



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

ECONOMICS REFERENCES COMMITTEE

**Reference: GROCERYchoice website**

FRIDAY, 18 SEPTEMBER 2009

CANBERRA

BY AUTHORITY OF THE SENATE



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**SENATE ECONOMICS  
REFERENCES COMMITTEE**

**Friday, 18 September 2009**

**Members:** Senator Eggleston (*Chair*), Senator Hurley (*Deputy Chair*), Senators Bushby, Joyce, Pratt and Xenophon

**Participating members:** Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams and Wortley

**Senators in attendance:** Senators Barnett, Eggleston, Joyce, Pratt and Xenophon

**Terms of reference for the inquiry:**

To inquire into and report on:

The establishment, management, operation and closure of the GROCERYchoice website, including:

- (a) the rationale and purpose for the website as stated by the Government before the 2007 election;
- (b) the business plan, modelling or plans formulated by the Government or the Australian Competition and Consumer Commission (ACCC) to establish, manage, operate and close the website;
- (c) the problems and issues faced by the ACCC in establishing, managing and operating the website, as well as in handing the website over to Choice;
- (d) the rationale for the ACCC ceasing to manage and operate the website;
- (e) the level of usage of the website while it was managed and operated by the ACCC;
- (f) the proposal Choice put to the Government to take over the website and the reasons why the Government was persuaded that taxpayers would receive value for money;
- (g) the problems and issues faced by Choice in establishing, operating and relaunching the website;
- (h) the contract arrangements with Choice and the various contractors involved with Choice's and the ACCC's management and operation of the website;
- (i) the legal issues and trade practices concerns arising from the establishment, management, operation and closure of the website;
- (j) the specific concerns of the major chains and independent retailers;
- (k) the total cost to the taxpayer in establishing, managing, operating and closing the website; and
- (l) any other matters incidental thereto.

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**Committee met at 8.05 am****CHISHOLM, Mr James, Manager, Competition Policy Framework Unit, Treasury****KENNEDY, Dr Steven, General Manager, Competition and Consumer Policy Division, Treasury****MARTINE, Mr David, Acting Executive Director, Markets Group, Treasury****PAINTON, Mr Geoffrey Andrew, Branch Manager, Central Agencies Branch, Budget Group, Department of Finance and Deregulation**

**CHAIR (Senator Eggleston)**—I declare open this public hearing of the Senate Economics References Committee in its inquiry into the GROCERYchoice website. On 12 August 2009 the Senate referred this matter to the committee for report by 26 October 2009. These are public hearings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to the committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether or not it will insist on an answer, having regard to the ground that is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may also be made at any other time.

I remind members of the committee that the Senate has resolved that departmental officers shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions to superior officers or to a minister. This resolution prohibits asking for opinions on matters of policy only and does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted. A witness called to answer a question for the first time should state their full name and the capacity in which they appear, and witnesses should speak clearly and into the microphones to assist Hansard. Mobile phones should be switched off. I now welcome officers from the Department of the Treasury and the Department of Finance and Deregulation. Do you wish to make any statement?

**Mr Martine**—Thank you for inviting the Treasury to appear at this public hearing in the committee's inquiry into the GROCERYchoice website. As the committee would be aware, we have responded to questions taken on notice at Senate estimates on 4 June. Included in Treasury's response was a copy of the GROCERYchoice website contract between the Commonwealth of Australia, as represented by the Department of the Treasury and the Australian Consumer Association, trading as CHOICE. Treasury, as the department representing the Commonwealth of Australia, administered the GROCERYchoice function following its transfer from the Australian Competition and Consumer Commission, including management of the contractual relationship between the government and CHOICE for the period of its operation. Also included in Treasury's response were copies of CHOICE's initial proposals to government and key documents outlining the way in which CHOICE proposed to go about constructing its

GROCERYchoice website and the options for collecting data to populate it. Treasury have also provided written responses to the questions put to it by the committee on Friday, 11 September, and we welcome the opportunity to elaborate on these responses, along with answering any further questions.

**CHAIR**—Thank you.

**Senator BARNETT**—Thanks for being here. Does the Department of Finance and Deregulation wish to make any opening remarks?

**Mr Painton**—No, I have no opening remarks.

**Senator BARNETT**—It is good to have you here, however. The first question is a key question: what is the total cost to the taxpayer—as in the Commonwealth—to date of the GROCERYchoice website?

**Mr Martine**—Thanks, Senator. I will run through the numbers.

**Senator BARNETT**—Can I interrupt? If you had something that you were happy to table for us, that would be appreciated. My second question will be to ask you to then itemise and break down that cost. I think they are reasonably predictable questions. If you had a piece of paper, that would be easier for everybody.

**Mr Martine**—I am happy to quickly run through the numbers, and this is a document that we could table for the committee. Unfortunately, I only have the one copy.

**Senator BARNETT**—Fire away.

**Mr Martine**—The original costs were incurred by the ACCC. These are GST-exclusive costs, because essentially the GST gets reimbursed back to the Commonwealth. The GST-exclusive costs incurred by the ACCC, we understand, were \$3.6 million. Treasury has made three payments to CHOICE. They are the three payments under the contract of \$1 million each, but the GST-exclusive amount sums to \$2.7 million. Treasury has also made payments to Getronics for reskinning the website and hosting and maintaining the website.

**Senator BARNETT**—Who made that payment?

**Mr Martine**—Treasury has made payments to Getronics, summing to \$397,000. Treasury has also made payments to the Bailey Group, which is Retail Facts, for the provision of monthly grocery price data surveys in the amount of \$835,000.

**Senator XENOPHON**—Over what period was that?

**Mr Martine**—That was from January 2009 to May 2009. We also incurred some legal costs with the Australian Government Solicitor summing to \$71,000.

**Senator BARNETT**—Sorry—what was the sum?



**Mr Martine**—The sum of \$71,000. That was for legal costs that we funded internally from the Treasury budget. The sum of those figures is \$4.938 million. The sum therefore is \$8.571 million. That is the sum of the ACCC costs of \$3.6 million and the other costs I have just read out, which sum up to \$4.9 million.

**Senator XENOPHON**—Does that include contingent liabilities? Are there any other liabilities?

**Senator BARNETT**—Exactly.

**Mr Martine**—That represents the actual amounts that have been paid to the various parties.

**Senator XENOPHON**—Sorry, Senator Barnett.

**Senator BARNETT**—Not at all. That is the key next question. You are on the money, Senator Xenophon. Do you want to try and answer that question? Those are the costs to date. The question is now: what is the liability or contingent liability for the Commonwealth?

**Mr Martine**—As outlined in the contract, there is a payment schedule. The payments were always envisaged to be staggered. It is on pages 51 and 52 of the contract. The \$8 million—

**Senator BARNETT**—Can we just pause for a minute. This has come in quite late and I do not think all senators would have a copy of it. It would be worth while for the senators to have a copy of that. I have page 51 of the contract.

**Mr Martine**—Page 51 of the contract at schedule 2—that does not look like it is a table.

**Senator BARNETT**—I have page 51 here. We might get a copy of it and then come back to it, if you like.

**Mr Martine**—I am happy to continue if you wish.

**Senator BARNETT**—Away you go.

**Mr Martine**—Under the contract and the payment schedule there are milestone dates. We have paid against the first three of those dates: 19 December, where we paid \$1 million; 30 January, a further \$1 million; and 1 March. They are the only amounts—

**Senator BARNETT**—A million dollars.

**Mr Martine**—That is correct.

**Dr Kennedy**—So we do not get confused with the numbers, the numbers Mr Martine gave you before were GST exclusive. That \$3 million includes the GST payment.

**Mr Martine**—They are the only payments we have made under the contract at the moment. You will notice in the contract when the schedule is brought to you that a further milestone date was 1 June 2009. We have not made that payment.

**Senator BARNETT**—That was for \$1 million.

**Mr Martine**—That was for a further \$1 million. Subsequent to that there are in the payments schedule further payments for July, October and January 2010, and it continues all the way through to 31 March 2011.

**Senator BARNETT**—And July was \$1 million as well.

**Mr Martine**—July was 1 July. Once again, the payments are tied to the achievement of certain performance indicators. So the 1 July payment of \$1 million is tied to the launch of what we call phase 3 of the website.

**Senator BARNETT**—They would be arguing pretty strongly that it was at death's door, not ready to be launched, a couple of days ago.

**Mr Martine**—It could be. In terms of coming back to the contingent liability question, with CHOICE we are in the process of winding up the contract. As part of that discussion there will be discussions about the payment, particularly around 1 June. We have not made any payment and we are not here today suggesting that we owe any more, but as part of the wind-up—

**Senator BARNETT**—You are not suggesting that you owe the June payment.

**Mr Martine**—It is part of the wind-up. It is something the legal representatives and the auditors need to go through and look at. That process is in train, so I am not in a position to say one way or the other whether the Commonwealth—

**Senator BARNETT**—So what is the extent of your contingent liability? What is your worst case scenario?

**Mr Martine**—I need to double check, but I think it would go beyond the wash-up of anything due up to the point of termination.

**Mr Chisholm**—As the contract was terminated for convenience by the Commonwealth, there are payments that will be made to CHOICE. It is expected because of the use of the termination-for-convenience clause under the contract but, as Mr Martine has said, that is a matter the extent of which is still to be determined. But it is fair to say that there will be amounts due.

**Senator BARNETT**—What is the extent of that? What is the worst case scenario in terms of the size? Are we talking \$3 million, \$4 million or thereabouts, or something less than that?

**Mr Chisholm**—I do not suspect it is anything in the territory of \$4 million; that is for sure. But beyond that it is difficult for me to say until we have been advised on a final analysis of the payments that have been made or are yet to be made and what the liabilities might be under the contract.

**Mr Martine**—The contract certainly allows termination. The contract always envisaged—

**Senator BARNETT**—But you have just said it is via convenience. Under that provision what are the expectations of the government?

**Mr Martine**—We are happy to table Dr Kennedy's version of the contract—provided he has not scribbled all over it! It is clause 17 of the contract that covers termination for convenience. Under clause 17.1.5—this is on page 33 of the copy we have—you will note that it indicates that Treasury is liable for payments due and owing to CHOICE under the payment provisions of the contract as at the date of the notice. So it is obviously a matter of construction of the contract in terms of the circumstances that might apply at that time. Treasury is liable to reimburse any reasonable costs incurred by CHOICE and directly attributable to the termination of the contract. Paragraph C indicates that Treasury will, in addition to the amounts payable under that clause, pay to CHOICE a sum equivalent to 20 per cent of the committed cash funding that would have been paid to CHOICE but for the termination. It has liquidated termination to cover costs and expenses incurred by CHOICE as a result of the termination that cannot be identified and claimed under the preceding paragraph B.

**Senator BARNETT**—So what is your estimate of that amount? Is that 20 per cent of the remaining payable to CHOICE under the contract?

**Mr Chisholm**—Yes, that is correct.

**Senator BARNETT**—Which is how much? You have paid them \$3 million. It is an \$8 million contract. So it is 20 per cent of \$5 million.

**Mr Chisholm**—Yes. So we are looking at around—

**Senator BARNETT**—A million.

**Mr Chisholm**—About a million, yes.

**Senator BARNETT**—So that particular provision is \$1 million. Then you have 1 June and 1 July, which you would have to say are pretty strongly argued for \$1 million. Certainly 1 June would be.

**Mr Martine**—All the payments are tied to the achievement of the KPIs, so it will come down to a question of whether CHOICE can demonstrate that they have met them.

**Senator BARNETT**—If they have met the KPIs, would it be fair to assume the 1 June \$1 million and the 1 July \$1 million payments?

**Mr Martine**—The contract was terminated prior to 1 July.

**Senator BARNETT**—It was 26 June—four days short.

**Mr Martine**—Yes. The first provision that Mr Chisholm read out was amounts owing as at the date of the notice. So really the main area of discussion is around the 1 June payment.

**Senator BARNETT**—All right. We are a bit tight on time, unfortunately. We have started late and there is an allocated time for various senators, so I have only had an opportunity to ask a couple of questions. I will have to put further questions on notice. At this stage, unless there is time available towards the end, I pass through the chair to other senators.

**Mr Martine**—We will table the page of costings that I was reading out if that will be of any assistance.

**Senator BARNETT**—That would be good if you could.

**Senator XENOPHON**—We know that CHOICE took over the running of the GROCERYchoice website from the ACCC. Was that handed over to CHOICE as a result of a competitive tendering process?

**Mr Martine**—No.

**Senator XENOPHON**—But isn't there supposed to be a competitive tendering process? My understanding is that there is a requirement under the Commonwealth Procurement Guidelines for there to be such a process.

**Mr Martine**—The Procurement Guidelines do allow for situations of direct sourcing.

**Senator XENOPHON**—And it fulfilled those—

**Mr Martine**—So direct sourcing is not prohibited. CHOICE are a major, national consumer, not-for-profit organisation. They approached government with a proposal to effectively take over the GROCERYchoice website and to enhance it with additional information that the ACCC were not really in a position to add to the website given potential conflicts with the ACCC's role. The government looked at that proposal and, because CHOICE could enhance it, there was consideration that it represented good value for money and the government made a decision to go with CHOICE. As I said, the procurement guidelines do allow situations for direct sourcing.

**Senator XENOPHON**—Perhaps you could give details on notice of the circumstances and the protocols involved with going outside those procurement guidelines in terms of direct sourcing.

**Mr Martine**—I do not have a copy of the procurement guidelines.

**Senator XENOPHON**—I am happy for it to be on notice, particularly regarding the circumstances in which that occurred.

**Mr Martine**—We are happy to take that on notice.

**Senator XENOPHON**—How did Treasury satisfy itself that CHOICE was the best value for money in terms of taking over the website?

**Mr Martine**—As I said, CHOICE approached the government in, I think, late September 2008.

**Mr Chisholm**—It was probably around August or late August.

**Mr Martine**—They approached government with a proposal and I think, from memory, those documents are attached to our responses to the Senate estimates questions.

**Mr Chisholm**—Yes.

**Mr Martine**—So you will be able to see the extent of their proposal. I think there were two documents that they sent through with a proposal and I guess what they will describe as a business case. We went through and had a look at the proposal and looked at what the GROCERYchoice website was currently delivering. The key factor really related to CHOICE's proposal for enhancements to the website for things which, as I mentioned, the ACCC were not really in a position, given their particular role as an independent regulator to be able to provide. Our assessment was really around the enhancements, along with looking at the costs compared with what we were always going to be paying the ACCC to run the website.

**Senator XENOPHON**—I guess what you are saying is that, because of the ACCC's regulatory role, it really never was in a position to look after the GROCERYchoice website in the first place, or on a long-term basis.

**Mr Martine**—I would not necessarily say that; it is more about the idea of enhancing the website. A good example is using the website to publish specials. That is where it gets complicated for an organisation like the ACCC. As an independent regulator, if they need to be in a position to potentially take action against various parties for misleading advertising, for example, it is very difficult for them to be hosting a website that is publicising specials. So, in terms of taking what was delivered and enhancing it, the government took the view that it became very difficult for the ACCC to go further than what they were doing.

**Senator XENOPHON**—I take your point completely, but does that not indicate that the ACCC should never have been hands-on with this website in the first place because of that fundamental potential conflict?

**Dr Kennedy**—There was a website that was functioning effectively. I think Mr Martine's point is that CHOICE could take it that extra step for the same cost. The ACCC could have continued to run that website with the functionality that they had, but CHOICE could go one step further.

**Senator XENOPHON**—But it goes beyond that, does it not, Dr Kennedy? Because the ACCC was publishing information that it might have to inquire into, it put the ACCC in an invidious position.

**Mr Martine**—Not with the website they were operating. The question was about going beyond and enhancing what they were doing. There was no difficulty with the information that they were publishing, because they were not publishing data that was specific to particular companies or supermarkets. They were publishing data on a basket of goods.

**Senator XENOPHON**—But to publish the meaningful information that the government intended to publish, it put the ACCC in a very difficult position.

**Mr Martine**—The original intention was to publish information on baskets of groceries.

**Senator XENOPHON**—I would like to move on to the whole issue of the decision to terminate CHOICE's contract. Was Treasury consulted with respect to that?

**Mr Martine**—Yes, we were.

**Senator XENOPHON**—And, obviously, given the Australian Government Solicitor's involvement to the tune of \$71,000, legal advice has been sought in relation to that—without asking about the content of that advice?

**Mr Martine**—Legal advice is currently being sought. I am pretty sure the \$71,000 relates to previous work, but I will check that.

**Mr Chisholm**—Obviously, Senator, we used AGS to help draft the contract, which is an extensive piece of work involving AGS and any ongoing advice that Treasury has needed in relation to the application of the contract related to the expenses that have been outlined today.

**Senator XENOPHON**—But I take it that there are ongoing discussions with CHOICE to finalise any outstanding contractual issues.

**Mr Martine**—That is correct.

**Senator XENOPHON**—So there are still some consumer liabilities. Minister Emerson has indicated that an industry website may be developed in place of GROCERYchoice. Is Treasury aware of whether any industry discussions have taken place or are taking place with a view to having such an industry website? Would you expect that Treasury would be involved in such discussions?

**Dr Kennedy**—As far as I am aware, Minister Emerson continues to talk to those key stakeholders. As to whether Treasury would be involved in an industry website—

**Senator XENOPHON**—Involved in such discussions, rather than the industry website itself.

**Dr Kennedy**—We would be involved to the extent that we would be advising the minister as the policy unfolded. If the question goes to whether Treasury is talking to stakeholders and suggesting to them how they should go about designing a website, no we are not.

**Senator XENOPHON**—Has any modelling or analysis been done by Treasury in terms of the benefit to consumers from giving consumers full price transparency?

**Mr Martine**—Not that I am aware of.

**Senator XENOPHON**—Is that an issue of concern—that lack of transparency of pricing and that real-time information that I think GROCERYchoice was intended to deal with?

**Mr Chisholm**—Certainly the website intended to assist consumers to make informed choices about grocery purchases. That was certainly the intention of the website. That as an aid to assist

consumers is something that the government has indicated is worth pursuing. That is really the underlying policy rationale of setting up a website like GROCERYchoice.

**Senator XENOPHON**—That rationale has not gone away. It did not work, but the underlying rationale is still there.

**Mr Chisholm**—As the minister indicated in his announcement on 26 June, the concern was that it was not going to deliver on that expectation, and that was the reason expressed by the government for the termination.

**Senator XENOPHON**—Are you aware of any of the discussions that took place with the major supermarket chains or any organisations representing Coles and Woolworths in the lead-up to that decision made by the minister?

**Mr Chisholm**—Certainly the minister consulted with supermarkets prior to making the decision.

**Senator XENOPHON**—And we would be talking about Coles and Woolworths, who between them have close to 80 per cent of the market?

**Mr Chisholm**—All supermarkets, as far as I am aware, were consulted about the website prior to a decision being made.

**Senator XENOPHON**—And it would be fair to assume that, as a result of those consultations and discussions—including discussions with Coles and Woolworths—a decision was made to pull the pin on GROCERYchoice?

**Mr Chisholm**—If I could take you to the announcement made by the minister on 26 June, the minister indicated that it had become clear to him that it was not feasible to implement the originally envisaged GROCERYchoice proposal, and that was because the view was taken by the government that it was not able to generate reliable, timely data as a basis for consumers to make meaningful comparisons in their neighbourhood. The minister formed that view on the basis of the status of the website leading up to that date and had discussed the website with all stakeholders in making his decision.

**Senator XENOPHON**—Is it your understanding or the understanding of any of the witnesses here today that a lack of cooperation, recalcitrance or any other conduct on the part of any of the supermarkets made it difficult for the aims of GROCERYchoice to be achieved?

**Mr Chisholm**—Again, I can only really refer to the announcement made by the government. The expectation was that the website would be able to contain accurate and timely data for provision to consumers and the view was taken that it unfortunately was not able to do that, which was a reason for termination.

**Senator XENOPHON**—That was not my question. Do you, or Dr Kennedy, or Mr Martine, have any knowledge of any level of a lack of cooperation by any of the supermarket chains that made the aims of GROCERYchoice difficult to achieve.

