



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

ECONOMICS REFERENCES COMMITTEE

**Reference: GROCERYchoice website**

WEDNESDAY, 28 OCTOBER 2009

CANBERRA

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**SENATE ECONOMICS  
REFERENCES COMMITTEE  
Wednesday, 28 October 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, Hurley, 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.

## **WITNESSES**

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**Committee met at 5.02 pm**

**CHAIR (Senator Eggleston)**—I declare open this public hearing of the Senate Economics References Committee for its inquiry into the GROCERYchoice website. On 12 August 2009 the Senate referred this matter to the committee for report by 26 October 2009. On 20 October 2009 the Senate granted an extension of time for reporting until 16 November 2009. These are public proceedings, 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 it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, the witness may request that the answer be given in camera and such a request may be made at any other time. I remind members of the committee that the Senate has resolved that officials 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 only asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted.

[5.05 pm]

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

**PEARSON, Mr Mark, Executive General Manager, Regulatory Affairs, Australian Competition and Consumer Commission**

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

**Mr Pearson**—We are happy just to go to questions.

**Senator BARNETT**—First, with regard to the ACCC's response to the evidence given post their giving of evidence and, in particular, regarding the independents: we received evidence from Tasmanian independent retailers, and also NARGA, with respect to the provision of advice regarding the website and the fact that the criterion of 1,000 square metres needed to be reached before the ACCC would survey those stores. The Tasmanian independent retailers gave very convincing evidence that that did not occur in Tasmania and that, in fact, the ACCC had their representatives collecting data in stores down to 300 square metres or less. They tabled an article from the *Mercury* newspaper from around the time noting quotes from Mr Graeme Samuel. So I am wondering if the ACCC has reviewed that evidence and if it can now confirm that it collected data from stores of less than the 1,000 square metre criterion, and what the consequences of that are for the independents vis-a-vis the major chains, in the view of the ACCC.

**Mr Pearson**—We did have some supermarkets in Tasmania, and I think there may have been one or two in regional areas on the mainland—I do not actually have those figures here—that were not as small as the Tasmanian ones. One of the problems we ran into, more so with Tasmania but to some extent in some of the more isolated regional areas, was that there were not enough large-scale, 2,000-plus square metre, supermarkets—in fact, in some of those cases there were not enough above 1,000 square metres—to actually cover off on the survey work that was being done by Retail\*Facts. In limiting those supermarkets, we would have been in a position where I think it would have been fairly easy to identify the supermarkets in those areas that were actually being surveyed and also, possibly, to identify what was in the basket. On our website we had a notice that said that the GROCERYchoice survey was generally restricted to those with a total floor area of greater than 1,000 square metres, and it really was, in the Tasmanian instance in particular, an issue that we had identified after we started doing the surveys. It was also one of those issues which, if we had kept the GROCERYchoice website and the GROCERYchoice operation, I am fairly sure we would have had to address going forward.

**Senator BARNETT**—Did you see the *Mercury* newspaper article tabled by Tasmanian Independent Retailers highlighting the cost differential between the major chains and the independents? They compared prices at Coles and Woolworths major stores with independent stores of 300 or 400 square metres. Like many of the independents, I was very upset by that because they were unable to compare apples with apples. That was clearly unfair on the independents. I wonder if the ACCC has considered this evidence and whether an apology to the independents might be forthcoming.



**Mr Pearson**—I cannot speak on that. I had a look at the *Mercury*. I also went back and looked at some of our grocery report and the evidence that came out of that. From our grocery report and also from our work that has been done in the Mergers Branch, I do not think it would be drawing too long a bow to say that the independents in general do not drive prices competition with Coles and Woolworths. That was a fairly strong finding in our grocery report. It is not something that just came out of the GROCERYchoice website. I am happy to revisit the article in the *Mercury*. I do not have it with me so I cannot recall exactly what was in it.

**Senator BARNETT**—Perhaps you could review and consider that article in the *Mercury* and other reports where I think you are comparing apples with oranges rather than with apples. We have had very persuasive evidence from Informed Sources which makes it pretty clear to the committee that they could have undertaken and completed the collection of data within the time requested and meeting all the terms and conditions set down by the ACCC. There is a differential of more than \$2 million between Retail\*Facts and Informed Sources. We would like to know your response since the evidence given by Informed Sources, which you may not have seen at the time of your first evidence. Could you respond to that evidence and let us know whether you think it was a shocking waste of taxpayers' money, or how else you would explain the \$2 million-plus differential.

**Mr Pearson**—I think we have responded to that question a couple of times. I know that Mr Cassidy responded to that issue. We had some discussions with Informed Sources at the time and they put in a freedom of information request. I do not know what else we can say except that the offers we received were not between just Retail\*Facts and Informed Sources. The range of prices was between \$2 million and \$16 million. So, in fact, we took the second-lowest price. We made what we considered to be a well-informed judgment. We invited Informed Sources back. They had a two-hour meeting with us in Melbourne and we had supplementary questions. Even today I do not think anything Informed Sources have said would change our concern over whether they had the ability to actually get the workforce on the ground in the time they had suggested.

