit and vegetables. In that vein, it is important that whoever handles our fruit and vegetables on the way from the farm to the fridge at home are custodians of the quality of those things and provide the best service possible to effectively market as much as our fruit and vegetables as possible to the consumers of this country. I know that retailers of the big supermarkets in recent years have increased their market share and you can argue backwards and forwards whether that is a good or a bad thing—

Senator FORSHAW—That is what we are doing.

Mr Ziebarth—but it is important for us to work with whoever can get our product from the farm to the fridge. It is as simple as that.

Senator FORSHAW—One further question: I have heard it said by consumers of the big three—but it is said of other fruit and vegetable retailers—'Oh, look, their tomatoes and lettuces aren't up to scratch because they must have bought big quantities of them in bulk and kept them in cold storage for too long, and used little tricks about how they can present them to make them look fresher than what they are. They look good when you buy them but one or two days later they've deteriorated.' It is hard to be specific in this if they do not want to name particular stores or shops but does that happen? Is that a matter of concern to growers? Is there a capacity, for instance, for big purchasers such as the big three or other fruit and vegetable retailing groups to buy fruit that may not be quite ready to hit the shelves and store it and make some advantage of it? Or is this just what consumers say as anecdotal evidence?

Mr Ziebarth—To be very trite, anything is possible but I think the reality is—and certainly growers have expressed this as a concern—that the supermarkets do have quite stringent quality specifications for supply, be they from produce they source direct from farm or through wholesalers or brokers. Those quality parameters are not unrealistic, they are not unachievable, but they try to endeavour to purchase good quality produce—not glamour, but good quality produce.

Growers do get very frustrated, however, when they go into various shopping centres that belong to the chains that they supply and look at the quality of a product that may or may not be theirs but is in the same category, obviously. I, as a tomato grower, went and looked at the tomatoes. We did have a lot of input from growers who say, 'Well, what the hell do they do to these things?' because we supply them in seemingly a good state. We hear all this from consumers, as you do, that the quality of our produce is not up to scratch when it gets in the trolley. We have had good negotiations with the supermarkets on how to manage that, but it is an issue from the growers' perspective that, if you consider that the supermarkets are really just custodians and suppliers of the service that get our product to the consumer, they do have a responsibility to look after it as best they can while it is in their custody.

Senator FORSHAW—It may be totally irrelevant, but I think there is certainly some feeling in the community from time to time that, if things are advertised so cheaply, particularly in the fresh fruit and vegetable market, some people may assume it is not quite the quality. That is something that might work in Mr Natoli's favour—I do not know—but it is all about consumer attitudes to pricing, isn't it?

Mr Ziebarth—Yes. They may assume that, but I think the reality is they do not, to the best of my knowledge, deliberately go out and buy poor quality fruit to knock it out on special.

Senator FORSHAW—No, I am not suggesting that.

Mr Ziebarth—The issue of loss leaders is a bit of an issue with our growers because we do have evidence of growers who are supplying a product and in the negotiation phase of that price setting are told, ‘Oh, by the way, we intend to go to special with this product next week at such and such a price in such and such a place; therefore we will offer you X amount for this product,’ which is always a discounted price. The issue that the growers have is to say, ‘Wait a minute. You’re on special, not us. If you choose to use our product on a special, you should pay the growing market price that’s set by the supply and demand thing, and what you choose to do with it once you own it is your business. If you want to use that as a loss leader, go for your life, but it’s not our loss that you’re leading, it’s yours.’ This has created some ill feeling with some growers at times about who actually bears the loss when you are running a loss leader as a product.

Senator BOSWELL—Who does bear the loss?

Mr Ziebarth—Sometimes it is the grower. Getting back to our initial point here about the power of the markets, a grower does have the opportunity to say, ‘No, I won’t supply under these circumstances,’ but there is a feeling that they do—and it is a feeling and a perception that they may run the risk of forfeiting part of their relationship as a supplier. I know of growers in the past who have been faced with that choice and have said, ‘No, I won’t supply,’ have not supplied, and it has not damaged the relationship with the—

Senator BOSWELL—Do you know any that have a negative effect?

Mr Ziebarth—None that I can call as evidence.

Senator BOSWELL—What percentage of the market of fruit and vegetables goes through the markets and what is direct sold to the chains? Is there any way of measuring that?

Mr Ziebarth—That is hard to quantify and I guess it depends what you mean by direct selling, and you will note—

Senator BOSWELL—I was confused when you were answering a question for Mrs Elson before. You said that there was no contract with growers or you did not know anyone who had a contract between a grower and a chain. That is not quite what I understood happened.

Mr Ziebarth—To the best of my knowledge—and I could be wrong—I do not know of anybody who has got a signed, sealed, legal contract to supply, as you would enter into a contract to buy a house.