**Dr Kennedy**—As Mr Chisholm was saying, we are clear that the reasons behind the termination of the agreement were that CHOICE, in working with the supermarket chains, was not going to deliver the product that we intended to deliver under the contract. Hence, the government took the view that it would terminate the contract. There are two parties involved: CHOICE and the supermarket chains. It was clear that what the government had envisaged under the contract was not going to be delivered.

**Senator XENOPHON**—We will hear from CHOICE later today, but are you aware of any difficulties in the flow of information from supermarkets to CHOICE?

**Dr Kennedy**—We were aware, over a period of time, that CHOICE and the supermarkets were having difficulties in coming to an agreement about how the GROCERYchoice website was going to go forward. It was not just in June; the situation evolved over a couple of months. As to each party's view on how that process unfolded, we will leave it to them to comment on that.

**Mr Martine**—Obviously the key issue between the two parties is the provision of data. That is really the relationship between CHOICE and the supermarkets.

**Senator BARNETT**—When you say, 'the supermarkets,' who are you talking about?

**Mr Martine**—It is the whole suite—Coles, Woolworths, Aldi.

**Mr Chisholm**—In order for the website to provide the meaningful comparison of prices—

**Senator BARNETT**—So you are including the independents?

**Mr Chisholm**—Yes.

**Senator BARNETT**—Sorry, Senator Xenophon.

**Senator XENOPHON**—I am conscious that Senators Pratt and Joyce want to ask some questions, so I might have one or two later if there is time.

**Senator JOYCE**—Does Treasury recognise that geographic price discrimination occurs?

**Dr Kennedy**—Yes.

**Senator JOYCE**—How are consumers supposed to find the cheapest prices or the cheapest supermarkets in the absence of full price transparency?

**Dr Kennedy**—There are a range of ways that consumers can find the prices that are being advertised in different supermarkets. That has been the case for many years.

**Senator JOYCE**—Does the consumer have to rely on generic advertising for a certain supermarket or on advertising across the board?



**Dr Kennedy**—There are a range of ways that people can find out the prices of products. They can look on the internet. They can undertake their own investigations. I am just describing what everyone knows to be the case.

**Senator JOYCE**—So they can look on the internet. Was not that the whole idea of what CHOICE was trying to set up for them?

**Dr Kennedy**—One of the objectives of the GROCERYchoice website was to provide consumers with more real-time information about how prices vary across supermarkets.

**Senator JOYCE**—So you are saying that consumers can do it, but CHOICE could not.

**Mr Martine**—I should mention that the website was in existence and did operate for the period up until the end of June, and it was providing information to consumers. As Dr Kennedy indicated, similar to other products and goods that consumers seek to purchase, they undertake their own activities to work out which is the cheapest and where they can buy the cheapest.

**Senator JOYCE**—I am just going to drill down to what you reckon their own activities might be because it has become apparent that CHOICE could not get the information in a timely and transparent manner off the major supermarkets, but apparently the consumer, aimlessly wandering around the supermarkets of the western suburbs of Sydney in their car will find it.

**Mr Martine**—I am not quite sure how to answer that question; my apologies, Senator.

**Dr Kennedy**—Perhaps I could answer this way, Senator. The average consumer is not being asked to do the extensive exercise that CHOICE was being asked to do across all of Australia. We might draw some distinction between what consumers are trying to do and what was being asked of CHOICE.

**Senator JOYCE**—Would there be a benefit to consumers if one of the major supermarkets—Coles or Woolworths—voluntarily decided to establish their own website with price information available to their customers in real time at store level?

**Mr Martine**—As Mr Chisholm mentioned a few minutes ago in response to a question from Senator Xenophon, Minister Emerson in his announcement did indicate that he would be holding discussions with supermarket chains about the possibility of an industry-wide website being established.

**Senator JOYCE**—This is predominantly two chains and possibly three if you include IGA as one, so how are you going with those? It seems apparent, from questions asked earlier by senators, that the major supermarkets were not too keen to play ball with CHOICE; so who are they going to play ball with?

**Mr Chisholm**—Senator, that is a question that is probably best directed to the supermarkets themselves.

**Mr Martine**—What Minister Emerson refers to in his press release is not a government-operated or government-funded website.

**Senator JOYCE**—So this would just be the supermarkets running their own website?

**Mr Martine**—I understand that a number of supermarkets already do have websites and provide information to consumers on those websites.

**Senator JOYCE**—This is giving information per supermarket or across a range of supermarkets?

**Mr Martine**—As I think Mr Chisholm indicated earlier, this is not a government-run website. The minister has indicated that he would be holding discussions with the supermarket chains about the possibility of them establishing some sort of website.

**Senator JOYCE**—The supermarkets have pretty awesome powers. They have managed to blow GROCERYchoice out of the water. What makes you think that they would relinquish any of that power that they have ably demonstrated lately, in pulling apart GROCERYchoice, to construct their own website to do the same job?

**Mr Chisholm**—As Mr Martine indicated, the minister indicated that he would hold discussions with the supermarkets about the possibility of a website, but the intention there is for as an industry based website, not a government-run website, those discussions are something that would happen between the minister and the supermarkets. Beyond that it is difficult for us to speculate about people's views on those things.

**Senator JOYCE**—What I am trying to work out is: if the government format that was proposed through GROCERYchoice and the efforts of CHOICE itself to try to bring about an outcome were able to be disassembled by the major supermarkets, what on earth are we going to achieve by having one-on-one negotiations with the people who actually achieved their outcome of disassembling it, and how much reliance can be put on them constructing their own website which is going to do approximately the same or a better job than the one they blew apart?

**Dr Kennedy**—We never said in our evidence that the supermarket chains blew apart the GROCERYchoice exercise. As we indicated, there were two parties involved who were not able to deliver, and CHOICE was not able in the end to deliver on that product. I just want to be clear about that. As Mr Chisholm and Mr Martine have indicated, there is information out there now and the minister has indicated that he is interested in working with industry to continue to enhance that information. I think he noted that there was the possibility that information could be audited by a government-appointed auditor, as well, to give consumers some comfort as to the quality of the information.

**Senator JOYCE**—What is the time frame and format of this new proposal?

**Mr Martine**—At this stage, there are no further details that we could add other than what is in the minister's press release of 26 June.

**Senator JOYCE**—And that says what?

**Mr Martine**—That says—and I will read out the quote—

**Senator JOYCE**—Check your email before you read it out.

**Mr Martine**—I will read out the last sentence. It says:

I will hold discussions with supermarket chains about the possibility of an industry website capable of providing convenient grocery price data that could be audited by a government-appointed auditor.

This is Minister Emerson's press release of 26 June.

**Senator JOYCE**—Does that give any time frame whatsoever of when that might happen?

**Mr Martine**—No, it does not.

**Senator JOHNSTON**—So it is just off in the never-never. It might not happen at all.

**Mr Martine**—I would need to check this, but the minister may have already had some discussions with the supermarket chains on this point. I am not too sure.

**Senator JOYCE**—Can you tell us the Treasury's state of play on the creeping acquisitions proposal?

**CHAIR**—It is probably not related to this inquiry.

**Senator JOYCE**—It will be if they own all the supermarkets.

**CHAIR**—That is a hypothetical possibility. Are there any other questions?

**Senator JOYCE**—Do you honestly believe that there is going to be any real hope of getting a transparent pricing guide to the consumer out there unless we have a legislative requirement for the supermarkets to provide it? Is it really in their interests, and in their shareholders' interests, for them to provide you with transparent, real-time information per store?

**Dr Kennedy**—I would say this, Senator: in a competitive market I would have thought that it is always in the interests of the suppliers to provide that sort of information to consumers to win business.

**Senator JOYCE**—Thank you very much.

**Senator PRATT**—Can I ask about emerging trends in this area? Technology has changed rapidly and it has probably changed significantly even since GROCERYchoice was first mooted. I would expect that those emerging trends will have an impact on the kinds of policy responses that the government might examine. For example, consumers are now far more active and likely to collect their own consumer information and exchange it using information technology. As I understand it, there are a number of applications where that is possible. Have any of those kinds of models been looked at where you kind of rely on consumers themselves to put forward information?

**Mr Martine**—Senator, I do not think we have undertaken any sort of extensive analysis of those sorts of options, but you have probably touched on an interesting point of trends in this area moving forward. One does see more and more consumers purchasing groceries online and having them delivered. In a sense, they are doing their shopping around comparing between stores on their home computer, sitting in their lounge room, as opposed to physically moving between stores. There has certainly been that trend, but we have not undertaken detailed analysis of future emerging trends.

**Senator PRATT**—Or possible policy responses in the future to look at that. Thank you. I am happy to give my time to others.

**Senator BARNETT**—There are a few key areas that we have not touched on. I am going to ask the ACCC this question but I will also ask you: are you aware of the Informed Sources submission and the fact that they advised that their submission for the tender was \$2.7 million less than Retail Facts? Are you aware of that, and what is your response to that?

**Mr Chisholm**—We are aware of the submission and the contents of the submission. I think it was uploaded yesterday onto the committee's website.

**Senator BARNETT**—Two days ago.

**Mr Chisholm**—We have not given—

**Senator BARNETT**—Did you have any involvement in assessing that tender?

**Mr Chisholm**—Not that I am aware of, no.

**Senator BARNETT**—We will ask the ACCC. If you have any further advice with respect to your knowledge or understanding at the time, please advise the committee.

**Mr Chisholm**—Of course, yes.

**Senator BARNETT**—Can we go to the business plan, the modelling to set up the website in the first place. On what basis did the government and the department rely in order to establish the website?

**Mr Martine**—You are talking about the original website?

**Senator BARNETT**—Yes.

**Mr Martine**—The background is that the government had an election commitment in 2007 to establish a website providing grocery prices and for the ACCC to run that.

**Senator BARNETT**—We are aware of that, yes.

**Mr Martine**—In the 2008-09 budget, the government announced that it would provide the ACCC with \$4.9 million over four years.

**Senator BARNETT**—We are aware of that. We just want to know the evidence. Do you have any evidence to suggest that it would work? There must have been some document, some modelling undertaken, some information and research undertaken by the department so as to say to the government, ‘Yes, this is going to work.’ Where is that evidence? Can you identify it for us?

**Mr Chisholm**—In response to questions on notice we provided some documents which had been developed by CHOICE which were made available to government, to the best of my recollection, in August-September 2008 setting out a proposal for a CHOICE-run GROCERYchoice website.

**Senator BARNETT**—I am not talking about the CHOICE—

**Mr Martine**—You are talking about the original—

**Senator BARNETT**—The original one, taken by the ACCC.

**Mr Martine**—Treasury obviously at the time—it would have been in the lead-up to the 2008-09 budget—provided the government with our advice. In terms of the question of whether we undertook detailed modelling, not being there at the time, I guess it would have been that we did not, and there would have been no detailed economic modelling undertaken on it. That is probably fair to say.

**Mr Chisholm**—To the best of our knowledge, no.

**Senator BARNETT**—You are saying that there is no evidence, no modelling, that you just sort of came up with the idea. You do not just spend \$13 million over a four-year period and put it in the budget and say, ‘We hope it is going to work.’ There must have been some basis for that. Can you please advise the committee of the reasons for it and of the evidence or modelling you relied on to put forward a budget proposal of some \$13 million over four years.

**Mr Martine**—If you are talking about quantitative economic modelling, where one looks at a proposal and undertakes an assessment of its impact on consumers or prices, anything like that, then the answer in this case is no, we did not undertake quantitative analysis. Just sitting here today, I would probably scratch my head trying to work out what sort of quantitative analysis you could undertake.

**Senator BARNETT**—What analysis did you undertake, Mr Martine?

**Mr Martine**—Like all budget proposals, in fact any proposals the government is considering, we provide the government and the relevant ministers with our views and advice on the merits or otherwise of the proposals under consideration. In terms of the original GROCERYchoice website that the ACCC were to run, we did provide that advice.

**Senator BARNETT**—I think it would be fair for one to assume that, if there were no modelling or business plan—and there is evidence that apparently that was not undertaken—some might argue that it is policy on the run or ill-conceived. The fact that the key basis for the website changed within a matter of weeks of it being established I think suggests that that is

exactly what did happen with the ACCC being asked to include, for example, specials and the like. That obviously was not conceived or considered prior to the establishment of the website.

**Mr Martine**—My colleagues will correct me if I am wrong, but I think the original announcement by the government about the website did envisage enhancements being undertaken over time.

**Senator BARNETT**—If that is the case, the ACCC—and we will have them as witnesses next—responded to say that they were not in a position to fully and properly implement those changes because there would have been a conflict of interest. That is ultimately why the decision was made to pass it to CHOICE.

**Mr Martine**—It really depends a bit on the nature of the enhancements. The example I used, specials, is a problematic one for an organisation like the ACCC, but one could envisage other enhancements that could be undertaken that the ACCC could have actually managed.

**Senator BARNETT**—The bottom line is that it has not worked; it has failed. Are you happy to admit at least that much, Mr Martine?

**Mr Martine**—I do not think it is my role to comment on whether it has been a success or a failure.

**Senator BARNETT**—Sure. You have received \$71,000 in legal advice from the Australian Government Solicitor. That is a lot of money and a lot of legal advice. What was the nature of that advice?

**Mr Martine**—The main cost incurred there—and I think Mr Chisholm mentioned this earlier—was in relation to preparing the contract. The \$71,000 is a cost that we have already incurred. That does not relate to work that they might be undertaking currently.

**Senator BARNETT**—No, and there will no doubt be further costs to the Commonwealth for that work. Did you receive any advice with respect to the Trade Practices Act—in particular section 52, on misleading or deceptive conduct?

**Mr Martine**—I will need to check on that one.

**Mr Chisholm**—To the best of my knowledge, we have not sought legal advice in relation to that.

**Senator BARNETT**—What about any other aspect of the Trade Practices Act?

**Mr Chisholm**—Again—I will just double check—we have not sought legal advice about other aspects of the Trade Practices Act.

**Senator BARNETT**—Would the ACCC have their own legal advice that they could have received on those types of matters?

**Mr Chisholm**—That is probably a matter that is best directed to them.

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**Senator XENOPHON**—Is Treasury able to salvage any value for taxpayers from the CHOICE contract, or is that money just a so-called sunk cost with no ongoing value to consumers?

**Mr Martine**—I am trying to think of the best way to answer this question because, as I indicated earlier, we are currently in the process of winding up the contract. So there are various matters that will need to be considered in that context. It is very difficult for me to sit here today and answer that one way or the other before we have concluded that process. Once that process is concluded, we will certainly be able to give the committee an answer to that question on what the outcome of the winding up of the contract has been.

**Senator XENOPHON**—What time frame are you hoping to conclude that within and answer the question?

**Mr Chisholm**—Again, it is difficult to give a precise date on that, but I would anticipate that we are looking at before the end of the year. I will put it that way.

**Senator XENOPHON**—Finally, you indicated in your evidence that GROCERYchoice was effective. What basis do you have for that statement given that the number of hits on the site fell off dramatically over time?

**Mr Chisholm**—Senator, have you indicated that we provided evidence—

**Senator XENOPHON**—I thought you said earlier today that it was an effective site in terms of the information that it provided, but in terms of use to consumers the number of hits to the site fell off dramatically. I think we are well aware of the dramatic drop off. I think it is something that Senator Barnett has commented on publicly on a number of occasions.

**Mr Martine**—I am not an IT expert, so I probably cannot fully elaborate on the distinction between page views and hits. But, in response to some questions on 4 June, we said that it looks to us as if the page views on the website from earlier this year were reasonably constant. It is probably like all new websites—there is a flurry of people going on and having a look. Towards the end of 2008—and this was a response to Senator Barnett’s question on 4 June—there is no doubt that there was a drop away of page views, but it looks to us as if, from around February 2009, page views were reasonably constant over that period.

**Senator BARNETT**—Constantly low?

**Mr Martine**—The average is about 60,000.

**Senator BARNETT**—Do you have a figure for June with you?

**Mr Martine**—We do not have it but we could take it on notice.

**Senator XENOPHON**—Mr Martine, I am less computer literate than you are, I can assure you. Does page view mean one individual consumer hitting the site? You could be just one person pressing the button, many times.

**Mr Martine**—Yes. I am advised that it is more accurate than what is called a hit.

**Mr Chisholm**—A page view is equal to one web page and a hit is equal to one graphic.

**Mr Martine**—So if you have 10 graphics on a web page, you have 10 hits.

**Mr Chisholm**—So a web page contains multiple graphics.

**Mr Martine**—I would interpret this information as being a consumer opening up a web page and looking at it and that is a page view. Whether that consumer comes back two days later and there is another page here or it is an entirely different consumer, there is a third page view.

**CHAIR**—Any other questions?

**Senator PRATT**—The words I was looking for before are participatory sensing of pricing information, which is where consumers collect information using their mobile phones and things like that. I have no further questions.

**CHAIR**—Thank you to the Treasury and Department of Finance for appearing this morning.



[9.02 am]

**BROCKLEHURST, Mr Adrian, Chief Financial Officer, Australian Competition and Consumer Commission**

**CASSIDY, Mr Brian, Chief Executive Officer, Australian Competition and Consumer Commission**

**WING, Mr Anthony, General Manager, Transport and General Prices Oversight Branch, Australian Competition and Consumer Commission**

**CHAIR**—Welcome. Do you wish to make an opening statement of any kind?

**Mr Cassidy**—No, Chair.

**Senator BARNETT**—Thank you, Mr Cassidy and colleagues, for being here. Perhaps we could deal with the submission by Informed Sources to start with. It has been a public document now for a couple of days and you are obviously fully familiar with it. They say that their tender was \$1.975 million or \$2.7 million less than the successful tender from Retail Facts, which was \$4.669 million. That is a huge differential. Obviously that raises a lot of questions and we would like to try to get to the bottom of why and how that occurred. Perhaps you could kick it off, Mr Cassidy.

**Mr Cassidy**—Mr Wing was more familiar with the detail, but I think the basic answer is that while the Informed Sources tender was lower in price than the Retail Facts tender, which we accepted, we were under some time pressure to get the GROCERYchoice website up and running and we did have some doubts as to whether Informed Sources was going to be able to deliver, particularly on the data collection side, within the time frame we were operating in.

**Senator BARNETT**—What time pressure were you under, Mr Cassidy?

**Mr Cassidy**—The government was keen for the website to be up and running as soon as possible.

**Senator BARNETT**—How soon?

**Mr Cassidy**—We were working with an indicative time of having the first collection done so it could be released in early August.

**Senator BARNETT**—When was this discussion? You are talking about a six-week period to get it up and running.

**Mr Wing**—By the time the contract was let, there would have been about six or seven weeks to do the surveys.

**Senator BARNETT**—So the government gave itself a self-imposed deadline to require it to be established within that six-week period. Did you advise them of the obvious cost differential? Did you advise the government of the implications of their push to rush this forward and to have it up and running so quickly?

**Mr Wing**—No. It was a policy and we had a budget so we just ran within that.

**Senator BARNETT**—Goodness. That is a bit worrying.

**Senator XENOPHON**—Could I ask a supplementary question to that, with Senator Barnett's permission.

**Senator BARNETT**—Please.

**Senator XENOPHON**—You said you had some doubts about the data collection of Informed Sources. Can you elaborate on what those doubts were?

**Mr Cassidy**—Again, I will defer to Mr Wing, but as I understand it Informed Sources did not have a data collection team on the ground ready to go. I should explain—and this is relevant to a couple of issues, I think—that, given our role as the regulator and law-enforcement agency, we took the view that in running this website we had to be absolutely sure of the accuracy and reliability of the data that we were putting on it. It therefore was not viable for us to rely on information that was provided to us by the retail chains and that we in fact needed to be collecting and verifying the data ourselves, which meant we needed to look for someone to actually go and collect the data. Informed Sources, while they had done similar work in the past, did not actually have a data collection team up and running. Our principal concern was whether they could in fact do that within the sort of time frame we were operating in.

**Mr Wing**—That is exactly right. We received a number of quotes ranging in price from about \$2 million to well over \$10 million. Our concern was very much that there was quite a major collection to be done—with approximately 600 supermarkets and approximately 500 products per supermarket—right across Australia and the first one would have to be up within six or seven weeks. We felt very strongly that it was important that there was a ready-to-go field force. We looked very closely at the proposals by Informed Sources and others. At the end of the day, we were not convinced that there was a ready-to-go field force and we thought a fair amount of recruitment would have to be done. That was a great concern—that is, that there would be a great risk to the ability to deliver the data and high-quality data in time.

**Senator XENOPHON**—Could I ask one more supplementary question?

**Senator BARNETT**—Sure. Go ahead.

**Senator XENOPHON**—I apologise to Senator Barnett for interrupting his flow of questioning. You looked quite closely at Informed Source's ability to have the teams on the ground. Did you put to them, given that they had been doing it in the fuel business for years, 'Can you do this?' Did you actually give them an opportunity to put to you whether or not they could do this?

**Mr Wing**—Yes. They came down to Melbourne to give us a presentation and we talked to them for quite a period of time, going through their abilities and what they had and what they would do. Following that, we asked them supplementary questions and they provided supplementary answers. That was basically very much us trying to see whether we could take the cheapest option.

**Senator XENOPHON**—Sure. Finally, on notice, could you provide details of those questions and answers? Or would you need to get Informed Sources' permission for that?

**Mr Wing**—Can I take that on notice?

**Senator XENOPHON**—Thank you.

**Senator BARNETT**—That was an excellent line of questioning. It raised a whole lot of questions and concerns about the interaction or lack of interaction between yourselves and the government. They have put a self-imposed deadline to get it up within a certain time and you have had to act within that period of time. Based on the evidence you have provided, you had no choice but to accept the tender that was \$2.7 million higher than the Informed Sources tender. Is that correct?

**Mr Wing**—Yes. We went to the next cheapest tender after that.

**Senator BARNETT**—So you really did not have any choice—as it were. You had to go for the tender that was going to meet the conditions specified by the government.

**Mr Wing**—We made a judgment that the risk was too high.

**Senator BARNETT**—They say that they were concerned that there was some sort of negative interpretation of their bid in light of their involvement in the Fuelwatch debacle. What do you say to that allegation?

**Mr Wing**—They were quite separate processes, for a start. All were run on the usual Commonwealth procurement requirements and best value-for-money tests. The suggestion has been put that we were biased against giving them contracts because we were having a public debate with them about fuel. Yet, at the very same time, we gave them at the end of June the contract for the collection of fuel prices. That contract for the collection of retail fuel prices was signed with Informed Sources on 29 June.

**Senator BARNETT**—Is there any ill feeling? Do you feel there is any substance to any of their allegations regarding the negativity between ACCC and Informed Sources?

**Mr Cassidy**—No.

**Senator BARNETT**—Thanks for that. We will no doubt have them appear as witnesses and we will hear more of their side of the story. I go back to any modelling, evidence or business plan. Did you have any that you put to the government to say, 'Look, this is how a GROCERYchoice website can work?'

**Mr Cassidy**—We started with the government commitment that they wanted to have a website.

**Senator BARNETT**—Can I just come in there. Did you give them advice to say, ‘Look, this can work,’ before they announced their plan for a website?

**Mr Cassidy**—I think—and my colleagues might correct me—that was actually an election commitment. In a sense, when they were elected they had this commitment and we did not have any input. We undertook what you might loosely call a scoping study, looking at different ways of setting up the website. There were some obvious trade-offs in cost, reliability and so forth. We put that to the government. Out of that process emerged the sort of website that went up in August. There was not a cost benefit in any sense. It was simply, if you like, a bit of a scoping study of what we thought different types of websites would cost and involve.

**Senator BARNETT**—What were the options that you put to the government?

**Mr Cassidy**—The options really varied around a couple of what you might call the parameters of the website. They were things like coverage—that is, whether you would do it by regions or whether you would look at possibilities of doing it on an individual store basis. Also, there were issues about coverage of range of products and baskets and so forth.

**Senator BARNETT**—I understand that, Mr Cassidy. I presume you put a number of options to them. What was the preferred option that you put to the government?

**Mr Cassidy**—We are getting fairly close to the issue of advice to government. I really do not want to go too far down that path.

**Senator BARNETT**—How many options did you put to the government?

**Mr Cassidy**—Let me just say, if I could—and this might help—that the site that went up in early August was fairly close to what we put to the government as being the preferable way of going, trading off those various considerations.

**Senator BARNETT**—Let us go another way. Did you put a proposal to the government whereby you established and operated the website, or did the government request you to undertake that responsibility?

**Mr Cassidy**—The government indicated to us that they wished for us to be running the website—to set it up and run it.

**Senator BARNETT**—Could you provide, perhaps on notice, the committee a copy of that scoping study?

**Mr Cassidy**—Obviously I will have to take that on notice, because it does go to the issue of advice to government. I will take it on notice and we will see.

**Senator BARNETT**—Finally: the Department of the Treasury have tabled a list of the costs and we now know the cost to the taxpayer to date is \$8.571 million with a contingent liability of

some \$3 million, maybe more—by my estimate—not to mention the legal fees. Have you got a list of the costs as they relate to the ACCC? I know you gave a partial answer to a question in Senate estimates in June, but do you have a table or a list that you could provide to the committee today with the costs incurred by the ACCC and the identity of the consultancies, when they were undertaken and so on? Do you have that document with you?

**Mr Cassidy**—I do not have a document in exactly that form—

**Senator BARNETT**—Or something similar?

**Mr Cassidy**—We got a list of questions from you, or from the committee, late last week or early this week, which we provided answer to yesterday. Question 10 on that list is: could we provide details of all consultancy contracts that we had in place during our involvement with GROCERYchoice—

**Senator BARNETT**—Yes. I have got a copy of that, but that includes the costs to the ACCC; it does not make any reference to contingency liabilities. I add that up to be about a \$3 million cost to the ACCC. It might be more than that. But you have signed up a \$5.135 million contract with the Bailey Group. We are very interested to know what contingent liability you have under that contract.

**Mr Cassidy**—Mr Brocklehurst will probably correct me if I am wrong, but we transferred that contract in total to Treasury. We have no contingencies in relation to GROCERYchoice.

**Senator BARNETT**—You have no contingency costs at all?

**Mr Cassidy**—We have no contingencies in relation to GROCERYchoice at all.

**Senator BARNETT**—So what is the total cost?

**Mr Cassidy**—We spent \$3.64 million.

**Senator BARNETT**—Thank you.

**Senator XENOPHON**—Mr Cassidy, in relation to Retail Facts, securing the data collection contract, were you aware that Retail Facts was also collecting price data for Woolworths?

**Mr Cassidy**—Yes, we were aware of that. Some people might see that as in some way qualifying them as a data collector, but on the other hand—

**Senator XENOPHON**—Sorry, you say: some people would say—

**Mr Cassidy**—Some may see that as a sort of disadvantage, if you like. On the other hand, it also meant that they were quite experienced in the data collection business. Informed Sources collects petrol data for us. They also, in their main business, collect it and provide it to the oil majors. As part of their contract, Retail Facts took the view that they were under obligation to us to collect the data as we wanted and to keep it confidential.

**Senator XENOPHON**—What safeguards were there that the ACCC required that Retail Facts would prevent any inappropriate disclosure of information to Woolworths? What built-in safeguards were there?

**Mr Wing**—We required Retail Facts to provide us with confidentiality undertakings and to get them from each and every one of their price collectors.

**Senator XENOPHON**—Were the same data collection teams from Retail Facts used to collect price information for Woolworths?

**Mr Wing**—I would have to take that on notice.

**Senator XENOPHON**—It is pretty fundamental, isn't it?

**Mr Wing**—I would not like to say. I would have to take that on notice.

**Senator XENOPHON**—Would you be concerned if Retail Facts had a data collection team that was collecting data not just for GROCERYchoice but also at the same time for Woolworths?

**Mr Wing**—We would be concerned if they were in any way passing data across.

**Senator XENOPHON**—No, that is not the question. If the Retail Facts data collection team was collecting data for both GROCERYchoice and Woolworths that would be a real issue of concern, would it not, for the ACCC?

**CHAIR**—If it was the same data.

**Senator XENOPHON**—Yes, thank you.

**Mr Wing**—Of course, if it was the same data.

**Mr Cassidy**—They are under contractual obligations to us. We encounter this quite often. It is not realistic to think, 'If someone else is using somebody to do something then we will not.' That is why we have safeguards and obligations in our contracts about confidentiality and so forth. It would almost be inevitable that some of the same data was being collected. Given we are collecting across 500 grocery items, there would be some commonality but only some in the sense that Woolworths or whoever else would be interested in some of the same items and some different items.

**Senator XENOPHON**—Sure, but can I go back to the issue. If the data collection team for Retail Facts was out in the field collecting data for both, even if there were some crossover before GROCERYchoice and for Woolworths, would that be covered in the safeguards established to deal with the fact that Retail Facts was also collecting data for Woolworths?

**Mr Cassidy**—They are under contractual obligation on confidentiality.

**Senator XENOPHON**—But would that contractual obligation also say, 'We don't want you collecting data for Woolworths at the same time'?

**Mr Cassidy**—No, we did not impose that sort of restriction.

**Senator XENOPHON**—Do you think you should have?

**Mr Cassidy**—No, I do not think that is commercial reality.

**Senator XENOPHON**—Did the ACCC review the Retail Facts data collection processes—for instance, did the ACCC ever accompany Retail Facts teams during data collection runs?

**Mr Wing**—No.

**Senator XENOPHON**—Do you think you should have?

**Mr Wing**—No, we contracted people to do this work.

**Senator XENOPHON**—I am not sure whether I am missing something here. You have the same team collecting data that could have conceivably collected data for both Woolworths and GROCERYchoice and you do not see any potential conflicts of interest there?

**Mr Cassidy**—Yes, and that is why we had confidentiality requirements in the contractual arrangement.

**Senator XENOPHON**—Is there any way that the ACCC could ever find out if there was any leakage of confidential information by Retail Facts to Woolworths? How would you know?

**Mr Cassidy**—That is a good question. Basically, what we want to protect is what was in our basket. Over a period of time of running the website if we started to suspect that the prices on our baskets were being manipulated then we would start to wonder how the information as to exactly what is in our baskets got out. In the time we have been running the website, we had no indication of that and we were crossmatching the data looking for outriders and for data which did not seem to be consistent. We saw no evidence that there was any manipulation going on or that any information had leaked.

**Senator XENOPHON**—But you would have been concerned if it was ever discovered that there had been leakage of information to Woolworths? That would have been a serious concern.

**Mr Cassidy**—Indeed. In the design of the website and the way we went about it, part of what we wanted to try and avoid is what we believe happens with some of what you might call the small-scale grocery price monitoring arrangements where the range of products is known and where that can then be quite open to manipulation in terms of the prices on those particular products not being reflective of the going price for the more generic type of good.

**Senator XENOPHON**—Any such leakage would have undermined the integrity of the GROCERYchoice website by Retail Facts.

**Mr Cassidy**—Yes. We would have been seriously worried if we had found that the contents of the baskets in terms of the exact products were known by the product retailers.

**Senator BARNETT**—The question is: how would you ever know?

**Mr Cassidy**—The reason I say a retailer may want to know the content of the basket is so that they could manipulate, so to speak, the prices of those particular goods.

**Senator BARNETT**—But how would you ever know?

**Mr Cassidy**—If we decided to use a 600 gram loaf of plain white sliced bread and we started to see that the price of that particular product had been moved out of line with the general bread product range price then we would say to ourselves: ‘Hang on. Why is that? We would not pick it in one month but, over a period of time, we would start to see whether particular retailers were aware of exactly what product lines we were collecting.

**Senator XENOPHON**—Mr Cassidy, you could understand that an outside observer would say: ‘Here is a team of people from Retail Facts. They have the job for the ACCC to look at grocery prices. The same company is doing work for Woolworths. If the same team was on the ground providing information to both the ACCC and Woolworths, there would naturally be concern that information could be linked to Woolworths.’

**Mr Cassidy**—I can understand that there could be that concern and that is why, as I say, in the contractual arrangements we had confidentiality requirements built in.

**Senator XENOPHON**—But you have no way of enforcing or monitoring those confidentiality requirements.

**Mr Cassidy**—Except that, if the knowledge of what we were collecting had gotten out, I think we would start to see it in the prices.

**Senator XENOPHON**—Is the ACCC able to tell us how many times and in what regions Woolworths was found to be the cheapest overall during the life of GROCERYchoice?

**Mr Cassidy**—We would have to take that on notice. We were collecting 61 regions a month, which, over six months, is 366 regions, and off the top of my head I do not know the answer to that question. We could take it on notice. We can give you the answer.

**Senator XENOPHON**—Would you be surprised if Woolworths did particularly well on those surveys?

**Mr Cassidy**—I do not know whether I would be surprised or not, to be honest.

**Senator XENOPHON**—If you could, I think it is really key to—

**Mr Cassidy**—We can look at it. And I can recall in general terms that it was back and forth between Coles and Woolworths in terms of who was the cheapest overall and who was cheapest in particular regions. But, as I say, I have not got that sort of detailed information available.

**Senator XENOPHON**—Were the goods included in the basket of goods surveyed under GROCERYchoice rotated every month or did the rotation of goods stop at any stage?



**Mr Wing**—There was rotation in and out, from time to time. That was partly to deal with concern about the list being leaked or anything like that, if that was the concern.

**Senator XENOPHON**—Obviously, Retail Facts had that list because they were doing the survey.

**Mr Wing**—Yes. There were two things that happened there. One was that the rotation was designed to make sure that getting the list after the event did not help and to avoid concerns about people going around the country and suddenly putting their prices down on those items and up on others. The list was transmitted to Retail Facts shortly in advance, and they downloaded it shortly before the collection date via PDAs to their collectors.

**Senator BARNETT**—When you say ‘leaked’, you mean leaking it to themselves or leaking it to Woolworths?

**Mr Wing**—To Woolworths or to on anyone else.

**Senator BARNETT**—Bearing in mind they actually have the information for both GROCERYchoice and Woolworths, you do not see that as a direct conflict of interest?

**Mr Wing**—Their collecting data for Woolworths would not actually affect the data that was collected from GROCERYchoice.

**Senator BARNETT**—I think Senator Xenophon has made his point very well.

**Senator XENOPHON**—Senator Joyce is in the ether, Chair.

**CHAIR**—We are running well to time. Senator Joyce.

**Senator JOYCE**—Thank you very much. How much did we pay Retail Facts?

**Mr Cassidy**—When you say ‘we’, the ACCC paid them \$1.46 million.

**Senator JOYCE**—You have a copy of the contract that you wrote up with them, haven’t you?

**Mr Cassidy**—Do we have it with us, Senator?

**Senator JOYCE**—No. You have a copy of it back in the office. You could easily put your hands on that contract, couldn’t you?

**Mr Cassidy**—I missed that question.

**CHAIR**—He says that you can easily access the contract.

**Mr Cassidy**—Yes. In fact, I thought the contract had been made available in the Senate, in the last few days, as to late answers from Treasury.

**Senator BARNETT**—Have we got that contract? I do not think I have seen it. If we have not got it, we would certainly appreciate a copy.

**Mr Cassidy**—My understanding is that it has been tabled.

**Senator BARNETT**—Take it on notice.

**Mr Cassidy**—Yes.

**Senator JOYCE**—Did you know that, whilst drawing up that contract, they were also delivering information to Woolworths?

**Mr Wing**—We did. For that matter, Informed Sources was delivering information to Franklins.

**Senator JOYCE**—We are not paying twice for the information, are we? We are not paying for them, in the same job, to draw up a contract with Woolworths, which they get paid for, and in the same breath, also send you a bill for finding the same information which Woolworths has just paid them to find?

**Mr Wing**—No, Senator. We had a specific and very extensive list of products and stores. So it was quite specific to us.

**Senator JOYCE**—So how do we know, since there were no teams going out with them for the assessment, that they were not actually doing the two jobs at the one time?

**Mr Wing**—The average time required to collect the products we had asked for was four or five hours in a store. They would have been there an awfully long time if they were collecting twice.

**Senator JOYCE**—Why could they not just do the Woolworths information and say, ‘That’s the stuff the ACCC want anyhow. Here we have two bills and we’ve doubled our money and done only half the work’?

**Mr Cassidy**—That assumes that Woolworths or, for that matter, Franklins—let us generalise this—or any retailer in question wanted exactly the same information that we wanted.

**Senator JOYCE**—I hope the taxpayer was not subsidising Woolworths in the collection of information.

**Mr Cassidy**—We have no knowledge of Woolworths’s contractual information or retail facts. We had specific data which we wanted from specific stores and that is what they collected for us.

**Senator JOYCE**—How do we know that this was not the case? What sort of due diligence did the ACCC delve into to make sure that the Australian taxpayer was not subsidising Woolworths for the collection of information by Retail Facts basically saying, ‘These two characters want the same information. They don’t know that we are collecting for both of them, so we’ll send them both a bill’?

**Mr Cassidy**—In any data collection exercise, I suppose that is a risk. We take the tender bid on its face value. You could pose the same set of questions in relation to Informed Sources, I suppose. Are we subsidising the oil majors for the petrol price information they get from Informed Sources? As I say, we had specific data requirements from specific stores and that is what we were paying for.

**Senator JOYCE**—Was Retail Facts the cheapest quote?

**Mr Cassidy**—No. We had an earlier questioning about that.

**CHAIR**—We have covered a lot of this ground, Senator Joyce.

**Senator JOYCE**—Just for the record, was Retail Facts the cheapest quote?

**Mr Cassidy**—It was the second cheapest.

**Senator BARNETT**—There was \$2.7 million difference.

**Mr Cassidy**—There were four dearer ones.

**Senator JOYCE**—Since they were a dearer quote, was the cheaper quote also working for one of the other major supermarkets, collecting information for them as well, or was it collecting for just one of the majors?

**Mr Cassidy**—Senator, I think all of about four minutes ago it was mentioned that Informed Sources, the cheapest quote, was collecting for Franklins.

**Senator JOYCE**—CHOICE had to approach the Australian National Retail Association rather than Woolworths themselves. Are you aware of that?

**Mr Cassidy**—I think I am going to end up saying this several times: we know virtually nothing of what transpired with CHOICE. We had one meeting with CHOICE where we made quite clear that any decision on the future of the GROCERYchoice website was a matter for the government and not us. At government request, we explained to CHOICE how the website worked. We would have explained that to anyone else, had the government asked us to. Beyond that, we know nothing of what transpired between CHOICE and the government or between CHOICE and any of the retailers.

**Senator JOYCE**—If one of the majors, for example Woolworths, said, ‘Don’t talk to us; talk to the Australian National Retail Association,’ and that body also represented Coles, would you see that as two major organisations working very closely together for a common purpose?

**Mr Cassidy**—I do not know. Maybe it is two major organisations using their representative body. I think the Business Council of Australia has 20-odd members who use it. That is the way representative bodies work.

**Senator JOYCE**—It is a very particular sort of interest though, isn't it? They are 70 or 80 per cent of the retail market and they are working together in a coordinated form to basically sink the GROCERYchoice website.

**Mr Cassidy**—I cannot comment on that. You are speculating on things that I do not know about.

**Senator JOYCE**—If that were the case, would you be concerned about it?

**Mr Cassidy**—Again, I am afraid you are asking me to comment on things that I do not know about. I do not know whether that happened. Would I be concerned? Unless it was somehow a breach of the law, it would not be a matter for us; it would be a matter for CHOICE and the government.

**Senator JOYCE**—I am going back to Retail Facts. In your recollection of the contract, what non-disclosure clauses did you have between you and Woolworths? What confidentiality clauses were there and what were the provisions that you put in place to make sure that outcome came about?

**Mr Cassidy**—I do not have the contract in front of me. I am absolutely certain it was tabled in the last couple of days in the Senate. It is a matter of looking at the contract, which is now, incidentally, under the control of Treasury. I do not know quite how free we are to be discussing the details of the contract.

**Senator JOYCE**—If you believe you have tabled the contract, you should be as free as you like.

**Mr Cassidy**—That is correct, but I do not have it in front of me. I thought that, as it has been tabled, you would have it to be honest.

**Senator JOYCE**—In St George?

**Mr Cassidy**—Modern communications are a wonderful thing.

**Senator JOYCE**—Did you have any clauses in there that dealt with breaches of confidentiality?

**Mr Cassidy**—We certainly did but, as I said, I do not have the contract in front of me so I cannot read them out to you.