Senator BOSWELL—It is just, ‘You grow 10,000 cases of tomatoes and I’ll’—

Mr Ziebarth—Yes, commitments to supply are basically a verbal commitment to supply, given some parameters that are agreed on, quality specs, et cetera.

Senator BOSWELL—Are they in writing?

Mr Ziebarth—I have never seen one in writing. They could exist, but that is outside of my knowledge.

Senator BOSWELL—Do you deal direct?

Mr Ziebarth—Myself?

Senator BOSWELL—Yes.

Mr Ziebarth—Is that an issue for this—

Senator BOSWELL—Only as in so far as whether there was an understanding in writing. Don't answer the question if you don't want to, if you feel it compromises—

Senator FORSHAW—Your figure says seven per cent of growers deal direct.

Mr Ziebarth—In the survey; the ones that were surveyed. Put it this way, I have had—

Senator BOSWELL—You don't have to answer.

Mr Ziebarth—Yes, I think it is an unfair question because it is not my business arrangements that are here before the inquiry.

Senator BOSWELL—It is a general business arrangement. I asked the manager of Coles yesterday. I said there were cases that I had heard of where people actually agree to present a product at a price, and the price in the market fell. Then there was a requirement for the grower to accept a lesser price. I am just trying to get an idea of how a contract is formed between a grower and a supplier. Is it just by a handshake or by an exchange of letters: 'We will present to you at a certain time, a certain date in the month, 10,000 cases of tomatoes'?

Mr Ziebarth—It varies between each individual supermarket, so it is hard to come up with a generality, but I can run through a couple of different situations. One of the supermarkets does have a policy of buying or sourcing product direct from the farms and they build relationships with individual farmers. Those relationships will evolve into a situation where the grower is given a supplier number, which then means accounts are set up, et cetera, within the internal system. Over the period of their evolving relationship, I suppose they negotiate quality specifications, go through training programs, quality systems, et cetera, and that involves a relationship. Supply is negotiated up to six months, nine months, 12 months in advance, to lock in with the seasons. Quantities are negotiated given the capacity of the grower to supply and their requirements, and it goes from there.

Senator BOSWELL—Thank you. That is the information that I was seeking.

Mr Ziebarth—But I will go on to say that there are other relationships where that same thing exists with wholesalers within the market, where a supermarket will develop that relationship with a wholesaler, who then builds up support relationships with growers. Brokers do the same thing. There are some instances where individual companies are appointed as either buyers or distribution systems or whatever. So there is a whole range of things in there.

Senator BOSWELL—Have you got a ballpark figure of what goes indirect and what goes through the markets?

Mr Ziebarth—Again I have got to be seemingly a bit evasive on this, but there are some situations where it is supplied direct from the grower and the financial transaction is directly with the grower. There are other situations where it is delivered from the grower straight into the store but the financial arrangements go through a wholesaler within the market, as opposed to others, where the wholesaler in the market handles the money and handles the fruit. It is a bit unclear as to what is direct, and it is hard to say because of the different arrangements.

Senator BOSWELL—Can I ask Mr Robinson this question: the markets are having a fair amount—we do not know what it is—of market power in the hands of two or three people. What effect is direct selling having on the market? Is it knowing the prices in the market and then, because the contract price is set off the market price, because the price in the market is lower, the contract price comes down to meet that? Is that an effect?

Mr Robinson—It would be very hard to quantify those effects, Senator, but there must be some effect. It depends how big the market is initially, and then how much volume is diverted. I would have thought there is still a fair volume going through the central markets for that to be a valid market in a price setting sense. If a high proportion of good quality produce is actually going direct, then the price setting is actually occurring for a different quality level, and I think then a sort of adverse feedback effect can occur to the grower, in that the price determined for the lower quality item in the central market is then used in some sense as a benchmark to determine a contract price. I think that can work against growers.

CHAIR—Thank you very much. I think, because we will have the problem of losing our quorum soon, that we had better press on. I appreciate your input today and the answers you have given. We also particularly appreciate the recommendations you have brought forward. I have been talking to some of my colleagues about some of these issues while you have been speaking, but we will certainly take it on board. The transparency and how you achieve that might be an interesting challenge for us to look at. Thank you very much for coming today. We really appreciate it.

[3.30 p.m.]

GREEN, Councillor Bruce Leslie, Mayor, Warwick Shire Council

CHAIR—Welcome, Councillor Green. You can ask for this session to be in camera but of course we should caution you that, while we can put it before the committee to see whether they are in agreement, at some stage the Senate may ask us that it all becomes public. You have not produced a formal submission, and we look forward to your opening statement.

Councillor Green—Thank you for the opportunity. The reason I am here today is that at last Tuesday week's submissions in Canberra some confusion would, I think, have arisen in your mind as to what was the position of Warwick Shire Council, and what, particularly, was my own position, because we were represented in the Woolworths case as being a fine example of the value of the large corporations in rural communities, and then NARGA represented the opposite view and gave some evidence that we supported their case.