**Senator JOYCE**—Have you had any desire, reason or impetus to query, check or follow through any of these issues or to suspect that something might not necessarily be so and to go and check it out?

**Mr Cassidy**—I explained earlier the sort of thing that we would have been looking for in terms of prices moving out of line. But in the six months that we were collecting the data, we did not see any evidence of that.

**Senator JOYCE**—That was just a desktop analysis, wasn't it?

**Mr Cassidy**—We were analysing the data as it came in and looking for various things. But we did not see any evidence of that.

**Senator JOYCE**—Who was analysing the data?

**Mr Wing**—We had a team that looked at the data and did crosschecks on it. We used tools that we had built internally, which were audited by Frontier Economics. We basically had a team that looked at those things.

**Senator JOYCE**—What did your crosschecks involve? Did they involve someone going out to the store and checking what they were doing?

**Mr Wing**—No. It involved looking at all the data and running through more than a couple of hundred thousand items of data per month looking for outliers, variants and so on.

**Senator JOYCE**—If you thought there was a problem, did someone ever go out to the supermarkets and check?

**Mr Cassidy**—We did not get to that point because we did not think there was a problem.

**Senator JOYCE**—There was never a problem?

**Mr Cassidy**—No.

**Senator JOYCE**—How would you ever test the veracity of the data that you were collecting if you never went out and did an empirical check of the data?

**Mr Cassidy**—As I said, we never got to that point because we did not see any evidence of anything being wrong with the data.

**Senator JOYCE**—How would you know if there was something wrong with the data if you never checked?

**Mr Cassidy**—We seem to be going round in circles. We did check but we did not find any evidence of anything being wrong with the data.

**Senator JOYCE**—All contracts are now concluded, aren't they?

**Mr Cassidy**—All contracts are now under the control of Treasury. I am not sure what the situation is between them and CHOICE and Treasury and Retail Facts. Whether they are completely concluded or whether there are any outstanding liabilities under those contracts is really something that you would have to put to Treasury.

**Senator JOYCE**—Did you ever consider having a team that would go out and check the data of Retail Facts? Did you ever consider that you might need to send someone out into the field to

see how it was actually going? The taxation department sends people out into the field. Everybody else sends people out into the field to check the veracity of data. Did you ever consider doing it?

**Mr Cassidy**—We certainly had that as a possibility but, as I said, we were not going to do it unless we saw something in the data which made us suspicious—and we did not.

**Senator JOYCE**—As part of an audit process, a random audit is always an intrinsic part of keeping the validity of data and dispelling assertions that things might have gone awry. In any audit process, it is a basic fundamental that you check data not because it is wrong but to give yourself a comfort zone that you have checked the data in an empirical form—that is, sighted the document, seen the process and gone out and checked in the field. When I was doing audits, I used to count the number of houses of a certain housing corporation not because I thought they had stolen one but just because I wanted to make sure that the houses were there. Didn't you ever consider doing that?

**Mr Cassidy**—I think it is a horses-for-courses approach. Given the use of this data, it was not financial information on which decisions were being based. It was not information that we were proposing to adduce as evidence in court. It was information going up on a public website. As I say, with your audit-cum-validity checks, you scale them according to what use and reliance is being placed on the data.

**Senator JOYCE**—Did you disclose on your website that Retail Facts was also collecting data for Woolworths?

**Mr Cassidy**—I am not aware that that was on our website. It was probably commonly known in the industry, but I do not think we had it up on our website.

**Senator JOYCE**—Do you think that the consumer who was using your website realised that or had knowledge of that information?

**Mr Cassidy**—I suspect probably not.

**Senator JOYCE**—Do you think that you had a duty to disclose that information to them?

**Mr Cassidy**—I would not, Senator, but I would suspect that you and I are going to disagree on that.

**Senator JOYCE**—Do you know of any other instances where a person who is working for both parties has disclosed that information in an up-front manner?

**Mr Cassidy**—Not that I can readily think of. It probably does happen. Again, I go back to my earlier comment that these sorts of things are scaled according to what reliance is being placed on the information.

**Senator JOYCE**—So you do not think there was a strong reliance being placed on the information on the website?

**Mr Cassidy**—I do not think it was of the same calibre as, say, when you talk of auditors of financial information in company accounts and so forth. It is certainly not of the same calibre as information which we would be thinking of going to court with.

**Senator JOYCE**—It was not information of as high a calibre as that which could otherwise have been declared. Is that what you are saying?

**Mr Cassidy**—No. That is twisting my words. All I am saying is that it was not of the same importance and significance as other types of data you could think of.

**Senator JOYCE**—So the data that you had on the GROCERYchoice website was not of the same importance or significance as other data?

**Mr Cassidy**—That is right. As I said, it was not being used for any legal or financial accounting type of purpose.

**Senator JOYCE**—It is a secondary issue—a bit of a waste of money.

**Mr Cassidy**—No. I did not say that. I just said that, in terms of the reliance and the use being made of the data, I would not rank it as highly as some other sorts of data you could think of.

**Senator JOYCE**—Now that we have put it to you, are you going to go back and check to see whether there was any apparent cross-subsidisation by Retail Facts that they were collecting information for one entity when they were actually collecting it for two? In your contractual process, did you believe that it was the exclusive collection of material on your behalf? Did you ask them the question: ‘Are you collecting this material on other people’s behalf and, if so, what can we rule out in our contract in terms of the money we are about to pay you, because you’ve already been paid for it?’

**Mr Cassidy**—I think the answer to both of those questions is no.

**Senator JOYCE**—‘No, you can’t do it,’ ‘No, you won’t do it,’ or, ‘No, you haven’t done it’?

**Mr Cassidy**—Your first question was ‘Are we going to?’ to which I am saying no. The second question was ‘Did we ask Retail Facts if they were collecting the same data for someone else?’ I think the answer to that is probably no as well.

**Senator BARNETT**—Senator Joyce, can I jump in there because I have discovered the contract to which you are referring, and I think I have got a question that is directly relevant to it?

**Senator JOYCE**—Sure.

**Senator BARNETT**—The contract that I have just discovered is about 10 pages long. It has three clauses in it regarding conflict of interest, and it has a schedule in it referring to confidentiality and management of conflict of interest. In that schedule, it does not convince me in any way, shape or form that the management of this conflict of interest is comprehensive or full and proper, but there is a clause which I will read it to you. It states: ‘All internal control

procedures, processes and practices would be open to case manager or a nominated representative of the ACCC to an agreed audit test.’ So the question is: was there ever an audit test?

**Mr Cassidy**—Again, my understanding is no, because we never had any trigger or reason to undertake one. We never saw anything in the data which made us suspicious.

**Senator JOYCE**—That is interesting. Can you explain to me what you think an appropriate audit test is, or maybe you would like to refer to audit standards of what an audit test is?

**Mr Wing**—There might well have been audits from time to time or at an annual time and so on in the normal manner, but we did not actually have it for that length of time.

**Senator JOYCE**—Can I put it to you that the basic premise of an audit standard is the empirical checking of data not so much because you suspect something is wrong but because you want to prove that it is beyond suspicion that it is wrong.

**Mr Wing**—Again, it would be the same thing. We were looking at it on a monthly basis both to do our own internal checks and to see whether there was anything which required us to take a further look at it. Also, there was the provision that Senator Barnett has just read out that also allowed us to do, for example, an annual audit or something on our own—

**Senator BARNETT**—But why didn’t you do it? Why didn’t you undertake an audit check? You have specifically put it in the contract. It is in the schedule and it refers to the opportunity for an ACCC representative to do an agreed audit check.

**Mr Cassidy**—We had no reason to do so. We saw nothing in the data in the space of six months that gave us any reason to suspect that there was anything wrong with the data.

**Senator JOYCE**—Mr Cassidy, the point is that, unless you check, you will have no reason to know that there is something to check. The whole point of checking is like saying, ‘I have no reason to check the fishing line.’ But you will not know that until you actually pull the thing in.

**Mr Cassidy**—If you have 50 fishing lines, you might only check the ones where you get a bit of a tug.

**Senator JOYCE**—You told us that you did not check any of them.

**Mr Cassidy**—That is right. But I am saying that, if you have a great number of them, you might only check the ones where you have some suspicion.

**Senator JOYCE**—You have no way of finding out any suspicions because you never check them.

**Mr Cassidy**—No. That is not right, Senator, and I am starting to get a bit irritated with you—let me be generous—misunderstanding what we are saying. We were doing a lot of checking of the data as it was collected, looking for any discrepancies. If we had found any and had suspicions then we would have gone to the next level, which would involve some sort of audit or



us collecting the data ourselves to crosscheck. But we did not find anything in the data which triggered that sort of action on our part. But please do not say that we did not check the data at all, because that is just not right.

**Senator JOYCE**—You just did a desktop check, Mr Cassidy. You never did an empirical check. You never went into the field.

**Senator PRATT**—I think we have been over this.

**Senator JOYCE**—One could ascertain that your process is—

**Mr Cassidy**—We will go over it again and again and again.

**CHAIR**—Senator Joyce, we have to go to Senator Pratt now.

**Senator PRATT**—Thank you very much, Chair. I would like to know what you can say about current demand for this consumer information. Clearly the collapse of this particular program has meant that we do not really have a viable alternative. How would you characterise the importance of having a strategy for collecting and looking at this kind of information into the future, as it relates to consumers and as it relates to looking at competitiveness within the grocery sector?

**Mr Cassidy**—This is something we would say as a general proposition: we think that transparency is important, because consumers can best exercise their right of choice if they are aware of what is on offer. From that point of view, we have no issue at all with the sort of advertising that is undertaken—quite extensive advertising by each of the retailers. I suppose the issue really is—and this is obviously not something for us to opine on—whether there is a role for government somehow in facilitating that sort of transparency or whether that is something which is best left to the retail sector, in this case. As I say, it is a judgment which others would make. I suppose all I would say is that I think when you look at the retail grocery sector on a spectrum, it is probably towards the end of the spectrum—where there is a lot of information made available to the general public through the press, through mailbox drops and the like. So it is one where there is already a good deal of information available.

**Senator PRATT**—Can I ask you what you think the impact of changing technology has been on the capacity to address these issues? In asking that, specifically I would like to know if you have looked at participatory pricing sensing and some of the new technologies that are coming out that will perhaps help consumers input themselves into price tracking.

**Mr Cassidy**—I certainly think the internet has made it easier for consumers in relation to the retail sector and also more generally to access information about prices and what is on offer from different retailers—which probably only goes to reinforce my earlier comments.

**Senator PRATT**—But you have not looked yet at any of the emerging mobile phone technology—

**Mr Cassidy**—We have not, Senator. To be honest, with the end of our involvement in GROCERYchoice we do not have any particular reason to be looking at that, unless there are

some accusations made to us that somehow there was misleading information being put out through that sort of medium, in which case we would be looking at it. But we would be looking at it from an enforcement point of view rather than an information dissemination point of view.

**Senator PRATT**—I do think the world will change in the future, when the line between these things will become far more nebulous and difficult—

**Mr Cassidy**—Indeed. Obviously, going back to my earlier comments and given our general role, it is something that we basically feel is a good development so far as consumers are concerned. It means that information is much more accessible to them than it has been in the past.

**Senator PRATT**—Thank you.

**Senator BARNETT**—One other question that I have relates to NARGA and the Tasmanian Independent Retailers. They have alleged that when you were undertaking responsibility for the website there was more benefit and advantage to the major chains and, secondly, with respect to the 1,000-square-metre supermarket. Being a Tasmanian senator I am fully aware that a number of supermarkets of less than 1,000 square metres were surveyed. Do you acknowledge that, agree to that, and accept that that was either inappropriate or outside the terms of reference?

**Mr Cassidy**—There are two questions there—firstly, the website being of more benefit to the major retailers. The point I would make is that NARGA is, as you know, closely connected with the wholesaler Metcash. If you look at our grocery inquiry report, you will see that we made the point that the independents have a lot of difficulty competing with Coles and Woolworths because of the prices that they are charged by their wholesaler Metcash, and that certainly showed up in the GROCERYchoice website during the time it was operating. We were doing 61 regions a month for six months, which gives you 360-odd regional readings. I think in about only eight of those did the independents come out as being the cheapest. So, even during those six months, I think the website illustrated the difficulty independents have competing with Coles and Woolworths.

In relation to your second question, our basic aim was not to include grocery stores under about 1,000 square metres. However, we did have some regions where, because of the limited number of grocery retail outlets in those regions, in order to give us a number so that we could then protect the information as to exactly which sites we were using, we did include some smaller ones. I do not have a precise figure—

**Senator BARNETT**—As small as 270 square metres?

**Mr Cassidy**—I do not know whether or not we went down to that size, but they were the exception rather than the rule. I think we were getting information each month in about 600 sites. I suspect you would be in no more than double figures in terms of the number of such sites below 1000 square metres that were in that 600.

**Senator BARNETT**—You can understand their concerns, particularly in Tasmania where you had three regions and you were comparing supermarkets in St Helens, Scottsdale and

Launceston, for example, which are up to 100 kilometres apart. In terms of the benefit or merit of that to consumers it is, frankly, an absurdity.

**Mr Cassidy**—I can understand that point. It was a difficulty we had in terms of taking a regional approach but, at the same time, keeping the integrity of the data and being able to protect just exactly which retail outlets we were collecting data in. Maybe if the site had run for a longer time, we would have thought of a more clever way of overcoming that problem.

**Senator BARNETT**—I think we would all agree that it had a few flaws, and that was just one of them.

**Mr Cassidy**—As I say, given those competing objectives, in the time we had it, we were not quite sure how to resolve that set of issues.

**Senator BARNETT**—In light of the time, any further questions I have I will put on notice.

**Senator XENOPHON**—Likewise, I will put some on notice, but I have a very basic question on the issue of data collection. The data was collected on a monthly basis—

**Mr Cassidy**—That is right.

**Senator XENOPHON**—So that means that the data would have been out of date by the time it go on the website.

**Mr Cassidy**—I think we are probably getting back to the earlier discussion we had about the sort of scoping we did. It could have been collected weekly and it could have been collected from every store in Australia. Clearly, the costs of that would have been a multiple of the actual costs, and that was a trade-off which the government made a decision on.

**Senator XENOPHON**—But I guess it touches on some of the technology issues that Senator Pratt raised. But do we not have a situation where that could be potentially misleading to consumers? For instance, in the first month, Woolworths could be the cheapest overall chain in a region and that led to consumers going to Woolworths in the next month. But what happens if in the next month Coles was the cheapest? It is a bit of a dud deal for consumers.

**Mr Cassidy**—That was one of the trade-offs in the design of the website and the amount of money to be spent on it. Clearly, the more regular the information, the less chance of a consumer going to one store when the price relativity has shifted.

**Senator XENOPHON**—Sure, but that is one of the problems that Senator Pratt raised. Given that it was monthly, it had the potential to be inherently misleading to consumers.

**Mr Cassidy**—It could have been. Whether it be inherently misleading—

**Senator XENOPHON**—Maybe just misleading.

**Mr Cassidy**—I am not quite sure. To be fair, I would have to say that we did have some evidence that the majors were concerned about how they were showing up in GROCERYchoice.

So, on the one hand, yes there was a time lapse and maybe that led to consumers going to the chain that was necessarily the cheapest at that point in time but, on the other hand, the fact that the website was there at all may have had some effect in reducing the overall level of prices below what they would have otherwise been. Where those two things come out in terms of the consumer, I am not quite sure.

**CHAIR**—Thank you for appearing before the committee.

**Proceedings suspended from 10.00 am to 10.10 am**

**RENOUF, Mr Gordon, Director, Policy and Campaigns, CHOICE**

**STACE, Mr Nick, Chief Executive Officer, CHOICE**

**CHAIR**—Welcome. Would you like to make an opening statement?

**Mr Stace**—Thank you. In a sentence, this is a story of supermarkets undermining what would have been a great development. It seems politicians also lacked the will to make it happen. The story illustrates the power and influence of the supermarkets and their resistance to any rebalance of power in favour of consumers. Let us be clear: GROCERYchoice was not rocket science. The supermarkets could have provided local price data had they wanted to. The story does not have a happy ending but it does leave some hope for the future. There is now public pressure and some political will to bring about change in the grocery sector, fundamentally to inject competition through governmental and consumer pressure. I propose to confine my opening comments to four questions. Why was GROCERYchoice important? What happened? Has this been a waste of money? What should happen next?

Firstly, why was GROCERYchoice important? Information is a basic consumer right. The ability to compare prices at supermarkets at the touch of a button was an important innovation. It would have begun to address the information asymmetry between supermarkets and consumers. Specifically, it would have had two positive effects: (1) each consumer using the site could have actively chosen to shop somewhere cheaper; (2) all shoppers would benefit through a proportion of consumers changing their shopping behaviour and, in the process, driving greater price competitiveness. It is one important change that would have helped to create a more competitive market for groceries.

Secondly, what happened? By June this year CHOICE delivered a site which could compare prices of thousands of products across thousands of supermarkets, handling up to 50 million prices. It could be updated hourly if necessary. It was scaleable, allowing unlimited numbers of users and it would have allowed further developments, including mobile applications over time. In terms of the necessary data, we had the commitment to provide data from Aldi and FoodWorks, we had arranged supply of third-party data for the leading larger supermarkets, but the three supermarkets under ANRA were unwilling to hand over store by store data. On 1 July, the site would have covered around 1,500 product items across the major supermarkets. It would have worked. It would have been updated weekly. It would have allowed consumers to choose their own shopping baskets and it would have been consumer centric in design. As a result, it would have been difficult for supermarkets to resist the pressure to cooperate into the future.

Thirdly, has this been a waste of money? It has certainly been a great disappointment that we did not launch the website but we proved it was possible to launch a price comparison site in the grocery sector and now there is great pressure, I believe, for there to be a mark II. By June, there was great public support for GROCERYchoice and there is now even greater public pressure to tackle the uncompetitiveness of the groceries market. If we can build on these three things, then it has not been a waste of money.

Finally, what next? The balance of power between consumers and supermarkets must be changed. Consumers need more information and they need it early before they are committed to shopping in a particular store. We also need much more competition on the supply side. A supermarket industry dominated by two players who have nearly 80 per cent of the market will never work for consumers. The Metcash wholesale monopoly for independents means that there are effectively three groups that control the entire market. CHOICE has four clear recommendations: firstly, we would like to see GROCERYchoice reintroduced, if not by CHOICE then by some other independent mechanism; secondly, we believe the ACCC should undertake a thorough market investigation into market abuses in the supermarket sector; thirdly, barriers to new entrants must be removed, whether that they are planning issues or restrictive covenants that I understand the minister is looking at this week; and, finally, the ACCC needs power to require divestiture of assets where there is too much market concentration.

GROCERYchoice was derailed by the leading supermarkets and a lack of political will. Looking forward, there are opportunities that must be taken to change the groceries market beyond price transparency. The lack of cooperation of the leading supermarkets continues. None of us have seen the evidence from the big two supermarkets or from ANRA yet which I think is preventing this inquiry from being as effective as it could be. Thank you.

**Senator BARNETT**—Thanks for being here today. The committee appreciates your submission and your full and frank views. I go firstly to the cost. The Treasury have advised us this morning that the cost of the website and related costs total \$8.561 million. They advised, and it is on the public record, there is an \$8 million contract with CHOICE. Could you provide some details regarding the cost and the contingent liability? This is very important because there is a breach of contract or it was terminated by way of convenience under the contract. There is a clause in the agreement that requires 20 per cent of committed cash funding of some \$1 million. Could you provide further and better particulars with regard to the contingent liability as seen by CHOICE?

**Mr Stace**—I can. So far we have received \$2,727,000 from them. That leaves an amount owing of \$679,000. So just under \$700,000 is owing, which takes the full cost of the contract to CHOICE at \$3.4 million. In terms of the contingency liabilities—

**Senator BARNETT**—How is that \$700,000 owing calculated?

**Mr Stace**—I have the list of fees here. The moneys that CHOICE have spent on fulfilling the commitments up to 26 June and moneys outstanding therefore from the Treasury are broken down by a number of different fees, including staffing costs.

**Senator BARNETT**—Are you able to table that?

**Mr Stace**—I am happy to table this. In fact, the Treasury auditors have had that. Would you like it now?

**Senator BARNETT**—That would be useful.

**CHAIR**—Thank you.

**Mr Stace**—In terms of the contingency liabilities, the contract, as is usual in commercial contracts, was drawn up with a cancellation clause. The clause means that the Treasury owes CHOICE 20 per cent of the remaining moneys in the contract, which is currently under discussion with the auditors at the Treasury, so I do not have a final figure on that. It is likely to be close to \$900,000.

**Senator BARNETT**—Is that exclusive of GST?

**Mr Stace**—Yes.

**Senator BARNETT**—If it is inclusive of GST, we are talking about \$1 million. I think that is what they referred to this morning.

**Mr Stace**—I think the claim is just slightly under \$1 million.

**Senator BARNETT**—Sure. The \$700,000 is exclusive of GST. If it was inclusive of GST, what would that figure be?

**Mr Stace**—I have given away the piece of information that probably had that figure on it.

**Senator BARNETT**—It is just that on 1 June under the contract you were due to be paid \$1 million and they said this morning that you have not been paid that money.

**Mr Renouf**—That money has not been paid to us but our claim is only for the money that we have actually spent. We are not making a claim for that \$1 million.

**Senator BARNETT**—The 1 July \$1 million was to be paid. The contract was terminated on the 26th, several days before 1 July.

**Mr Stace**—Yes. We have not been paid that either, but as Gordon says the important thing from our point of view is that we simply get back what we spent up to 26 June and the costs that were incurred over the days that followed in order to wrap up the contract. Beyond that, the only other liability is the contingency—which we talked about.

**Senator BARNETT**—I am trying find out about this, from the taxpayers' point of view. There is \$3 million that has been paid from the Commonwealth, which is inclusive of GST, and you have \$2.7 million of that.

**Mr Stace**—That is right.

**Senator BARNETT**—Then you say there is \$700,000 owing to you, and that is again inclusive of GST. That comes up to \$3.4 million.

**Mr Stace**—That is right.

**Senator BARNETT**—That is your entire claim.

**Mr Stace**—Plus the contingency, which we talked about.

**Senator BARNETT**—It is just under \$1 million. Is that right?

**Mr Stace**—Yes. The contract we believe was fair and we have sought simply to abide by the contract. We are not making any claims over and above what we are entitled to.

**Senator BARNETT**—How long do you think it will be before you can settle those matters with the Commonwealth?

**Mr Stace**—I was a bit surprised this morning to hear the Treasury saying it might well take until the end of the year. That does seem an enormous amount of time, given that we have been very clear about the amount owing. I would suggest it could be done by the end of the month, but I know government sometimes moves at a slower pace than the rest of the world.

**Senator BARNETT**—I will go back to your proposal. You put in a proposal to the government initially to undertake the work that you envisaged as appropriate, and that proposal was for \$20 million over five years rather than \$13 million over four years. Why did you make such a claim?

**Mr Stace**—We did it initially because we believe that it takes a while to get a site established in the hearts of the consumer, and I think a five-year time frame was more realistic in order to do that. We also planned to bring about further innovations over that period. Of course, we would have done some of those, but the curtailment of the contract length and therefore the moneys flowing to CHOICE would have restricted us a little in the developments that we would have brought about. The important thing about this site was that consumers were absolutely at the heart of it and driving change. I know Senator Pratt talked about it this morning: it is important that consumers are in the driving seat and are bringing about those innovations. But what you need is the capacity and the platform to be able to do that. In a sense, that is what we were hoping to do over that five-year period.

**Senator BARNETT**—Because time is tight, I will move on. Your former CEO was also an assistant commissioner of the ACCC. Did you see that there was any conflict of interest or potential conflict of interest in CHOICE obtaining the contract without going to public tender?

**Mr Stace**—No. I have never seen a conflict of interest there, largely because the discussions were not held with the ACCC. Initially, the discussions on 29 August last year were held with Minister Bowen. Following that we had a discussion with the ACCC, but then the negotiations were with the Treasury. In a sense, I think the ACCC was an irrelevant party to the negotiations and discussions around this contract. I see no reason why there would be an assertion of a conflict of interest.

**Senator BARNETT**—On the issue of the independence of CHOICE: I understand a board member, Robin Brown, resigned because he did not support the decision. Is that correct? Were there other board members who had similar views? Do you feel as though you did not seek commercial benefit from GROCERYchoice and the operation of the website through the sale of various products and services?



**Mr Stace**—I think they are both fair questions. CHOICE are a democratic organisation. We have 200,000 members. We have lively board discussions on most issues. Our board are chosen by their ability to challenge and bring scrutiny to everything we do, so it does not surprise me in the slightest that an issue of this kind would spark serious discussion within CHOICE. He was the only member that resigned as a result. The vast majority of board members at CHOICE were fully supportive of this.

Clearly, at the time GROCERYchoice was not exactly having a honeymoon period, and I think there was some concern about the reputational damage that that might cause CHOICE, but I think CHOICE took absolutely the right decision. It was a bold decision to take. I think it was a brave decision and the right decision in the interests of consumers.

**Senator BARNETT**—But he was concerned about conflict of interest and the perceived independence of CHOICE. Is that right?

**Mr Stace**—I was not on the board at the time. I joined, as you possibly know, in February, so I was not party to those discussions. I understand that he had a general concern that we should not take on that government contract. I do not understand the question about the perceived conflict of interest. We are a fundamentally independent organisation. We are funded by our members. Our only interest is that of the consumer. We believe that this site would radically transform the grocery sector. Therefore, we had a duty to take it on. I think it would have been a conflict had we not taken it on.

**Senator BARNETT**—We have received evidence this morning—which, at least to some of us, is somewhat disturbing—that the ACCC authorised a contract with Retail Facts, which, at the time, they knew also collected price data for and on behalf of Woolworths, one of the major chains. Were you aware of that and were you concerned about that potential conflict of interest?

**Mr Stace**—I listened to the evidence with you this morning and similarly had some questions and concerns about that. It is worth noting that Woolworths, generally speaking, nationally came out more price-competitive than Coles over that period. It is for others to draw conclusions from that or ask further questions. I noted that the ACCC were not sure whether Woolworths or Coles came out on top overall, but generally speaking it was Woolworths that did. I think there are serious questions to be asked about more than where the contract was held and where the checks and balances were put in place. I know that you and Senator Joyce questioned that ferociously this morning—and rightly so. If it is true that Woolworths came out on top most of the time, that should spark questions with the ACCC about, perhaps, the basket of goods they were putting together or the methodologies that were being used. At least they should have gone back and further questioned it, but it seemed the ACCC were rather complacent around that particular issue in their answers this morning. So it sparked that concern for me this morning.

**Senator BARNETT**—Is it a concern to you?

**Mr Stace**—One of the problems with the ACCC site is that it only looked at a basket of goods of just under 45 items. It was a very small number of items and therefore, I suggest, it was quite easy to game that basket. It is easier to work out what is in the basket of 45 items than it is a basket of 1,500. You could argue that, if you had a basket of 1,500 or 5,000 and supermarkets want to game those prices, that could be in the interests of the consumer. But in order to come

out on top it is possible—and I am not pointing the finger of blame at any particular supermarket here, because I do not know whether they did this—to game the system and to work it in your favour.

**Senator XENOPHON**—You refer to the ACCC’s complacency. You are saying that the way this was done—with Retail Facts, which was the same organisation that was also getting prices for Woolworths, and with a smaller basket of goods—made it easier to game it. So are you saying that the potential for manipulation was much greater because of the smaller basket and because of the structures and lack of safeguards in place?

**Mr Stace**—I am saying it is easier to game something when it is a smaller number of items and there are not serious safeguards in place for the ACCC to ensure that that does not happen. I am not drawing the conclusion that because the contractor that they used happened to work for Woolworths as well that would necessarily lead to that outcome.

**Senator XENOPHON**—But is it fair to say that because of the smaller basket the risk of manipulation was greater and it was further exacerbated by the fact that there were, from CHOICE’S point of view, a lack of adequate safeguards to prevent manipulation?

**Mr Stace**—Yes. It was one of the reasons why, although we supported GROCERYchoice from the outset, we believed that the ACCC were not doing a good job. Firstly, the site was not consumercentric. Secondly, it had 45 or thereabout items, which was not sufficient. Thirdly, as a consumer you could not develop your own basket of shopping, so it was not practically very useful to you. Fourthly, it was not local data. Fifthly, it was updated monthly rather than weekly, which is what we proposed. So there were a number of problems involved with the ACCC site. One of them happens to be the one that we are talking about now.

**Senator XENOPHON**—You may want to take this on notice. In order to establish whether there was manipulation—and you have been quite properly very careful not to suggest that there actually was, but the potential for it obviously existed—what are the relevant questions to ask and what are the relevant checks that ought to be undertaken, perhaps even retrospectively, to look at that? You have indicated in answer to Senator Bartlett’s questions that it seems that Woolworths came out on top more often than the others.

**Mr Stace**—It was more in surprise that the ACCC did not know that, bearing in mind they were running the site. I was a bit surprised that they did not know the outcome of their own surveys, rather than necessarily drawing the conclusion that there was any particular gaming. I certainly think that there is a greater potential to game a site where there are relatively few items. That was one of the reasons we approached Minister Bowen to take it off the ACCC’s hands. As you say, I am choosing my words carefully because I do not want to make the accusation that any particular supermarket was gaming the system, but it was certainly possible.

**Senator XENOPHON**—On notice, could you provide details of the sorts of questions and the matters that you think could be a proper line on inquiry to determine whether there was in fact any manipulation that some of us may be interested in taking up further? From your experience in the UK, do you believe that UK consumers have greater price transparency with groceries than Australian consumers?

**Mr Stace**—I do.

**Senator XENOPHON**—What market share do the big two in the UK have compared to the 80 per cent market share our big two have?

**Mr Stace**—The advantage in the UK is that there are five big supermarkets. The advantage is from a competition perspective. They have relatively similar shares of the market. Tesco and Asda have the leading shares.

**Senator XENOPHON**—How much is that roughly?

**Mr Stace**—I would have to give you that information on notice. I could not give you a precise percentage. It is a competitive market and has been proven by a series of Competition Commission inquiries to be so. It is fiercely price competitive as a result of so many players. But it also is price competitive online. At the touch of a button already consumers have the facility to be able to compare prices which do vary quite considerably online. If you look at prices online between Coles and Woolworths in this country, a lot of price matching goes on. There is not very much difference between the prices that you spot between Coles and Woolworths online. In terms of price comparisons, there is no facility at the moment particularly for consumers to use.

**Senator XENOPHON**—Is there a government or independent website that provides that information for consumers?

**Mr Stace**—No, there is not, and I would say the reason for that is that it is a fully competitive marketplace. It is quite a radical thing for a government to intervene in a way with a site like GROCERYchoice. But it was absolutely necessary given that there are significant market failures in the grocery sector in this country and given that price transparency would have been one important step in terms of creating a more competitive market here.

**Senator XENOPHON**—I have just been told it is [mysupermarket.co.uk](http://mysupermarket.co.uk). Does that provide the information?

**Mr Stace**—It is not my understanding that they scrape the data from the websites of the leading supermarkets.

**Mr Renouf**—I think that is important because it demonstrates that the UK online shopping market is competitive and is competitive not just between each other but with offline shopping, whereas in Australia we have two online supermarkets which, generally speaking, are more expensive than ‘bricks and mortar’ supermarkets by a bigger margin. Today, we heard some evidence that you can get information online about retail prices. It is true about retail prices; it is not true about supermarket prices.

**Senator XENOPHON**—Mr Stace, you have referred to the fact that you are in negotiation with ANRA who represented collectively Coles, Woolworths and Franklins—is that right?

**Mr Stace**—Yes.

**Senator XENOPHON**—Did you ever inform the ACCC or the minister of any possible Trade Practices Act implications about the fact that ANRA was negotiating collectively with CHOICE on behalf of the big three?

**Mr Stace**—No, we never formally made a complaint or submission to the ACCC or to the minister on that issue. The reason for mentioning it in my evidence is that it really became a turning point in our discussions with supermarkets. We had been making quite good progress talking to the supermarkets individually. Then ANRA stepped in and progress stopped at that point. The point we make in our submission is that they provided a block to progress on discussions. They prevented us from talking individually to supermarkets. The supermarkets all fell into line behind the ANRA line. In effect, by protecting their own members, ANRA prevented progress where progress needed to be made with GROCERYchoice, which would have been in the interests of consumers.

**Senator XENOPHON**—Given the conduct that you referred to, would it be fair to say that, in effect, ANRA sabotaged the progress of the implementation of a resurrected GROCERYchoice?

**Mr Stace**—We could have launched GROCERYchoice, which we were planning to do, on 1 July. In fact, I should say that we were planning to do it a couple of days before then, because I believe in underpromising and overdelivering. We were actually going to go out early.

**Senator BARNETT**—How early?

**Mr Stace**—By a couple of days. We were going to go out on the Monday.

**Senator BARNETT**—On 29 June?

**Mr Stace**—Yes, on Monday, 29 June.

**Senator BARNETT**—Thank you.

**Mr Stace**—In fact, the week before we were ready to go, we were doing the final stages of user trials. So we were absolutely ready to go. The issue is therefore not that we could not launch in time and with data that was valid and accurate; the issue was that, without supermarkets being cooperative, we could not provide local data. There are 7,000 stores nationally, as you know, and we could solve the unemployment problem in Australia by sending an army of people into every store to take down thousands of prices. Maybe that is a recommendation this inquiry might want to make! It is not possible to get local price information at local stores unless the supermarkets actually take part.

**Senator XENOPHON**—They did not cooperate, so effectively they sabotaged the site.

**Mr Stace**—Yes, effectively they sabotaged it. I think there is an antidemocratic strain running through that because it was an election commitment of a popularly elected government. It is pretty antidemocratic for a body like ANRA and the supermarkets to block progress in that way. It is certainly anticompetitive, bearing in mind that this would have added an important tool for consumers to compare prices.

**Senator XENOPHON**—There is a whole issue about geographic price discrimination. If the major supermarkets will not give customers full transparency, would CHOICE see any value in outlawing geographic price discrimination? I declare an interest in this as I have introduced a bill, along with Senator Joyce, to outlaw that practice. Is that one way forward in the absence of the supermarkets providing the information in order to make such a site effective?

**Mr Renouf**—I have two points. The first is that it is a real problem. Consumers do not like having different prices in different supermarkets when there is no good reason. If there is a transport cost issue then that is fine. We would say that is a symptom of an underlying problem. It is not necessarily a disease in itself. The disease is the lack of competition in the supermarket sector and we think that the focus should be on fixing that problem through the sorts of things we have recommended in our submission—things like divestiture powers, fixes to the planning laws, fixes to restrictive covenants, and so forth.

**Senator XENOPHON**—Did you mean asset divestiture?

**Mr Renouf**—Yes, asset divestiture powers. We are not just talking about competition between supermarket A and supermarket B, we also talking about competition between supermarkets and other retailers who provide those products, in particular fruit and veg shops, butchers, bakeries, and those sorts of shops. We understand they have got some problems with restrictive covenants in the larger stores as well. It is not just an Aldi that might have difficulty in getting into a retail space; it might be a competitive butcher. Finally, I do not know if you would call it predatory pricing or not—you probably would—but there is certainly evidence that where there is a competitive fruit and veg shop near to a Woolworths or Coles or another supermarket, that supermarket's fruit and veg will often be marked down to match, whereas the one three kilometres up the road will not be. There are a range of things, but the fundamental issue is having a competitive supermarket sector. Achieving that means new entrants, changes to the planning laws, and possible changes to the competition law.

**Senator JOYCE**—I am very interested in the approach that ANRA had in working together to stymie your process. Do you think this flies in the face when they say: 'There is strong competition between entities'? Until a mechanism brings about transparency, the major players work together hand in glove' The ACCC say, 'This is just an extension of a membership body working together.'

**Mr Stace**—The short answer is, yes, I do think that. On really important issues of competition such as GROCERYchoice, it was wrong for the big two to work together in the way they did because basically they were preventing something that would have been in the consumer's interest from happening. I do think it is anti-competitive and wrong. There is a separate question about whether that contravenes the Trade Practices Act. I am not a lawyer so I cannot tell you whether I think it is not. But for an explanation as to why we were not able to get local price data, also as a salutary lesson for future discussions about reform in the grocery sector, it is important to acknowledge the role that ANRA plays in preventing reform from happening.

**Senator JOYCE**—I posed the question to the ACCC prior to your evidence today and they certainly had no problems with it. In fact, they made the assertion that it is just like another membership body and how a representative body works. That being the case, was this membership body working against the competitive requirements? Do you believe their actions to

stymie your process assisted them to reduce competition in the marketplace by reducing transparency?

**Mr Stace**—We were making reasonably good progress with separate individual discussions with the supermarkets on everything from resolving some of their concerns about practically how the site would work and how information would be delivered to us. We were making some progress on all of those issues. It was not until ANRA stepped in that progress stopped. I certainly think they played a significant role. It is quite easy to blame ANRA of course. You also have to look behind ANRA to see that there are members of ANRA who were probably having discussions about the role that ANRA should play in this. What is interesting is that there has been no written evidence yet from ANRA that any of us have received, nor from the big two supermarkets. You have received something this morning that has not been made publicly available. The big two supermarkets in particular rarely take to public platforms or the media on this issue because I think they see it as damaging their brands in the eyes of the consumer. In a sense, ANRA becomes a whipping boy, or a whipping girl, whichever way you look at it, and a block and a protection to the two supermarkets.

**Senator JOYCE**—I am sure the ACCC are fully aware of the laws and they would be aware that ANRA were not actually breaking any laws, that they were completely within their rights to do it. Do you think it would be better in the future to have laws in place that say actions by representative bodies to inhibit competition in the marketplace by reducing access to transparency should be strongly looked at?

**Mr Stace**—I do think it should be strongly looked at, so I would support that.

**Senator JOYCE**—The UK has the Enterprise Act, which talks about divestiture. Do you think Australia needs a divestiture power?

**Mr Stace**—I do, yes. I raised this issue with Graeme Samuel at the ACCC a few weeks ago. He did not seem very keen to have those powers, which makes you think he probably would not use them if he did have some. So there is an issue around the current leadership of the ACCC and whether they are willing to take the kind of tough action required in this particular market. I do think those powers would be very useful, of course as long as they were used.

There is one particular issue that would be worth looking at with these powers and that is the monopoly situation of Metcash with the independents. CHOICE is a major fan of the independents. We believe they provide a great service to consumers in localities and we would like them to be a major competitive force, driving down prices, improving service and really challenging the big two to do the same. The problem at the moment, when you have a monopoly in the form of Metcash providing wholesale produce to the independents, is that they are less able to do that. For CHOICE, that would be one of the first areas for divestiture powers at least to be considered. I am not suggesting at this point that Metcash should be broken up, but I think it should be considered.

**Senator JOYCE**—With divestiture powers, just like a cane in a school, you do not have to use them. People just have to know they are there and they are a lot more willing to comply in a will to government, to get transparency. What you ran into was basically the majors organising themselves together to block you out and they successfully blocked you out and sank the project.

**Mr Stace**—That is right. I would like to reiterate the point that we suspected that the supermarkets may not have been entirely happy with the prospect of the GROCERYchoice site, one used by millions of people and one which started to drive prices down. Clearly, this site had more benefits for the consumer than it did for the supermarkets, particularly the bigger ones. So we had plan B, which was to do it without, and of course we implemented that. I would not want the inquiry to go away with a sense that we could not launch. We could have launched. We were ready to launch. We would have got ticks in three out of four boxes which we agreed with the Treasury and we would then have applied great pressure on the supermarkets to come forward with information. I should say what three of those four are. Firstly, it was a consumer centric website in design and layout; secondly, there would have been around 1,500 prices, increased every day, tailored to people's individual needs; thirdly, it would have provided the important opportunity for people to compare prices on a timely basis, so it would have been updated weekly. The area where we could not do without supermarkets' cooperation was having local information.