CHAIR—That is right, yes.

Councillor Green—So I appreciate the opportunity you have given me to, I guess, not so much clear up that misunderstanding you might have but quite clearly state the case as far as my community sees it. To start with, there is absolutely no doubt that Woolworths, in the form of Big W, came to our region some time ago—not that long ago, a number of years—and established a very large distribution warehouse in the order of a $60 million or so investment. That distribution centre services all their Big W stores from Sydney to Darwin on the east coast. That investment has been very welcome and of extreme benefit to the town. Following on from that we have some flow-on effects.

CHAIR—How many jobs did it provide, just out of interest?

Councillor Green—About 170; it varies a little bit seasonally but there are about 170 full-time equivalents. Just as importantly, it brought some national attention and national focus to Warwick and we are starting to see some spin-off effects in the form of other transport operations, or transport operations co-locating. The fact that there was a Big W distribution centre led the company to support a retail development in town with a Big W store which the size of the town would not have justified, had it not been almost co-located with the distribution centre. So Big W then formed an anchor tenant of a shopping centre development along with the Woolworths supermarket and a Bi-Lo, which is a Coles supermarket, and there was a large scale—large-scale for Warwick, anyway—shopping centre development that has been hugely beneficial to the town.

The other important thing I should mention as far as Woolworths is concerned, is that Dick McMoran, who is the general manager of the Big W distribution, has been not only helpful but proactive in helping us get in touch with people that supply them, and saying, 'Look, we have taken a lead and taken a gamble in locating in regional areas. Why don't you manufacturers that supply Big W seriously consider a regional location.' I have had the opportunity to address Big W suppliers and to talk to people about the opportunity for rural Australia. I think it is fair to say that Woolworths have taken the lead in establishing this distribution centre in a regional environment which is very different from most of these that just go straight to the big cities or straight to the coast.

The things that I said on the video, I stand by: that that company has been very beneficial to our city. I do not retract that. I was not aware, however, that that footage I gave them was to be used for the purpose for which it was used. When NARGA approached me on that Tuesday morning to let me know that it was going to be used in that manner, I said, ‘Well, I did know it was going to be used in that manner.’ As a matter of fact, when I had asked directly for what purpose it was to be used, the reason of this committee was not explained to me.

CHAIR—Are you unhappy about it now that you have found out what it was used for?

Councillor Green—I am here today to tell you that I stand by my remarks, though I think the communications could have been clearer to me so that I need not have not gone through this embarrassment. The embarrassment is caused by the fact that, some time ago, council wrote to NARGA and said we supported their case in this inquiry. At the time I guess we did not understand exactly what the NARGA position was, except in the letter there was mention of NCP, and as a council we have had great concerns, and some have been impacted negatively on, about the notion of NCP and the notion of total open competitiveness, and our own work force has suffered. So we responded in a manner that was more supporting the inquiry along the lines of: let’s have a look at the effect of NCP on rural economies more particularly than the market domination.

CHAIR—So in terms of the statement on the video, you are not unhappy about the statement, but you are a little surprised at the way it was used, and maybe that NARGA used it was your concern.

Councillor Green—Yes.

CHAIR—Both sides, it seemed, used your credibility from different angles. I understand that. Are there further questions by the committee?

Senator BOSWELL—How many people are employed at the distribution centre?

Councillor Green—About 170.

Senator BOSWELL—That would be the second largest employer?

Councillor Green—Pretty close.

Senator BOSWELL—Warwick Bacon would be the largest employer?

Councillor Green—Yes, Warwick Bacon is the largest by a long way. I guess the retail complex, if you could roll that into one, would a larger employer. I think it is fair to say that the retail activity that went along with that did create some opportunities for small business, and there were some 30-odd businesses that were able to locate in the shopping centre as a result of that. Having said that, I stand by my comments and a letter that I wrote to the hoteliers some time ago, supporting the position that I did not want to see, in Queensland at least, liquor sales go into supermarkets. That very strongly reflects the view of the community in that we see that the hoteliers are fine small business men, they employ a lot of people, and we do not see any need to erode their markets unduly.

CHAIR—You are subject to a whole lot of pressure groups out there. Mr Nairn?

Mr NAIRN—What is the population of Warwick?

Councillor Green—Ten thousand in the town and another 10,000-odd in the rural areas, which gives the shire a population of 22,000.

Mr NAIRN—You said that the new shopping centre that you put in as a result of this distribution centre is a Big W.

Councillor Green—Big W, yes.

Mr NAIRN—Big W, a Woolworths, and a Bi-Lo.

Councillor Green—And a Bi-Lo.

Mr NAIRN—All in the same complex?

Councillor Green—All in the same complex.

Mr NAIRN—What effect did that complex have on the strip street shops—you know, the greengrocers, the butchers, those sorts of thing? Because you said the whole complex has had a very positive effect on the town.

Councillor Green—Yes. It has done a couple of things. There is no doubt that there are a couple of small businesses that were put under pressure, the greengrocer particularly, but the town is generally busier because we are now more of a regional shopping centre and the activity that that has generated has put pressure on some. But I would say in our town it has given more opportunities than it has caused pressures.

Mr NAIRN—With the development of a complex like that, and the fact that some of the larger companies were prepared to locate there—besides then it clearly becoming a magnet for some of the surrounding regions because there are more services—as a councillor, and a mayor particularly, do you think that gives sort of a psychological boost to the town? Do you think that the town is big enough to cope with that type of development?

Councillor Green—Absolutely. I am talking about it from Warwick's perspective, where we were fortunate enough to have this investment and that development. Within the smaller villages that make up part of my shire as well, I think there is a recognition that chains will never move into those towns because the market is not there, so the smaller retailers and the family owned businesses do a great job out there, and they are not going to disappear because of that.

Mr NAIRN—So you do not feel that they have been disadvantaged to any great extent by the bigger guys in Warwick, with people travelling to Warwick to do their shopping in the supermarket and therefore also doing something else while they are in Warwick, and not doing it back in the little town 20 kilometres away?

Councillor Green—Well, maybe to a limited extent, but we had that, anyway, in that they were not stopping in Warwick, they were driving straight through to Toowoomba. So it is really just a matter of degree; that if we did not have a better retail experience or a better retail opportunity in Warwick, we would be losing those people to Brisbane and Toowoomba.

Senator BOSWELL—Killarney is holding up all right?

Councillor Green—Really, in the smaller towns retail has been difficult for a long time because they are only 20 minutes from town. Whether it is Allora or Killarney, retail opportunities there have been somewhat limited because of the larger centres anyway.

Senator BOSWELL—Bruce, if we were forced to put a cap on the retail sector, we have been told that the people who would suffer would be in the rural areas. What would be the political fallout if Warwick were forced to lose its supermarket? Do you follow the question? Would people be disappointed?

Councillor Green—Well, all I can say is that people tend to vote with their feet and, whatever I might think personally, you have got to accept that people like shopping in those environments, and largely the people who locate in those shopping centres do it because there is a lot of traffic there. Ron, I cannot answer. The only thing I would support is that I cannot see a reason to change the situation where the pharmacists—and in our state the hoteliers and the newsagents—have got an almost exclusive territory. I cannot see a reason to dismantle that.

CHAIR—All right. I think Mrs Elson had one brief question to you.

Mrs ELSON—A very brief question. If Franklins made application to put a store in your town, can you legally say no to them? Can they take you to court if you say no?

Councillor Green—Under our planning scheme, no. The amount of competition that that might bring to town is not something that council would consider too strongly. We would consider it purely on planning grounds, and they take the business risk.

Senator BOSWELL—Has there been any expression of attitude from the community about prices for the products in the supermarkets—in other words, a feeling that they are getting access to cheaper prices—or hasn't that really been an issue?

Councillor Green—No. Before the shopping centre opened, which is only just over a year ago, Woolworths had a monopoly in town, but now with Bi-Lo there are two players. In the price surveys prior to that time we did not appear to be disadvantaged comparative with other towns who had tougher competition. There was a perception in the community that we really wanted another player to keep the other one honest but, in reality, we have not seen either price wars break out or one of them move their prices substantially.

CHAIR—Thanks very much for coming down today and clarifying the situation.

Councillor Green—Thank you for the opportunity.

CHAIR—Obviously you must have a high reputation with everyone looking for your endorsement. I am sure Nike will be next. Thank you for coming down.

Councillor Green—Thank you.

[3.26 p.m.]

BEYNON, Mr Trevor Raymond, Managing Director, Free Choice Stores

CHAIR—Welcome. Do you have any comment to make on the capacity in which you appear?

Mr Beynon—I am the managing director of a group of 57 stores throughout Australia.

CHAIR—Right. The committee prefers all evidence to be taken in public, but you may request the committee to take part of your evidence in confidence if you wish—in camera—but, of course, such evidence may be requested by the Senate at some later stage to be made public. The committee has before it submission No. 106 dated 26 March 1999. Are there any alterations or additions that you wish to make before we proceed?

Mr Beynon—Yes, there is a presentation I would like to make, which is what I believe—

CHAIR—Is this presentation an addition, that is, additional matter?

Mr Beynon—An addition to the presentation, which is information on price surveys.

CHAIR—Have you copies of that?

Mr Beynon—Yes, I have.