**Senator JOYCE**—If you had gone forward with the project, would you have relied on just desk top information for the analysis of prices or would you have gone out into the field from time to time to check the empirical data?

**Mr Stace**—Yes. I was a bit surprised at the ACCC's responses to your questions around auditing of information this morning because in order for a website like GROCERYchoice to have the credibility it needs with consumers, there need to be appropriate checks and balances put in place along the way. We planned to do a number of checks and balances. There were technical checks put in place so that as information was coming in electronically it was being checked. So there was a system in place developed by SMS that would help achieve that. We had a number of manual quality assurance processes as well. We were about to put in place a series of baskets that only we would know about so that we could check whether anything was being gamed in any way. So there were a number of checks and balances that we were putting place. Ultimately, everything that comes from CHOICE has to be trusted by the public so we would not have put any information out there which could not have been trusted by the public and in order for it to be trusted it needs to be properly checked and verified.

**Senator JOYCE**—One of the parts of trust and transparency is disclosure. Do you believe that if the body collecting the information was also collecting it for one of the major retailers that that should have been disclosed on the website?

**Mr Stace**—We believe in transparency, not just in relation to grocery prices but in relation to any perceived conflict. I certainly would not instantly draw the conclusion that because they happen to work for a leading supermarket it meant that it was going to be biased. I would not jump to that conclusion but in terms of the confidence that the public could have in the site, it is important to be utterly transparent about other contractual obligations that these organisations have.

**Senator JOYCE**—Would it be a fair disclosure? If people can argue that there is a Chinese Wall that they cannot pass information through, surely that is a decision for the consumer to make. You have a duty to disclose that you have a commercial relationship with one of the entities that you are supposed to be checking.

**Mr Stace**—I think your point is exactly right. The truth is that, if it is not disclosed, people will ask questions like the ones that you are asking about why it was not disclosed. This leads people to assumptions around the fact that there was a conflict, even if there was not one. Transparency of this kind of information is extremely important.

**Senator JOYCE**—Have you any knowledge of an updated website or a new website, or a new process like GROCERYchoice or another version of it that will come into play?

**Mr Stace**—I should say that one of our key recommendations is the reintroduction of GROCERYchoice, whether by us or someone else. The site has been mothballed for the time being. I am sure that I can take those mothballs off and start it up again. So, in terms of an answer to Senator Barnett's questions around 'Has this been a waste of money?' it does not have to have been because we can restart it if the government finds the political will to do that. Should someone else take this site on? I know that there have been discussions around the supermarkets doing it? If they do it, there needs to be some independent verification of the processes they will employ and support given to that. This is because, given their record in the groceries market, they are not particularly trusted by the government and, most importantly, by the public, and the public should be able to trust this kind of price transparency site.

**Senator JOYCE**—If it were taken on by someone, what powers would you suggest that they have? If you were to say, 'That's it. We're not going to touch it again. Good luck to anybody else who wants to have a go at it. But, before you do, I would recommend that you ask for these powers,' what would those powers be?

**Mr Stace**—Simply the power to make sure that the supermarkets give you the local price information that is required. We entered discussions with the supermarkets before we took on the contract, largely because we wanted to get a sense of their willingness to give us the local price data. It seems from the early discussions that they were interested in doing so. That was the basis on which we took the contract. With hindsight, I think we should have got some certainty either from the supermarkets or from the government that, if the supermarkets were not willing at some stage to provide the information, there would be some kind of legislative stick to force them to do it. I have talked to a couple of ministers about price transparency legislation and about why this information should be available to the public and that, if the supermarkets are not willing to provide it, they should be forced to do so.

**Senator JOYCE**—All price transparency legislation comes about because, once the marketplace becomes totally centralised, it starts to lose the inherent zest of a marketplace—that is, too much power in the hands of too few entities. This means that the government has to step in to be ipso facto competition by regulation or competition by regulation to bring about transparency.

**Mr Stace**—Yes. I think it is a sad state of affairs when the government is required to step in in that way. But it is only when markets are not functioning effectively in the consumer interest that that is necessary. In many other markets there would be no need at all for the government to step in in that way.

**Senator JOYCE**—In England, there are five major players, with Tesco being the largest. I do not think it is even 30 per cent of the market. Because the market is more vibrant in England,



there is less requirement for this type of legislation. The market is evidently working in a more efficient manner in England than it is in Australia where it has got a clunky nature with two major players, plus a half of one.

**Mr Stace**—That is right. It does not mean that there are not some problems in the UK with the supermarket sector. I would not want to give the impression that everything is perfect in the UK; it is not. One example is the concentration of a particular supermarket chain in some localities. Where that locality is—for example, the Milton-Keynes area just outside London—prices of fuel and prices of produce are higher than in other localities. As a result of a recent competition inquiry in the UK, competition is now a key component of planning laws in all localities. This means that, if, for example, Asda is dominating a particular locality and Tesco wants to set up a store there, it will be looked upon more favourably in order to ensure that competition is encouraged.

**Senator JOYCE**—Are any of the major supermarkets in the UK involved in the insurance industry?

**Mr Stace**—Yes, they are. In the UK, supermarkets can be a force for good in other sectors, and I think it is worth putting that on record. For example, a number of years ago I worked very closely with Tesco to encourage them to set up legal services in their stores to be a competitive challenge to the partnership arrangements that existed in the rest of society. They are now starting to set up real estate agencies as well, and of course insurance and so on. They can provide a real competitive challenge to sometimes quite complacent markets. So I do not think we should ever think that supermarkets cannot be a force for good; they can be. The problem in Australia is that there is too much of a market concentration in the hands of the two big players.

**Senator JOYCE**—The major supermarkets in the UK are involved in legal, real estate and insurance, but the mitigating factor is that they do not have market domination. Do you think it would be a danger in Australia for Coles and Woolies to go into legal? There is no reason why they should not. They are already involved in insurance in a major way. Why not real estate? Everywhere a supermarket is located there is a window in which to sell houses.

**Mr Stace**—We welcomed, for example, Woolworths not so long ago getting into telcos and providing a mobile phone tariff that was transparent and rather straightforward—more so than many other mobile tariffs. I do not want to put me and my organisation into a corner by saying that everything the supermarkets do is wrong. Our main focus is on groceries. There is a real concentration of power there. I think there is a slight distrust amongst the public when the supermarkets move into other areas, but let us keep the focus on groceries.

**Senator JOYCE**—That sounds good. At the end of the day, if we packaged one of the majors into owning real estate, insurance, legal, alcohol, gaming machines and fuel, we could just sell the whole lot off to state owned enterprise overseas. That would be a great outcome for us. Thanks for that.

**Senator XENOPHON**—I want to go back to this whole issue of the ACCC's response to what Retail Facts was doing in order ensure that it was robust and transparent and not subject to gaming, as you put it. Was the ACCC in dereliction of its duty in the way that it supervised or

monitored the collection of data by Retail Facts, given that they also had an arrangement with Woolworths?

**Mr Stace**—I can only comment on what I heard this morning. It seemed unclear what their processes were in order to check and verify data and to challenge where they thought there might be a sense that it was not reporting the true—

**Senator XENOPHON**—Yes, but what would you say?

**Mr Stace**—From what I heard this morning, I certainly do not feel that it was adequate and that probably more needed to be done. But maybe, on notice, more will be brought to bear on how they checked the facts that were given to them.

**Senator XENOPHON**—Would you be prepared to comment on that on notice once we have received that information?

**Mr Stace**—Yes.

**Senator PRATT**—From your point of view, what are the technical issues in the exchange of data between an organisation such as yours and supermarkets?

**Mr Stace**—We knew from the outset that the supermarkets would obviously have different computerised systems in place and that some, particularly the independents, would not even have computers or computerised systems in place for stock control. We were aware from the outset that this was going to be a challenging area. That is why, in working with SMS Technology, we developed 10 different ways in which supermarkets could provide us with information which was literally everything from a faxed copy of their stock with prices to it—we could input that—through to large data files sent directly to us, through to Aztec and Nielsen and other research houses providing us with that information or even providing us with more information than we required. We could reduce that information down to what was really necessary for the site. There were, of course, technical challenges in taking data in many different ways, but we overcame that technically.

**Senator PRATT**—What are the challenges in publishing that information in real time, in the sense that the collected information is likely to match what is actually in the stores?

**Mr Stace**—We would have cleansed the information that we had been provided with in a process that we had set up. We would have done some spot checking. We would have put in place the kinds of checks and balances that are required to make sure that it is accurate.

**Senator PRATT**—What is the longevity of the information?

**Mr Stace**—It would have been time and date stamped. It would have been accurate at that moment in time, but with every hour and day that goes past it is possible for those prices to change. There are three caveats to that. Firstly, it would have been time and date stamped so people would have known and we would not have been misleading anyone about that. Secondly, the supermarkets reassured us that the prices were likely to come down over that period, not go up. So a price is more likely to be more expensive on the shelf than it ends up being at the point

of sale. It would not have been misleading people in terms of inflating those prices. Thirdly, we would have encouraged consumers to give us feedback as well. So there would have been a number of ways that we could have overcome that.

**Senator PRATT**—What kind of future trends do you both think we should be looking for in terms of how future programs should enter this space?

**Mr Renouf**—Are you talking about technical solutions or food prices?

**Senator PRATT**—It is a question about technology I suppose.

**Mr Renouf**—What we were hoping to do with GROCERYchoice was to deliver on that price comparison side in stages. Ideally, we would have liked to have got real-time data from supermarkets that do that as well.

**Senator PRATT**—Can you tell me about real-time data. Is that technically possible?

**Mr Renouf**—The database that we built was capable of dealing with real-time data if we could get it. But if we could not get it, our commitment was to do it weekly, which is consistent with the price cycles of the supermarkets as they currently operate. I was going to elaborate on the fact that we would have had the capacity for consumers—I think you were getting at the wisdom of the crowd in your discussion with Treasury this morning—to add to that information. If consumers found bananas on special, they could tell us and we would have it instantly available for other consumers in that locality. You could subscribe to your locality to get updates on what other consumers have been finding. We thought there was a lot of potential for getting consumers to talk to consumers through the site, but you have to have a really sophisticated data platform to deal with the 30,000 different lines of products that you have got out there in the market. We had a lot of other issues to overcome in terms of comparability of fresh produce and all those sorts of things, but we believe we worked out adequate solutions that would have not only given an expert view, but also ultimately left the consumer with the choice to make.

**Senator PRATT**—What is your understanding of the problems that retailers at the other end might have faced? I do not know much about how they organise their data, but clearly they must be emailing big databases of prices around between themselves.

**Mr Stace**—That is right. Different retailers collect data in different ways. We do know that Coles and Woolworths, for example, work with Aztec and Nielsen—two companies I mentioned before—to collect point-of-sale information, which is the price that people are paying. What they do with that information is more than what we would want to do with it. For example, they compare the number of Heinz Baked Beans tins that are being sold in any given week or month, and compare it against different shops and localities and so on. There is a lot of commercially sensitive information that is useful and interesting to the industry, but not so useful or interesting to the consumer. We could have taken data that they had sent to Aztec and Nielsen and used it for the consumer. That was one way that it could be collected. Clearly there are price lists that are sent from head office. According to discussions that we had with Coles right at the beginning, although there are local price variations, they do not vary by very much—it is a matter of cents. Every cent counts, particularly at a time of global financial crisis, but on the

other hand, in terms of an indicative sense of where it was cheaper and where the cheapest basket of shopping was, it would probably have been sufficient information for us to use.

The industry, particularly in the guise of ANRA, did present these issues as being insurmountable. My response was always: ‘This is not rocket science. You have so much information on every customer. You have so much information on every product and every price in every store.’ All we were after from a consumer perspective was local price information on each product—in fact, not even every product in every store. What we decided to do with supermarkets was identify 5,000 products out of an average 30,000 in a store. Those 5,000 products pretty much made up 80 per cent of people’s purchasing.

**Senator PRATT**—How many of those products could be consistently compared—for example, a product with a bar code that means you know you are looking at exactly the same product versus meats and fresh produce? In terms of those more difficult issues, how did you aggregate those?

**Mr Renouf**—We certainly acknowledged the difficulty and we also acknowledged it was ultimately up to the consumer. The question mainly is about quality. ‘Is this grade X or grade Y?’ We did a lot of work on ways to do like-for-like comparisons. We could send you some more detailed information if you like, but it is in the submission. I reiterate that we did quite a lot of work on the way to describe the quality of products, the common product descriptions and the other features of the product, including even ethical features claimed by the manufacturer. We would have used unit pricing to help with the different sizes. The consumer would have had control because they could say, ‘I want to only look at this type or that type in my own personal basket and that is what I will use to compare.’ The site would have told them, ‘That thing is not available at supermarket X.’

**Senator XENOPHON**—When the announcement was made by the government on 26 June, which happened to be the same day that Michael Jackson died—an unhappy coincidence, I am sure—

**Senator JOYCE**—The first thing that came to my mind was about Michael Jackson passing away!

**Senator XENOPHON**—In the lead-up to the announcement, did CHOICE have a meeting with the minister to say, ‘We can make this work, but we are not getting information from ANRA, Coles and Woolies?’

**Mr Stace**—Yes, we did. Firstly, I certainly never made a link between the announcement by the minister of the demise of GROCERYchoice and the death of Michael Jackson. Having worked in government over a number of years, I do not think government is capable of such a conspiracy. I appreciate you are not specifically asking me that, but I certainly would not make that judgment.

We kept the Treasury informed right along the way. The most important thing for us was to keep the public informed about what was happening, but clearly Treasury were an important client to us as well. At the end of April when ANRA stepped into the picture, things started to go wrong in terms of progress, which is why towards the end of May we had a meeting with

Minister Bowen and his team to talk about achieving three out of the four commitments in the contract. And we talked about what should happen therefore with the fourth commitment: the local price data. We had a number of options before us, in a sense: firstly, that the minister could exercise greater influence behind the scenes to force the chief executives to allow that information to happen; and, secondly, that he could have introduced price transparency legislation, if he chose to.

**Senator BARNETT**—Just on that, did he have those meetings with the supermarket chains or did his chief of staff have those meetings?

**Mr Stace**—I think you would probably have to talk to the minister. I know that he was keen to have telephone conversations with each of the chief executives, but I cannot on the record say whether he did not because I just do not know.

**Senator BARNETT**—You are not aware?

**Mr Stace**—Exactly. We needed some influence to be brought to bear on the supermarkets to allow that information to come to CHOICE. Of course, we had the power and the might of CHOICE and our large membership as well to bring pressure on the supermarkets. We agreed that probably the best thing to do was to launch on 1 July to demonstrate to the public, most importantly, but also to the supermarkets that the site worked and that it was useful to consumers, and then to apply the pressure.

**Senator XENOPHON**—Can we pause there. Did the government know that you could have been in a position to launch the site? He would have had the gap or not with the lack of cooperation from Coles and Woolworths in particular, but there could have been enormous public pressure to bear as a consequence of him saying: ‘Here it is. It can work. We just need these guys to cooperate.’

**Mr Stace**—We did and we spent some time talking about exactly that. They were well aware six weeks before the launch date that we were not able to get the local data from the supermarkets. Minister Bowen and we were content to work on the basis that we should launch and that we could do so with third-party data sources. Then we should step up the campaign to bring the cooperation of the supermarkets.

**Senator XENOPHON**—This is very important to me. You are saying that Minister Bowen was open to the suggestion that you could still go ahead and do what you were doing, but there was a change of ministers. What date was that?

**Mr Renouf**—He was not just open to it; there was an agreement.

**Senator XENOPHON**—Mr Renouf, I do not know if that was recorded by Hansard, but I think you said, ‘It was not just open; there was an agreement to that effect.’

**Mr Renouf**—Yes, that is in our submission.

**Senator XENOPHON**—I just wanted to have that on the record. So something changed between the two ministers, is that what you are saying?

**Mr Stace**—Yes, something changed. Obviously the minister changed, but the office of that minister therefore changed their opinion.

**Senator XENOPHON**—Did you have a meeting with the new minister about this, or a meeting with the office?

**Mr Stace**—On the day that the new minister was appointed, we wrote to him to arrange to have a meeting so that we could update him and his office. In fact, he brought with him an official who had already been working with Minister Bowen—that was James Chisholm, who was here this morning giving evidence. So there was some consistency in understanding where we were.

**Senator XENOPHON**—Did James Chisholm give evidence at all?

**Senator BARNETT**—Yes, he did. He is a departmental official. Was he working for the minister or working for the department?

**Mr Stace**—He was working for the department, but he came with the minister and he allowed some consistency.

**CHAIR**—He appeared earlier as a Treasury official.

**Senator XENOPHON**—So with the new minister there was a different tack. They were not prepared to give you a go to at least launch the site.

**Mr Stace**—We put absolutely everything in our submission and I will just be clear about what happened. We met with the minister on 23 June, which was the first available date for him to meet with us. He indicated at that meeting that he had already had meetings with the supermarkets and with ANRA, and that he was aware of the site and that we were going to launch in about a week. At no point in that meeting did he give any indication that he felt that the site should not be launched and he seemed to be reasonably supportive of the progress that we had made. He did ask at that meeting that we meet with him and the supermarkets at some point quite soon. I said to him, ‘That is fantastic because that is exactly what we wanted to do,’ and the previous minister had promised a similar meeting. I did not want to do it before we launched, which was a week later, given that it was all hands on deck. Anyway, the minister decided to go ahead with the meeting on that Friday.

**Senator BARNETT**—You also say in your submission that you met the Prime Minister’s office.

**Mr Stace**—That is right.

**Senator BARNETT**—Who did you meet with?

**Mr Renouf**—I am sorry, I do not have his name.

**Senator BARNETT**—Is he an adviser to the Prime Minister?

**Mr Renouf**—Yes, he is an adviser.

**Senator BARNETT**—Was that a separate meeting to the meeting with Minister Emerson?

**Mr Stace**—Yes, it was. In fact, during that week I came to your office, Senator Barnett. Unfortunately, you were not there. I met with a number of other senators, including Senator Joyce. I met with a number of journalists that week. I met with the minister and the Prime Minister's office. The reason for doing so—if I may clarify—was that we at CHOICE were proud of the site that we were going to launch a week later. I would not go around showcasing the site to all politicians that I could find and all journalists that were willing to listen unless we were absolutely confident with what we were going to do.

**Senator BARNETT**—The point is that the government did not give you any impression at that stage that they were about to chop it. The Prime Minister's office did not give you that impression and neither did Minister Emerson.

**Mr Stace**—That is right.

**Senator BARNETT**—We are talking about three days before the government terminated the contract on 26 June.

**Mr Stace**—We had the meeting with the minister on Tuesday, 23 June, and I think we had the meeting with the Prime Minister's office on Wednesday, 24 June, which is therefore two days before.

**Senator XENOPHON**—When did you first find out? What was the timeline and when were you told that the pin had been pulled on this?

**Mr Stace**—It is in the submission, but I can certainly talk you through that. I formally found out from the minister at 3.15 in a telephone conversation.

**Senator BARNETT**—You found out after the media release had gone out from the minister's office.

**Mr Stace**—Exactly. In fact, there were reports on Twitter before three o'clock. My media team were trying to get through to me to notify me that the minister had pulled the plug on GROCERYchoice. In effect, the first that I knew of it was from a telephone conversation with the minister at 3.15, and the press notice had gone out before that.

**Senator XENOPHON**—The media release went out before you were told about it?

**Mr Stace**—I asked the minister, in the course of a 15-minute conversation with him, whether we could have a meeting about it, as a courtesy, to discuss this and to see whether it was sensible to pull the plug just a matter of days before. He said that was not possible; he had made the decision. I asked, 'Have you notified the media' and he said he had. Before speaking to us he had not shown us the courtesy in order to—

**Senator XENOPHON**—How did you feel?

**Mr Stace**—I think ‘disappointed’ is probably a moderate term to use.

**Senator XENOPHON**—You English are so understated!

**Mr Stace**—We try not to be too emotional about these things!

**Senator BARNETT**—An \$8 million contract, Mr Stace.

**Mr Stace**—I am not disappointed from the point of view of CHOICE. I am disappointed from the point of view of consumers. We would not have done this had we not thought that this was going to really add value to consumers and really make a difference to the grocery sector. I am not taking it personally and I certainly do not take it emotionally from my point of view. I take it from a consumer perspective, and I think the minister did not show CHOICE or consumers enough courtesy in the way that he made his decision.

**Senator BARNETT**—Could I follow up on—

**CHAIR**—We have practically run out of time.

**Senator BARNETT**—Just very, very quickly. What we do know now is that the government has invested \$8.571 million into this website, which I consider a total waste of money. In terms of contingent liability it is about \$1.7 million based on your advice and the advice of Treasury. So that is over \$10 million, not counting legal costs and perhaps other miscellaneous costs. Is that your understanding of where we are up to?

**Mr Stace**—Yes.

**Senator BARNETT**—Going back to my earlier question, you put forward a proposal for a \$20 million website over a five-year period. It ended up being \$13 million over four years, and you ended up with an \$8 million contract. How did that compromise your initial proposal, and do you still feel that it was credible?

**Mr Stace**—Partly I was seeking advice; I only started in February, so I was not party to the initial discussions. My understanding is that two things changed. Firstly, the technological solution that we were able to come up with overcame some of the challenges that we thought may emerge and therefore may cost more to overcome. Secondly, as I said to Senator Pratt earlier, we scaled back some of our ambitions for the site in terms of future developments. So I think it was a combination of those two things.

**Senator BARNETT**—It is a pretty big difference, though—from \$20 million to \$8 million.

**Mr Stace**—It is, although you are also talking about a change in time frame as well—

**Senator BARNETT**—A four-year period from a five-year period—

**Mr Stace**—A five-year period down to a three-year period. It is a 40 per cent cut in time frame.



**Senator BARNETT**—Finally, very quickly; we are about to hear from NARGA. They have expressed concerns about comparing like with like and fresh food in particular. They have made some pretty persuasive comments in their submission. Do you have any responses to those concerns that they have expressed?

**Mr Renouf**—In terms of exactly what they have expressed, I am happy to take that on notice, but I just want to reiterate what I said to Senator Pratt, which is that we believe that we have done a really good job in trying to give consumers the information they need to make those comparisons in a fair way. We would do everything we could to prevent consumers being misled by one chicken breast not being the same quality as another chicken breast. It is wrong to say that you have to do it perfectly or you cannot do it at all.

**Senator BARNETT**—But fresh food is a particular concern they had, and, frankly, I can see their arguments being quite compelling.

**Mr Stace**—As Gordon said earlier in answer to a similar question, we commissioned a company called Freshlogic to help us work through some of those like-for-like comparisons, particularly around fresh produce, and I think we came up with a very workable solution. Specifically around NARGA, though, it is worth saying a couple of things. John himself will give evidence soon, I am sure, but we had one initial meeting with NARGA but we did not meet with them after that time frame. The Treasury had taken a decision that it was important to get the site up and running with the big supermarkets first and then, as a phase 2, to work with the smaller and independent supermarkets. John may feel that he was slightly out of the loop on some of the discussions that happened.

Secondly, it is worth saying that, whatever we would have done in phase 2, we would have worked incredibly closely with John and his team and the independent sector, because the independents are an incredibly part of the grocery sector and they are certainly part of the solution in terms of creating a more dynamic and competitive market. So there would have been no question that we would have worked with them very carefully.

**CHAIR**—Thank you both very much. We are very pleased with your evidence. It is very useful.

[11.21 am]

**CUMMINGS, Mr John Watson, Chairman, National Association of Retail Grocers of Australia**

**HENRICK, Mr Kenneth Michael, Chief Executive Officer, National Association of Retail Grocers of Australia**

**CHAIR**—Welcome. I invite you to make an opening statement, if you would so desire.

**Mr Cummings**—In our opening statement I would like to put clearly on the record that the independent sector in no way, shape or form are afraid of the prices that we charge on any of the products. As a matter of fact, we spend a lot of time in the supermarket industry making sure that our pricing is correct. We spend a lot of money on that, and we give as much information as we possibly can to consumers. To put that into perspective, just in price ticketing, it would probably cost my particular business—and I am a retailer by profession; I am the chairman of NARGA on a voluntary basis—somewhere around \$1,000 a week for each of our stores to make sure that our pricing is correct.

Also, with regard to technology, technology has improved a heck of a lot in the information that we give to consumers. I will pass on to you a copy of a docket that comes out of our tills. It shows not only the prices that we are charging people but also what the normal shelf price is if it is on special. So we are not in any way, shape or form hiding from any pricing issues that there are there.

I come from Perth, Western Australia, where the independent sector has 31 per cent of the market. Coles and Woolworths have about a third of each. So we are about a third each. We as a sector spend about \$10 million a year advertising to people the prices that we charge, and I do not think we would be spending the \$10 million a year if we were advertising that we were expensive. It is a very price-competitive industry. I will also pass along for the information of senators some prices that I took from our store in Perth which I compared with some of the majors in Sydney. Interestingly enough, we sell Heinz Baked Beans in Perth at \$1.59, and those Heinz Baked Beans travel all the way from Sydney to Melbourne to Perth and go through the warehouse that we buy from, Metcash. We retail them at \$1.59, which is the same price that Coles and Woolworths retail them for in Warringah Mall in Sydney. So the thought that somehow we are not competitive is completely and utterly wrong.

**CHAIR**—Before you go on, would you like to table those documents?

**Mr Cummings**—Yes.

**CHAIR**—Thank you. That is so moved.

**Mr Cummings**—Our problems with the GROCERYchoice website—and we expressed them from the outset in our informal dealings with the ACCC—were, firstly, our concerns about the methodology of the collection of the data, the accuracy of the collection of the data and the

relevance that it would actually have to consumers. There has been some talk about fresh produce. When we got onto fresh produce, it was our advice—and it is my personal opinion—that trying to get meaningful comparisons of fresh produce is basically impossible. One of the reasons I say that is that, if you look at my supermarket today in Perth, we would be selling, for example, potatoes at about six different prices and—

**Senator BARNETT**—Tasmanian potatoes, I hope.

**Mr Cummings**—Not today, I am sorry.

**Senator PRATT**—We grow a few potatoes in Western Australia.

**Mr Cummings**—Absolutely. We are selling them from 99c a kilo to \$5.99 a kilo. So which potato do you want to look at? Also, how do you compare a tomato? When it got down to the collection of that data—and we spoke further with CHOICE as to how we would transfer that—the reality is that the computers work on product item numbers. For example, a tomato has to have an item number allocated to it; it does not come grown with a barcode on it. The item number that I have in our Glengarry store is 931026, which is a totally different item number to the one in our Leederville store, which has a totally different item number to the one we have in our Duncraig store. So how do you collect that data and put it together? Or do all 4½ thousand independent supermarkets throughout Australia decide on a Monday that we are going to use exactly the same item numbers for our tomatoes?

**CHAIR**—Perhaps you could tell us how item numbers are allocated? Are they done on a weekly basis?

**Mr Cummings**—Mostly, our point of sale systems—our back office systems—will generate it.

**CHAIR**—Over what period of time, though?

**Mr Cummings**—Our current system has been in place for about eight or 10 years now.

**CHAIR**—If we go and buy a tomato today, will that have the same item number in two week's time?

**Mr Cummings**—In our system it will, yes. But it is an individual system. The other thing that needs to be understood is that our systems are basically just an update of a cash register. They do not hold the amount of data that people were looking for. As a business, our point of sale system is not connected to the internet. So no broadband transfer of any information can occur. It is done by a telephone modem—so it is a dial-up system. One of the main reasons that the sector had to go to the expense of going to computerised point of sale was to comply with GST requirements.

**CHAIR**—Yes, you say that in your submission.

**Mr Cummings**—One of the requirements for the GST is that we not only have a retail price but also the cost, the GST component et cetera. And now we have a further one, a unit pricing

system, we have to link into it. So any files available to me on retail price actually have a cost, a margin and all the rest of it associated with it. That was one of our issues.

Another comment I would make is that, being a retailer, I work by a very simple adage: I do what the customer wants. Very simply, as I have said publicly, if the customer says, 'John, you should clean your teeth,' guess what I do? I go out the back and clean my teeth. We have never been told by one customer—and in my particular case we serve 34,000 customer transactions a week—'Gee, I want that website back.'

**Senator BARNETT**—That was a very compelling final comment. Informed Sources have put in a submission and they have said that their tender for the data collection service was \$2.7 million less than another data collection company, Retail Facts, which won the tender. Does that worry you? Does that cause concern for you?

**Mr Cummings**—To be honest with you, Senator, I was absolutely gob smacked at the amount of money that was being spent on that, when you consider that this is a merchandising company that is going around to these stores. I was also, I have to say, surprised that it would take somebody four or five hours to collect prices on 600 items. I found that to be a tremendous amount.

**Senator BARNETT**—What would you consider to be more realistic?

**Mr Cummings**—To give an example: we would probably put up 1,200 price tickets and, if we gave that to one of our staff and it was not done within two hours, we would want to know why.

**Senator BARNETT**—Wow; that is a big difference. The government have imposed sort of a self-imposed deadline—that they wanted this thing up and running within six or eight weeks. They obviously gave those instructions to the ACCC and the ACCC acted on it. That is their response. What do you say to that?

**Mr Cummings**—My recollection of it is that, in informal discussions that we had with the ACCC, we raised our concerns about the methodology of doing this. We also raised our concerns about the need for it. From where we sat, I cannot recall any great degree of urgency.

**Senator BARNETT**—The other issue that we have addressed at some length this morning is the fact that the data collection company also collects for Woolworths and has just received this very significant contract, which is ultimately over a \$5 million contract for GROCERYchoice. There have been serious issues raised regarding conflict of interest or at least perceived or potential conflict of interest. What are your views with respect to that conflict of interest issue?

**Mr Cummings**—I, like others, was surprised that they were doing them both. One of my thoughts was, 'I cannot imagine Woolworths paying that amount of money to an organisation to do the data collection for them.'

**Senator BARNETT**—That is a good question. We do not know, of course, what Woolworths is paying them to collect the data. What we do know is what ACCC and subsequently

GROCERYchoice are paying Datasearch, and it is \$5 million-plus contract. You think that is a very high price?

**Mr Cummings**—I can only talk for the independent sector that does that same sort of data collection as well, and it would not cost the independent sector that amount of money to collect data.

**Senator BARNETT**—What do you think would be more realistic?

**Mr Cummings**—I would have thought that it would be well under \$1 million.

**Senator BARNETT**—To undertake the work?

**Mr Cummings**—Absolutely. And that is not only collection of data but also interpretation of the data and then setting price files. The way the industry works—and I did that in those price comparisons that I gave to you—very simply, we do not want to be known as being more expensive in selling Heinz baked beans than any of our competitors. So somebody actually goes around to the competitors and checks out the price of Heinz baked beans and then comes back. If the wholesale price of Heinz baked beans goes up, one retailer will say, ‘It is no longer \$1.50. I have to put the price up to \$1.60.’ You will find that everybody goes and checks prices and everybody’s price goes up to \$1.60. That is the data collection and interpretation that I assume Retail Facts were doing for Woolworths.

**Senator BARNETT**—Their initial bid was \$4.669 million and subsequently it signed up at, I think, \$5 million-plus. The Informed Sources tender was \$1.975 million, and you are saying that in fact it should be about \$1 million or less to undertake that sort of work.

**Mr Cummings**—That is what I think private enterprise would be expecting to pay.

**Senator BARNETT**—Just to get on the record your views about this conflict of interest, the ACCC seem to have a complacent approach to that. Despite the fact that the contract referred an opportunity for an audit, such an audit was never undertaken. What is your view about that, and should such a contract ever have been signed up?

**Mr Cummings**—We were always concerned about that, and we were always concerned about the data collection and the integrity of that data, especially when it came down to some of the smaller stores that were being gone into and having that price data taken out of. One of our concerns there was, of course, a smaller store might not have the entire range. If you take my particular instance, you have a larger independent, or Coles or Woolworths, that would sit at somewhere around 22,000 or 23,000 SKUs. In my particular instance, we sit on about 16,500 SKUs. Seeing as nobody knows what is in the prices that they are taking, if I do not range one of those products and they come into my store, what do they actually mark down? Do they take a larger size, a smaller size? Was that veracity ever checked? Again you have that same problem if you look at a shelf label. Even for one who is in the industry, when you go to short descriptions it is very difficult to actually figure out what the short description stands for. Quite often you have to go to an item number or a PLU to get what the actual product is. There is a whole pile of issues in there that make the data collection difficult.

**Senator BARNETT**—All right. I want to go back to the initial website the ACCC was setting up, and I have read your submission and some of the compelling arguments that you have put. You have got 500 products, 600 supermarkets and 61 regions. Frankly, in your view, was it ever going to work?

**Mr Cummings**—I still cannot see what the relevance is of a product available in Merredin to a product in Broome—which was the area that you are looking at. It would be like travelling from Greece to London to do your grocery shopping in the afternoon.

**Senator BARNETT**—So the way it was designed was a fatal flaw?

**Mr Cummings**—I have no doubt that the consumers who looked at it voted with their fingers and decided to go away from it because it did not deliver them any meaningful information.

**Senator BARNETT**—Okay. In your submission you expressed concerns about the 1,000-square-metre rule or requirement. As a Tasmanian I am fully aware of that in the submission of Tasmanian Independent Retailers. Do you maintain those concerns about what you would call a ridiculous requirement?

**Mr Cummings**—Yes indeed. We have to understand that a lot of these stores service their local market, and they service their local market in a particular way. When you service a local market you will have different demographics—perhaps different races of people that you are looking at—and pricing will be completely different. Economies of scale must also be brought into things. When you then look at rural and regional Australia and you have further economies applying to the transport of groceries, which can be very high, you bring in another dynamic. We were concerned from the outset, and it is fair to say we were also concerned that there was not a lot of communication to individual businesses as to how this was going to occur and what would happen. A common thing that happened to me was people ringing me up and saying: ‘There is some bloke here wandering around the shop. What do I do? Do I turf him out? How do I handle this?’ We did not know if he had a legal right to be there or what it was all about.

**Senator BARNETT**—Was he not required to gain the consent of the shop?

**Senator PRATT**—Is it any different to you or me wandering in to check out the prices?

**Mr Cummings**—Some people get precious about it and others do not. People just did not know.

**Senator BARNETT**—What was the protocol? Were they meant to advise the store manager?

**Mr Cummings**—They would just turn up.

**Senator XENOPHON**—What is wrong with that?

**Mr Cummings**—Nothing, except that some people were unsure about it. People have concerns. I think this came up before in the discussion of predatory pricing: do you particularly want a major chain in your store jotting down the price of your fruit and veg so that they can

undercut it? There is nothing you can do about it, but those were the legitimate concerns from business owners.

**Senator BARNETT**—I will move on to the legal issues. You have mentioned predatory pricing. We have talked about section 52. You mentioned in your submission that there are potential unintentional breaches of the Trade Practices Act under the CHOICE regime. I am not sure if you have the same view about the ACCC operated website. Can you elaborate on those concerns?

**Mr Cummings**—We got involved in one discussion that we went along to at the invitation of CHOICE, and other major retailers were represented there. In the discussion we got into how pricing occurred and how this would happen.

**Senator BARNETT**—Was this a meeting with Coles and Woolworths?

**Mr Cummings**—Yes.

**Mr Henrick**—It was Woolworths, Franklins, Aldi and the Australian Retailers Association.

**Mr Cummings**—I made the point at the time that if you made available on a particular site the price of milk—and I think CHOICE used the word ‘gaming’—why would somebody not go one cent cheaper? Over a period of time, would you end up with retail price maintenance by default? What would be the incentive for anybody to price baked beans at any different price to what was there?

**Senator XENOPHON**—Are you saying that the website would be counterproductive in that respect?

**Mr Cummings**—There is that chance. If we stocked 16,500 items and you had 500 items on a website, why would I ever be one cent more expensive than Coles or Woolworths? Why would I ever be one cent cheaper?

**Senator XENOPHON**—Will you make it up on other items?

**Mr Cummings**—Why would I not be the same price? What you end up with is everybody selling at the same price.

**Senator XENOPHON**—But the overall basket for a typical consumer may be more expensive or less expensive.

**Mr Cummings**—That is exactly my point. When the wholesale price of one of those items goes up and one retailer—me or Coles or Woolworths or whoever—puts its price up from \$1.60 to \$1.80, why would anybody else go to \$1.79? Why would they not go to \$1.80?

**Senator BARNETT**—You went to a meeting with these major retailers. Did you have lawyers there? This is possible price collusion, where you are actually sitting and talking and discussing prices. How did you get around those issues? This is very serious stuff.

**Mr Cummings**—Absolutely. It was not brought to my attention and, not being a lawyer, I did not understand that. One of the major retailer's representatives said, 'We need to cease this discussion because you are going into what I feel is price collusion.' I think the point was made at that stage that, if you are going to have any more of these meetings, perhaps you better get a trade practices lawyer along.

**Senator BARNETT**—Who organised those meetings? Was that CHOICE?

**Mr Cummings**—Yes.

**Senator BARNETT**—And what happened after that?

**Mr Cummings**—That was the last meeting we went to.

**Senator BARNETT**—Were there further meetings?

**Mr Cummings**—I understand there was.

**Senator BARNETT**—Was that with CHOICE and the major retailers?

**Mr Cummings**—I understand so.

**Senator BARNETT**—And we do not know the content of those meetings or what was discussed.

**Mr Cummings**—No.

**Senator BARNETT**—Do you have concerns that there were discussions about prices and possible price collusion?

**Mr Cummings**—I still have those concerns. My concerns have not gone away. If you do this, you end up with, by default, everybody selling at the same price, so some form of retail price maintenance. If the government wants to go back to that, that is fine. I do not have an issue with that because whatever that retail price is you have to assume, as a businessperson, that the requirement of my competitors will be to run a profitable business as well. They are not going to price it at a point that is not profitable for them, unless they are being predatory.

**Senator BARNETT**—Was there any assurance that the prices coming in from Woolworths and Coles via the data collection company did not somehow pass to the other company or the other supermarket? They are collected by the one company. In terms of the possibility of error, this is huge, this is enormous. What sort of assurance did you have and did the system have to ensure that there was not possible collusion or prices going from one supermarket to the other?

**Mr Cummings**—Absolutely none. It is my belief—I have no evidence of this—that people other than the tight circle would know what that basket was, if not in its entirety at least on some of the items. Very simply, as a retailer you just had to stand beside the person collecting the data and you knew that it was 750 gram-packets of Weet-Bix that they were taking the price of. You could not keep it secret forever.



**Senator BARNETT**—But my point is, once that person got that information they then electronically, presumably, sent it to the data collection centre and then on to CHOICE. Surely that is a high-risk strategy.

**Mr Henrick**—There were two issues there. One was the security of the data in its raw form and the second was whether CHOICE was going to validate that data in any way. On both of those issues, they were unable to give us any assurances.

**Senator BARNETT**—You say ‘validate’. Surely putting it on the website validates it, does it not?

**Mr Henrick**—No, it does not, because if the data were incorrectly gathered—if it were deliberately manipulated or gamed—then it would be on a website and it would look as a cheap basket but might not necessarily be an accurate number.

**Mr Cummings**—One of the concerns there was also—not everybody is as honest as I am—that it would enable someone to put, say, their fruit and veggie prices in on Monday at 20 per cent below what they put their prices up to one Tuesday and sit up there for a week, a month or whatever. How do you verify that they actually sold a tomato at \$1.99 kilo on Monday?

**Senator BARNETT**—So these are some of the unintentional consequences that you are referring to?

**Mr Cummings**—Sure.

**Senator BARNETT**—Are there any other legal issues you want to raise that you have concerns about—misleading and deceptive conduct, section 52, in terms of advertising, marketing—or are there other concerns?

**Mr Henrick**—There is one other concern I have and that is with the number of stores surveyed in each region. There were supposed to be 10 stores. How were those 10 spread across the industry? If you did it on a market share basis, there would be five Woolworths, three Coles and two for everybody else, but I will bet that was not the way the stores were allocated. That would bring about a skewing in the basket, I would imagine. Then when you look at the small stores that were surveyed, that compares directly with the fact that Woolworths and Coles convenience stores, around the same size, were excluded from the survey.