CHAIR—All right. Is the committee agreeable that it be made available? Thank you. I ask you to distribute it around.

Mr Beynon—I only have three copies at the present time.

CHAIR—All right, that will be fine. Mr Nairn and I will share it. If you would like to now make your opening statement, we will follow up with questions. Thank you.

Mr Beynon—Mr Chairman, I represent the concerns of 57 independent tobacconists situated in all states of Australia. The number is a reasonable representation of the total number of tobacconists nationally, which number in the thousands, but I must admit I am only representing my stores, which account for 57. We have specific and deep concerns regarding the ability of the supermarket chains to employ their enormous buying power to effectively dictate retail pricing. Aggressive competition is an acceptable part of normal business activity, but when prices are reduced to levels below what the average retailer can purchase from the supplier—being in our particular industry the cigarette manufacturers because that is the only place you can get your cigarettes from—I believe it amounts to predatory pricing, an unscrupulous act of preying upon the smaller independent tobacco retailer.

I have submitted documentation to the committee which is a copy of a price survey of tobacco pricing in supermarket chains, and also attached to that is a wholesale price list from the manufacturers. You will observe that there is a particular Woolworths store in Western Australia that would have a class/category 10 and all their prices for the last six months are well below what the wholesale list price of manufacturers supplies. The sample of supermarket chain pricing submitted is indicative of the pricing by supermarket chains in every state and country town of our nation. It is an obligatory practice of supermarket chains to price check their local independent tobacconists up to three times a week. They come in, put their book on the counter, take all your prices, and then go back and place their prices below yours or at the same price. We do not see this as aggressive competition, we see it as an act of preying upon the small and independent retailer, with the ultimate aim of eliminating the competition.

We employ approximately three persons per store in our franchise operation, that is, approximately 170 people, or 57 families, depend upon our survival. We can assure you that if we close down our business because we are unable to compete effectively, efficiently, more profitably against the supermarkets, the supermarket chains will not employ one extra person, and there is a loss of 170 persons unemployed through our 57 stores.

Mr Chairman, let me draw your attention to a statement reportedly made this current week by the federal minister for small business which appeared in the Gold Coast *Bulletin*. He makes a statement which I think might be pre-empting what is going to happen, to the effect that regulation of the retail industry is a last resort. The caption under the minister’s photograph states, ‘A level playing field for all parties’. In my view, in our business sector this can only be achieved if preying on small tobacco retailers by the supermarket chains is stopped. The supermarket chains’ inherent enormous financial resources are directed primarily at capturing market share and eliminating the independent competitor.

In September 1998, the Hon. Peter Reith MP announced a ‘New deal, fair deal’ business package which made a commitment to behavioural change on the part of big business towards small business and to provide small business with adequate means of redress against unconscionable conduct. The new unconscionable conduct provisions of section 51AC of the Trade Practices Act were assented to on 22 April 1998. It was intended to provide meaningful protection for small business against exploitative business conduct. It is intended to prohibit a stronger party exploiting its bargaining advantage. It was intended to consider the parties’ relative commercial strengths and whether undue influence was exerted. Since this change to the Trade Practices Act—which was just about 12 months ago today—the supermarket chains have changed nothing and are still exerting their commercial strengths with their pricing policy, which tends to amount to predatory pricing.

The consequences of the increased dominance and unconscionable conduct of predatory pricing by the major supermarket chain stores in the tobacco industry are to effectively close independent tobacconists and reduce direct employment opportunities and cause an escalation of unemployment in the small business sector of the tobacco industry. The prices then will increase as our stores and any other stores reduce, and I believe that there will be a reduction in consumer shopping options and a loss or significant downgrading of local shopping facilities. That is my presentation, Mr Chairman.

CHAIR—Thanks very much, Mr Beynon. May I say first of all that the minister has not spoken to me about what he expects the outcome of the committee’s inquiry to be, nor shared his views on the market. We are a totally independent committee. They are obviously his personal views, but I think at some stage there are points that are relevant. To put a market cap, for example, or to change the market size of individual players would be a significant step, and obviously you need the appropriate evidence to show that there is a significant problem. That is why we are talking to people like you. We are an independent group or body.

In terms of the Western Australian example that you gave, we had the advantage of, this time last week, hearing similar evidence over in Western Australia and I have to say that I had a certain amount of sympathy with the evidence that was provided, about the people out there from the majors with their clipboards, writing down the prices and following it and watching the price falling. You talk about the price being below the wholesale price. In lots of department stores, in lots of stores, there is an issue of lead loss marketing, and obviously they have decided that cigarettes are one product where you get into lead loss. Isn’t that the type of thing that happens out there to get people into your stores?