**Senator BARNETT**—Because of their size of just because they were excluded?

**Mr Henrick**—Because of their size and because they were seen to be part of the convenience store offer. Yet that is what a lot of small independents are.

**Senator BARNETT**—So you were not comparing like with like?

**Mr Henrick**—Not comparing like with like.

**Senator BARNETT**—I realise the time, Chair, so I pass over to another senator.

**Senator PRATT**—Thank you. In what data format was it envisaged you would be exchanging data with CHOICE?

**Mr Cummings**—They asked if we could give them, in the first instance, 1,000 retail prices.

**Senator PRATT**—Would that be in a table? What kind of thing do you source it from?

**Mr Cummings**—They were looking for it to be electronically done. We pointed out that a price file that we have does not actually have that. We do not keep a thousand items together, so we would have to get our software provider to go through and write a specific program for that. Whose cost would that be? That would take a length of time to do. Transferring it again would be done through dial up because they are not on broadband. What dial-up modem system would they have to collect 4,500?

**Senator PRATT**—Can you say the bit about broadband and dial up again? Your end is dial up.

**Mr Cummings**—We can only transmit it by dial-up modems.

**Mr Henrick**—That means we would have to have many modems to collect the data.

**Senator PRATT**—Surely you would just email it to them and they would pick it up through their broadband. I do not quite understand the technical problem.

**Mr Cummings**—The till at the point of sale is not connected to the internet. It is there to scan products and give somebody a receipt. It is not internet connected; it has no connectivity at all. The way we transfer data is via a dial-up modem, which takes quite some time to do. We do that on a weekly basis to update those files. They then suggested that to transfer the file, if we had it—there was a degree of difficulty there—it could be faxed through, but somebody would have to write down 1,000 prices on Monday morning.

**Senator PRATT**—Can you print it out?

**Mr Cummings**—No, because it does not hold a price file. We have got 16,500 items. If I wanted to print out a price file, it would include 16,500 items.

**Senator PRATT**—How do you manage your own costings and budgeting if you do not manage the information in that way?

**Mr Cummings**—Every one of those items has a costing cell allocated to it. Again, it is about the complexity of the industry that we are in. Not many people realise that when the GST came in, Coles and Woolworths did not do a stock take. There are not enough people in Australia to stock-take Coles and Woolworths on the one day. It is a massive job.

**Senator BARNETT**—Yes, it would be.

**Mr Cummings**—They dealt with the tax office and did an estimate through their accountants of how much stock they would hold, and an estimate of how much wholesale sales tax they

would claw back from the government. That is how it worked. The things that you are asking about just do not exist.

**Senator PRATT**—I am surprised.

**Mr Cummings**—We do not have live stock in our system. I understand that one of the majors has tried it, but you need two data entry people at your back dock, entering how many different loads of bread the baker dropped off. What is the purpose? They are all gone by the end of the day.

**Senator PRATT**—You only stock-take as things come out?

**Mr Cummings**—We stock-take on a monthly, six-monthly, or an annual basis.

**Senator PRATT**—And as things sell.

**Mr Cummings**—Absolutely.

**Senator PRATT**—What would the implications for your reputations as retailers be if, as you purport would have happened, the data on the website was inaccurate? Was that your key concern?

**Mr Cummings**—No, it was not a concern. When we were first asked about this, we were asked by government and the ACCC what our thoughts on it were. We simply went away and asked a number of people: ‘Is it done anywhere else in the world? Is there a model that can be used? Is there an effective way of doing it? Do you use specials? Do you use shelf prices?’

**Mr Henrick**—How do you compare private label with branded product? There were a whole lot of issues.

**Mr Cummings**—And how do consumers shop? Our conclusion was, ‘Look, we do not think this is going to work.’ I would say again that I have 34,000 customers a week and nobody has ever said to me, ‘Bring back the website.’

**Senator PRATT**—Okay, thank you.

**CHAIR**—On that point, we heard from CHOICE, and you heard this too, that they do have a system in the UK. Do want to make any comments about that?

**Mr Cummings**—There is more than one internet provider of groceries. There are more than two. There are people other than Coles and Woolworths. A lot of independents do it. As a matter of fact—here is a plug for them—I think Wembley Super IGA were the first to do internet shopping in Australia. That has been done time and time again. There are some sites there. One of the problems you have is the descriptions and the item numbers to find the products. I do not think that people fully appreciate that even I struggle when I go into some supermarkets to find the brand and the product I am looking for. It is not always in the same spot on the same shelf. Sometimes it is by luck that you actually find it. On a website it is even harder.

**CHAIR**—Very true.

**Senator PRATT**—That will all change with technology. We will have a GPS for the supermarket.

**Mr Cummings**—And maybe it will. As a sector, I would also like to point out that, in Western Australia, the store that I own was the first one that ever went to scanning. The independent sector in Western Australia was scanning before Woolworths started off. So we are not afraid of technology. We are in the front of technology; it is just that the technology is not available. If it is available, fine.

**Senator PRATT**—One day you will be able to ask your mobile phone, ‘Where are the baked beans?’ and it will tell you.

**Mr Cummings**—It might even heat them up and put them on the table for you.

**CHAIR**—Thank you. We will go to Senator Xenophon now and then Senator Joyce.

**Senator XENOPHON**—I just have a couple of questions. There was a criticism in your submission in relation to Aldi. You were saying it is not a like-for-like comparison because they have got a much smaller basket of goods and it is usually their own brand. I think you said with Nescafe, for instance, they source from a different country.

**Mr Cummings**—That was one of the problems. When you go into these places, especially places with limited quantities, you start looking at house brands. I use this example—and I spoke to a number of people about this: the cheapest place in the world to buy tomatoes is Argentina. Anybody can bring them in at 40c a can. I have brought them in and I have sold them 49c a can. Aldi do the same thing and sell them for 69c a can. But the price comparison that was done was SPC, an Australian brand.

**Senator XENOPHON**—Yes, which is quite different. Is the tenor of your submission that, if there is going to be a GROCERYchoice-type website—if it is revived in any way—the way for it to be effective, so that you will not have ‘gaming’, as Mr Stace from CHOICE has referred to, is to have a much bigger representative basket of goods, and then just publish details of which supermarkets are cheaper as to that typical basket, without necessarily specifying the items. Is that what you are saying?

**Mr Cummings**—I think the only way you can do it effectively is to take like-for-like brands, which I attempted to do in that short list that I gave—

**Senator XENOPHON**—No, sorry—do a like-for-like but not necessarily specifying what those brands were—

**Mr Cummings**—If you do not specify them, how do you know?

**Senator XENOPHON**—If it were to say, ‘For 100 items at these supermarkets, of basic staples, this particular supermarket is cheaper than others’—

**Mr Cummings**—But how does the consumer know? It is like you saying that you go to your local supermarket and only spend \$50 a week on groceries but I go to mine and I spend \$65. We might both buy 16 items.

**Senator XENOPHON**—But was one of your concerns that if you had 50 or 100 items, you would end up getting almost a sort of retail price maintenance if you specify which particular items, whereas if you just did a basket that was not specified but was like-for-like, that would be a better way of informing consumers, saying ‘Overall, this supermarket is cheaper than the other supermarket.’

**Mr Cummings**—I stand by the first premise. People walking around Australia jotting down prices will not put downward pressure on grocery prices.

**Senator XENOPHON**—And you think that to put downward pressure you need to actually divest—

**Mr Cummings**—I think you need to have more competition. I do not think you have to be Einstein to figure out that if you go and buy petrol or groceries in an area where there are three or four alternatives, it will be cheaper than the area where there is only one.

**Senator XENOPHON**—And tell me this: Western Australia has a lower concentration of Coles and Woolworths—

**Mr Cummings**—We have the highest market share of the independent sector.

**Senator XENOPHON**—Could we go back a step. What is that compared with, say, Melbourne and Sydney? What is the percentage?

**Mr Cummings**—In Sydney the independent sector is below 10 per cent. It is somewhere around eight per cent.

**Senator XENOPHON**—And Melbourne?

**Mr Cummings**—In Victoria, the independent sector sits at about 18 per cent.

**Senator XENOPHON**—And South Australia is a bit higher, isn't it?

**Mr Cummings**—South Australia sits at about 24 or 25 per cent, and WA is 31 per cent.

**Senator XENOPHON**—Perth has one of the longest supply chains in the world, because of where it is, so what does that mean in terms of prices? How do you come out in terms of prices overall?

**Mr Cummings**—In those comparisons that I did, where I just did the like-for-like, on a basket of products that I just picked, we were a small percentage cheaper than the majors in Sydney.

**Senator XENOPHON**—Even though you have got much longer supply chains—that would actually add to the cost significantly?

**Mr Cummings**—Yes, indeed.

**Senator PRATT**—You also need to take into account WA's trading hours. Coles and Woolworths have more limited trading hours.

**Mr Cummings**—We do not change the prices—

**Senator PRATT**—It just means you have a market available to you that Coles and Woolworths do not.

**Senator BARNETT**—Tasmania's market share?

**Mr Cummings**—I should know this off the top of my head, but I think the independent sector is somewhere around 12 per cent or 13 per cent.

**Senator JOYCE**—You will be happy to know that in St George in Queensland it is 100 per cent independent.

**Mr Cummings**—I thought it was 100 per cent national.

**Senator JOYCE**—Is the crux of the issue—and obviously it is a political one—that consumers pay more? We have the highest food inflation in the Western world, and the farmer is getting the same or, in some instances, less. There are exemptions from time to time, such as fat lambs at the moment and the lamb price. It has political resonance, and Mr Rudd exploited that very well at the last election saying, 'This can't go on; we've got to do something about it.' If GROCERYchoice is not the solution, what is? The political dynamic of it will continue. If Mr Rudd could pick up on it last time, no doubt we will pick up on it this time. It is going to become a political football where you are talking to the biggest marketplace, which are the voters who want something done.

**Mr Cummings**—The only answer I can give is that, to solve the problem of market domination in Australia, it is going to take a whole pile of different things. There is not one, single thing that will do it. A very simple example of that is unit pricing. I was in Sydney earlier this week. You now have every grocery retailer in the suburb of Hurstville with unit pricing on their shelves. Are we going to conclude that the average consumer in Hurstville is saving money on their groceries this week over what they were paying two weeks ago because of that unit pricing? I would not have thought so.

**Senator JOYCE**—So what is the answer?

**Mr Cummings**—As I said, Senator, I think it is a whole pile of different things. I think it is more effective trade practices law, some things that we have been calling for over the years—stronger predatory pricing, activity by the ACCC, creeping acquisitions, transparency in pricing. I agree 100 per cent with transparency in pricing. We argued at the grocery inquiry that transparency of pricing needs to go not only from the shelf but all the way down to the farmer. I cannot today explain why farmers in Australia, if it is raining, get something like \$2,000 a tonne for rice and I retail it for \$28,000 a tonne. I do not know the answer to it.

**Senator JOYCE**—Or why the price of milk at the shelf is not going down but the price for milk that the farmer is receiving is certainly going down. That is the next inquiry we have got, I think.

**Mr Cummings**—If you look at milk as an example and you look at house brand milk, the reality is—and we have spoken about these figures time and time again—that, of the available gross margin on milk, something like 78 per cent of it is available to the retailer and only two per cent of the available margin is available to the farmer. And that is just wrong.

**Senator JOYCE**—That obviously is wrong. By far and away, the farmer is doing the most work. They are kicking themselves out of bed at half past three in the morning to go milk the damn cows and then doing it again in the afternoon 365 days of the year. What is the answer? Do the farmers just end up militant like they are in Europe and just start blockading things and shutting down production?

**Mr Cummings**—I have said for some time that some people think that the way to solve this is to buy powdered milk from Brazil, take it up to China, hydrate it and bring it down here as UHT milk to put on your ‘cornies’ tomorrow morning.

**Senator JOYCE**—With melamine in it!

**Mr Cummings**—Yes.

**Senator JOYCE**—And kill a few people. Obviously once we do that, we would lose food sovereignty and, as a nation, we would be terribly exposed. That would never be politically palatable—or it would be until there was a period of crisis and then, as food production shuts down and people start being unable to afford the food in their shopping trolley, you would really have a political breakout which you would probably never have seen before in the country, as in the nation.

I will raise one other question. Prior witnesses have put to us the involvement of Metcash with independent groceries, saying that this is another form of the monopoly wholesaler and that this is another problem. I know you have an association with them, so I will put it on the table: what are your views on that?

**Mr Cummings**—The reality is that I have only one place that I can buy Heinz baked beans from in Western Australia, and that is from that warehouse. The warehouse used to be owned by a company called Foodland, and it was taken over by Metcash. I am not a shareholder of Metcash and never have been. I was not a shareholder of Foodland. Quite frankly, I could not care who owns it. Obviously, at the end of the day, I will do whatever I can to buy baked beans from the cheapest place and the most convenient place that I can get to. Because of the scale that those wholesale operations have to work in, I would not have thought that it would be in Metcash’s interest to have poor simple retailers like me trying to sell baked beans at \$2.50 a can if Coles and Woolies are selling them at \$1.59. So there is competitive pressure put on that to make sure that we are all selling around the same price.

**Mr Henrick**—Back in the early nineties, there was at least one wholesaler in each state. Over the period of the next decade or so, they were consolidated into the one company that now exists, Metcash. All of those acquisitions and mergers were approved by the ACCC.

**Senator JOYCE**—Yes. We are trying to find something that the ACCC will not approve. At the start of your evidence you talked about your budget and how much you spend on advertising a year. It makes the statement that you are prepared to invest for the consumer to know what the price is, because you believe that that attracts them to the store. But then you also said that no-one has approached you about reintroducing the website. If it is pertinent that the consumer wants to know the price prior to purchase—they want to be pre-informed of the price—then surely an effective website would be able to do that.

**Mr Cummings**—I concede that. The reason that we engaged in conversations with CHOICE was that some of the things that they were proposing seemed to make sense. Maybe there is a place in the marketplace for a website that can achieve those sorts of things. Our point was that, at the time, it could not achieve those things because the information they were asking for simply did not exist.

**Senator JOYCE**—Couldn't we have a website which says, 'These are the best deals of the stores in your area right now,' and everybody submits to that? You put in what you think are your 50 most attractive deals on consumer items and allow people, as they do everywhere else, to click on the items that make up the basket of goods and then they can compare the items they want on line. You could be given even more latitude with a basket of goods that is not regimented. You could put your best 100 priced items on the site, but you would have to give a guarantee that when the person goes down to the store they can buy them at that price.

**Mr Cummings**—Certainly, which is why one of the suggestions was that weekly specials would be put on that website. But, again, I think the majority of consumers perfectly understand that, if Cadbury's block chocolate is available in one of those supermarkets this week at a special price of \$2.49, it will be available in the next one the week after and, in the next one, the week after that. That is the way the rotation of weekly specials goes.

**Senator JOYCE**—In retailing groceries, what brings people in the door? What is your standard-bearer as a price? Is it the price of a litre or two litres of milk or the price of a kilo of bananas? What do you think are big ones? To be honest, I have never actually gone shopping for Cadbury chocolate. I might, if my kids are with me, end up picking up a block—

**CHAIR**—I bet you buy bananas, though.

**Senator JOYCE**—Yes, bananas. I will go in for milk, eggs, bananas, spuds, tomatoes, mince and pasta—that sort of stuff.

**Mr Cummings**—The independent sector, rightly or wrongly, believes that milk and bread are two of the driving factors. I doubt if you would find many independent stores around Australia that did not have the cheapest milk and bread on their offer, especially if they were a large, successful store. And then there are the obvious things. Coke is still a big drawcard for people, and things like that. The way that the industry works is that we pick a whole basket of goods that



we think contains the key indicators that people will take. One of those key indicators is, of course, Kraft Vegemite.

**CHAIR**—It has gone up in price recently.

**Mr Cummings**—Absolutely. We make 4.9 per cent gross margin on Kraft Vegemite because we sell it at a very low price. It costs us about 18 per cent to run our business. You do not have to be Einstein to figure out that if all we sold was Kraft Vegemite we would be broke in a very short period of time.

**Senator JOYCE**—This is all about getting a better deal for consumers. You have said, and I support this, ‘The more competition in the marketplace the better the marketplace is.’ Major retailers are into insurance in a big way. We had evidence today of Tesco being in real estate and legal services overseas. That will arrive here in Australia. They have already made the move into the white-collar section of the marketplace and service delivery. When people decide to cross-subsidise in your area and use the weight and power they have, not just from groceries but from alcohol, gaming, cigarettes, low-line pharmacy goods—even though they cannot sell high-line pharmacy goods—insurance, real estate and everything else, how will you survive when they say, ‘We’ll just use this as a mechanism to sit around your thing and geographically price discriminate until you go broke’?

**Mr Cummings**—That is our concern. Those large organisations go into those markets with only one objective: to have 100 per cent of the market. They do not go in there to be satisfied with 10 or 20 per cent of the market. That is where successful regulation has to play a role in putting some sort of cap on this area. I notice that the word ‘divestiture’ has been mentioned today, but nobody has ever had the political will to tackle that question.

**Senator JOYCE**—You will be happy to know that the National Party has divestiture as its policy platform.

**Mr Cummings**—I understand that.

**Senator JOYCE**—Do you think that there is a political power associated with the major supermarkets that covers off a lot of these issues in Canberra?

**Mr Cummings**—No, I do not. I think they, just like a huge giant, are hard to feed. They are a bulldozer. Once they start, you cannot stop them; they just keep on going ahead. The other thing we have to understand as independent business people—and I am not unique in this regard—is that every dollar I have is invested in my business. It is not a part-time thing for me; it is completely there. If the business I own does not make a dollar this week, guess what? I do not take home anything. For Coles and Woolworths, if one of their stores does not make a dollar this week, who cares? If one of their stores loses this week, who cares? They just make it up somewhere else.

**Senator JOYCE**—Do you have evidence that, where independents do not exist—as you are representing the independents—the price is higher than where independents are?

**Mr Cummings**—Yes. We would argue that in a lot of instances—and we put this to the grocery inquiry—Coles and Woolworths tend to market share in preference to competing when they are in the same area. I guess you can understand that. If one of them tried to sell the cheapest bread, they would both end up selling bread for 1c.

**Senator JOYCE**—You were talking about how you are annoyed and that it had been reported to you that a person in your store was taking down information. You also gave evidence about how it became obvious that one of the things they were interested in was 750g of Weet-Bix. That is the picking up of information. You have obviously ascertained some reason of competence or otherwise in the actions of that person. If I were paying the contract for that person to go out and source that information, should check what he is doing once in a blue moon?

**Mr Cummings**—If it were my money, I would be.

**Senator JOYCE**—Do you think you could totally rely on working out the capacity of that person's job, how he was doing his job and how he was spending the public's money, if all you ever did was a desk analysis of what he did?

**Mr Cummings**—I can answer that in this way: in our business, if I give one of our staff the task of doing pricing, putting up tickets and checking things, if I do not take the time to walk around and see how it was performed—whether it was done in a timely fashion and correctly—I am a mug.

**Senator JOYCE**—Most people would agree with you totally. If you do not do some quality control of the work that you are paying for, then you will pretty soon find that you are paying for nothing. Thank you very much that.

**Senator BARNETT**—This is my final question. Could I have a concluding comment from you on the impact of the GROCERYchoice website on grocery prices—whether there has been any at all?

**Mr Cummings**—There is no evidence to show that prices went up, went down or stayed the same and there is no evidence that market share shifted in any way, shape or form.

**Mr Henrick**—I would make one final observation. The GROCERYchoice proposal to take over the website had a budget for \$20 million for five years and it then listed a whole lot of things that they would do or hoped to do but not a line about how they intended to do it. That is what the crunch became—when they tried to figure out how to make that sort of wishful thinking work. In that same context, they were given the remnants of a \$13 million budget and they were going to work with that. So where did the \$20 million figure come from and how come they could work with so much less?

**Senator BARNETT**—Ended up with an \$8 million contract, less than half.

**Mr Cummings**—Yes.

**Senator BARNETT**—But a shorter period of time.

**Mr Henrick**—Yes.

**Senator BARNETT**—Thank you very much.

**CHAIR**—I thank everybody for their assistance today—Hansard, the secretariat and the witnesses.

**Committee adjourned at 12.11 pm**