Mr Beynon—There is lead loss to a certain degree, but when you consider that there is one particular chain store there that has been selling for a period of a number of months, even years, at a price below that which any other retailer who buys tobacco products—milk bars, delicatessens, those people—can buy for, they are actually gaining from the fact that the manufacturers do not supply these people more. All the milk bars and everything are forcing themselves to go to Coles—to go to this particular store—so they can buy cheaper than they can in the open marketplace, and it makes it prohibitive for other people to compete.

CHAIR—Is it one brand?

Mr Beynon—No, it is the total range of products.

CHAIR—In one store. And how much is it below the wholesale price?

Mr Beynon—You are talking 20c, 30c a carton, which is quite a large amount when you consider that, within our industry, the maximum a milk bar would make selling cigarettes is 16½ per cent gross profit. Where an independent tobacconist would work on five per cent gross profit, these people are working on minus one and minus two, so it is very difficult for an independent, especially when you have a situation right across Australia where the major chain and grocery stores come into every store two or three times a week, take your prices, and go back. We may have the benefit of negotiating a price or a special from the manufacturer, so we put our price on. We have never got an advantage because he will come in that week and sell it at the same price. And where they have the benefit of negotiating a price with the manufacturer, it is low enough that we cannot match them anyway. But they will match us every time that we have negotiated a deal to have a special price.

Mr NAIRN—Mr Beynon, what is the difference between—in this pricing—the normal and special? It is their normal price and when they are on special or something, is it?

Mr Beynon—Yes.

Mr NAIRN—You are talking here about the group 10, Woolworths.

Mr Beynon—That is correct. If you look at their normal price, that is their normal retail price.

Mr NAIRN—Yes, $45.50 is their normal price, and then when they are on special—which is how often?

Mr Beynon—It could be a couple of times a month or something like that. For instance, their normal price is $45.50. The wholesale price is $45.68. So it is cheaper than that, just at normal wholesale price that anybody can buy at, before they have a special. They might have another $1 or $2 off that. It might sell for $43.50 or something like that, so nobody can compete.

Mr NAIRN—Do you think that Woolworths, in this case, are doing some sort of private deal with the manufacturer so that they are buying at below the wholesale price that everybody else is buying at? Or do you think they are just taking a loss on that line on a constant basis, for whatever reason?

Mr Beynon—I have a background in the tobacco industry for 30 years. I was the distribution director for one of the large tobacco companies so—

Mr NAIRN—So did you used to do deals like this?

Mr Beynon—No, not to this extent. There is a buying policy and there are special deals that are done for promotional activity and certain other things. When you look at that right across the board, it is a concerted effort to be able to control the marketplace. I cannot get a definition of what predatory pricing is. I have tried to contact the ACCC to find out what it is, and their comment is 'If it is a price below what the normal person can buy for a period of time.' What is the period of time? I have also been told if you want to take somebody to court on predatory pricing, have $150,000, have $300,000, in your pocket. It has got to go to the Federal Court, you have to have economists, you have to have lawyers and accountants and so forth and so on. We just do not have the money to throw at this sort of thing. What is predatory pricing? Is it below the price that a normal person can buy at? There would be 10,000 to 20,000 retailers who sell tobacco products who cannot buy at the price that Woolworths are selling them for.

CHAIR—Can I flick that around, because we are very interested in this whole question of predatory pricing and the problem that you strike. If you were sitting on the committee, how would you recommend that we overcome that?

Mr Beynon—What I try to allude to is what the minister in his 'New deal, fair deal' policy talked about. We talk about fair trading, we talk about the large business not exploiting the small business. The minister seems to believe that the unconscionable conduct provision is the one that is going to solve all these ills. They may be able to be solved if the financial assistance was given to smaller business where large business takes on this policy. For instance, that is a classic example, and we could go back for a month before and a month before and actually show those figures to be the sell price of that particular competitor. Totally published throughout Australia is the manufacturers' price list: we know what 10,000 or 20,000 retailers pay for their cigarettes every day. They can buy cheaper at that Woolworths store.

Mr NAIRN—Therefore you would not think it would be in the interests of the manufacturer to do a special deal because otherwise people will stop buying from the manufacturer and buy from Woolworths, wouldn't they?

Mr Beynon—That is what I tried to allude to before. It is affecting their distribution channels and all the rest of the stuff as well, so they are not very happy about it, either, because it is creating the wrong pricing structure for their products.

Mr NAIRN—So in this particular case, that Woolworths store is presumably wearing the loss and making it up somewhere else.

Mr Beynon—And you will find that every Woolworths store or Coles store or Franklins store around Australia have a whole pile of brands which they do exactly the same thing to. If we happen to be able to negotiate a good deal with a manufacturer to sell at a price, they will not negotiate special pricing that allows us to sell it under wholesale price. We may have a special on in one particular week but when the people come in with their clipboards and so forth and check our pricing, we do not get advantage for that week because they will just go back and undercut us and put it at that price. Five years ago in the industry, one week we would have an advantage because we would have a special, and Mr Woolworths the next week would have an advantage because he had the special. So it was the personal contact with your customer which kept him with you. Now it is not.

CHAIR—Are you sure that the manufacturers have not done a special deal?

Mr Beynon—I am pretty sure, yes.

CHAIR—Pretty sure.

Mr Beynon—I believe there is so much difference in the pricing structure that yes, I am sure.

CHAIR—Is it worth asking them to come into the inquiry and ask them, to see whether they volunteer the information?

Mr Beynon—That is up to you, Mr Chairman.

CHAIR—But you are confident.

Mr Beynon—I am confident that every approach that I have made to the manufacturer, I have been assured that no, they have not.

CHAIR—Fine. Mrs Elson, do you have a question?

Mrs ELSON—Yes. Why do you allow them in your store three times a week to check prices?

Mr Beynon—We try to throw them out but unfortunately—and this is another thing—they send a poor young girl who is a staff member and who has been told by the boss she has got to go there, and she would probably get a great slap on the wrist if she goes back without the pricing.

CHAIR—Is this everywhere?

Mr Beynon—This everywhere.

CHAIR—Or just in Western Australia?

Mr Beynon—No, everywhere around Australia. In fact we have a store just down the road here at Buranda that comes in three times a week and goes back and changes the prices.

Mrs ELSON—I would say you have got over 50 stores by the looks of it.

Mr Beynon—Yes.

Mrs ELSON—Has there been any decrease or increase in store numbers over the past few years?

Mr Beynon—The store numbers have not decreased. We lost one in Melbourne. The store numbers have not decreased but our turnover and profitability have declined dramatically. It is not just because of people giving away smoking either, it is the aggressive competition that has been taking place. Where we are restricted by legislation and so forth and so on, the supermarket chains seem to be able to use tobacco products. The first port of call you see when you go into a supermarket chain is the kiosk for tobacco products sitting up the front. So, yes, they see it as a very good means of—how you may call it—loss leader or getting additional people in, but with a detrimental effect on us. Our turnover is around about $80 million to $90 million a year through our stores, so you can imagine what theirs is through their stores. So just one per cent of that is quite a big GP.

Mrs ELSON—Thank you.

CHAIR—Senator Boswell?

Senator BOSWELL—Where do you buy your product from? From a wholesaler or direct from the manufacturer?

Mr Beynon—The tobacco industry now is restricted and we buy it directly from the manufacturers. In some cases there are wholesalers to purchase off, but the majority of times we buy direct from manufacturers.

Senator BOSWELL—FAL or—

Mr Beynon—For instance, in Western Australia you can buy off FAL, you can buy off Campbells, Davids, those sort of people.

Senator BOSWELL—Will they give you the same price or a better price?

Mr Beynon—Their pricing structure in a lot of cases is wholesale price plus a percentage.

Senator BOSWELL—They give cost plus—

Mr Beynon—If you have got a smaller retailer who goes to Campbells Cash and Carry or something like that, he will be paying that wholesale price to the manufacturers, plus a percentage which is a service fee of theirs, so that makes the Woolworths price even cheaper.

Senator BOSWELL—Mr Beynon, when you were distributing cigarette products, you would have been aware that there is a price and then there are various discounts off the price.

Mr Beynon—Yes.

Senator BOSWELL—In the hardware game it could have gone up nine, 10 or even 12 per cent; a certain allowance for advertising, distribution, settlement terms, whatever. Are you saying that you are buying at the wholesale price less all the discounts?

Mr Beynon—We buy at a wholesale price less discounts which we negotiate on a national basis through the manufacturers. Mr Coles and Woolworths and Franklins would do a similar sort of thing. They certainly would have a better buying price than us because of warehousing their own stock, distribution and all of the rest of the stuff. So there certainly would be a better buying price. But what I am saying is, even if there is a better buying price, there is a thing called aggressive competition. One does not sell at a price below what the normal general 20,000 or 30,000 retailers of tobacco products would buy their product.

Senator BOSWELL—You are representing 57 stores and they have huge market power.

Mr Beynon—Yes.

Senator BOSWELL—Surely they will buy better than you.

Mr Beynon—Yes.

Senator BOSWELL—So you are not really buying at the best rate.

Mr Beynon—We are buying at a good rate, but probably not at the same rate as Coles and Woolworths. We work on margins of around five per cent and we buy at a reasonably good rate—when you consider some of their pricing structures, they are selling at minus two or minus three per cent, or they would probably be making one or two per cent on a product, and one or two per cent does not allow competition to exist.

Senator BOSWELL—No, it does not allow competition, but it is not selling under cost.

Mr Beynon—This is where I ask the question, what is predatory pricing? Twenty thousand retailers have to pay that price, but because you are of a size you can get a better price.

CHAIR—So what you are saying is that it is a reasonable price because it is selling under what you regard as a reasonable price, because that—to us—is quite a significant point, if they are selling below cost or not.

Mr Beynon—They are selling below the cost that 20,000 retailers around Australia can buy it for. I do not know what the terminology of predatory pricing is. I cannot get a terminology of predatory pricing. What it means is that the entire distribution channels of the industry are blown up in the air because they can sell the product or are selling the product in instances well below what 20,000-odd people have to buy it for. They cannot get it cheaper than that.

CHAIR—That is because of dealing direct with the manufacturers and the wholesalers having to take their own margin.

Mr Beynon—Most of the time now there are no wholesalers of cigarettes. There are a couple of wholesalers but 90 per cent of tobacco products throughout Australia would be purchased through either Rothmans, Philip Morris or Wills.

Senator BOSWELL—Do they come by van?

Mr Beynon—They come by van or telesales or anything else like that. So from my point of view I think what I am trying to allude to is, what protection is there for small business under this unconscionable conduct situation for predatory pricing? It is, to me, an unconscionable act to be able to sell the product and use your market power. The 'New deal, fair deal' belief that I had, anyway, was that it would look at the behavioural pattern of these larger people, because if what we are saying is, 'No, that doesn't happen,' they can continue to do what they did 12 months ago, even though this 'New deal, fair deal' has been in for 12 months. They have not changed their philosophy at all. It didn't affect them one little bit, having their people come into our stores three times a week, getting our prices and going back and making sure they sold at exactly the same price, if not lower. In fact it probably made it worse.

Mr NAIRN—But that has not been tested yet. That new legislation, as you say, has only been there 12 months, and it is a damn sight better than it was before April last year. I think there possibly need to be some test cases.

Senator BOSWELL—There is a test case going through at the moment, yes.

Mr NAIRN—But that is in relation to a retailer, isn't it?

Senator BOSWELL—Yes.

Mr NAIRN—But it is probably good that one will go because it will define just how much teeth that has got, because I guess that is one of the aspects that this committee has really got to look at.

Senator BOSWELL—And that action has been taken on behalf of the other person, so small business do not have to fund the case. The question I am going to ask you is very important, because we have been assured by the CEOs of Coles, Woolworths and Franklins that they will match prices but never undercut prices.

Mr Beynon—They undercut prices.

Senator BOSWELL—We are going to go back to these people and say, 'You gave us an assurance that you would match prices but you would never undercut prices.'

Mr Beynon—I can assure you they undercut prices.

CHAIR—Who was it? It was Woolworths or Coles.

Mr NAIRN—I don't think Franklins said that. I think Franklins—

Mr Beynon—Actually I think they did.

CHAIR—It was Woolworths.

Senator BOSWELL—Both of them said it, and I had the distinct impression that Franklins said it yesterday, that they would set a price, 'We won't be beaten but we won't go under the price.'

Mr NAIRN—You can look at the *Hansard*. I thought they said they were in the market for the discount and therefore they will—

CHAIR—Yes, and they made no apologies.

Mr Beynon—Yes, they don't make any apologies. That is why I am sitting here.

CHAIR—Take no prisoners.

Mr Beynon—But just to finally answer your question on what action you would take, I think the problem for small business is that access to the ACCC, the right and the funding area, if it is going to be based on that sort of thing—I do not know how you put a cap on. That is going to be a very hard decision for you ladies and gentlemen to put everything together to try and work it out. But I think there has got to be a freedom of access to the ACCC. Actions are very quick when large conglomerates want to merge and so forth. Professor Fels comes out very quickly and says, 'No, it's not going to happen,' but when small business is being affected by large business who—

CHAIR—Yes, I understand what you are saying.

Mr Beynon—We can put up our hand, but nobody listens.

CHAIR—This is the core of the challenge for us, and how we get at it, so we will exercise our minds. If you have any inspiration then please let us know.

Mr Beynon—I certainly will.

CHAIR—It has been going through my mind whether there should be assistance for test cases so that everyone is on their mettle, because funding may be made available to particular groups and may be made available through the government. I do not know. I am only thinking aloud.

Mr Beynon—This is a start from that point of view, because we have all got a feeling of what we want to do. We all look at predatory pricing, we all look at misuse of market power and all the rest of the stuff, but the little independent small retailer has not got $200,000 or $250,000 to take Federal Court action.

CHAIR—I think the cigarette area is a particularly interesting area; the same in Western Australia. Certainly they had my attention. Anything else from our still existing quorum before we disappear? Thank you very much for coming.

Mr Beynon—Thank you.

CHAIR—We appreciate your input and your openness in answering questions in your time before us. Ladies and gentlemen, this session is now adjourned.

Committee adjourned at 3.54 p.m.