I have read the transcript concerning charges that we should learn a little bit about how to act as public servants in the Westminster system. I find it a little bit hypocritical for these people to come in and say that we should learn on what they regard as folly when they were more than happy to put in a bid and take the money for what they considered was folly. I find a certain—I would not want to say lack of integrity, but it is a bit hard to join the dots there when we are being accused of one thing and yet the company accusing us were going ahead more than happily in putting in a bid for what they think is a nonsense and a folly, and they were more than happy to take taxpayers' money if we had chosen them.

I look back, and I have looked back at all the information we had. My colleague Mr Brocklehurst has looked at all the tender process. The people involved were in my division, my staff, and I am more than happy that it was appropriately handled. The decision was right at the time. I know that there was some concern from Informed Sources about how we would treat them going forward, and I think that should have been laid to rest by the—again, this is from my division. I had to sign off on this contract as well through the job I had through the Regulatory Affairs Division, where they had another two years extended on their contract. So notions that perhaps we would hold things against them or that we held things against them at the time are, I think, a little bit nonsensical. We are grown-ups. We are mature people. We are trying to make

legitimate decisions within certain parameters that we are given, and I feel that we did the best that we could at the time. When I look back on it, I still think that we made the right decision within the framework of the decision that we had to make and the time frames.

**Senator BARNETT**—Mr Pearson, you talk about the framework and the conditions and the parameters. Aren't the parameters either in part or in full the instructions from the minister and the government to commence by a certain date?

**Mr Pearson**—Undoubtedly, Senator. We had what we considered was an election commitment that had been put forward by the government. They said they wanted something by August—that they wanted it up and running. We had our grocery report coming out at a similar time, so we worked within those parameters. We feel that we did a good job within those parameters.

**Senator BARNETT**—I understand from previous evidence that you did not raise with the government and the government did not raise with you the merit of perhaps waiting one or two weeks to be entirely happy with the Informed Sources estimate or quote so that you could save over \$2 million.

**Mr Pearson**—No, that is correct, Senator.

**Senator BARNETT**—Well, what we are saying is that if there had been a delay of one, two or three weeks in the commencement of the website then you could have saved—or the taxpayers could have saved—over \$2 million. Is that correct?

**Mr Pearson**—It would be very hard for me to say two or three weeks. At the time, we just did not consider that there was any way that they could get that workforce up and running in time. The notion of 'if we extended time' was not even in our thought processes, I guess. I think if we had done that we probably would have had to go back and completely redo the tender processes. As I understand it, under the Commonwealth guidelines, once we had gone down the path we were on it would have been very difficult if not impossible for us to then go ahead with that. We probably, I think, would have had to go out again for a full tender. I am not sure—my colleague Mr Brocklehurst may correct me on that if I am wrong—but I think that under the government guidelines we would have had to go back and revisit the whole process.

**Senator BARNETT**—But you made your decision based on the time frame given to you by the government, which you saw as non-discretionary and non-flexible?

**Mr Pearson**—Yes. When we say 'non-discretionary', we were given a task and we did it, so it was not actually in our frame of reference or thinking, if you like, to sit there and think, 'Well, perhaps we should push this back for six weeks or whatever.' It is like a lot of times where agencies or departments are given a task by the government and they say this is what they have. We believed we could do it within the budget we were given, and, in fact, I think at the time we probably would have gone ahead under budget. It is a bit hard to say that looking back; it is easier to say at the time.

**Senator BARNETT**—I will come in there—and I know Senator Pratt and others may have questions—on your reference to the budget and move on. Clearly, based on the previous

evidence we have received and tabled at our last committee hearing—I think it was the first hearing in Canberra—the cost to the taxpayer will be just under \$10 million. Initially the budget over a four-year period, I think it was, was some \$13 million. So we had a website that was set up and established and it did not even last one year before it was closed down by the government, at a cost to taxpayers of under \$10 million, when the budget was some \$13 million over four years. Is that right?

**Mr Brocklehurst**—The cost to the ACCC was in the order of \$3.6 million; the remainder was transferred to the Department of the Treasury along with the function of those funds. That \$10 million figure that you are alluding to relates to figures that are also provided, I presume, by the Treasury, and therefore we could not comment on those because they do not relate to our component of that site when we had the function.

**Senator BARNETT**—I appreciate your feedback on that. We as a committee, or the secretariat, can get updated figures on that from the Treasury prior to finalising our report.

**CHAIR**—Senator Barnett, we are going to have to go to Senator Pratt now.

**Senator BARNETT**—No problem.

**Senator PRATT**—You mentioned the tender process and the possible constraints that meant that you could not necessarily take into account factors outside the tender in order to mitigate circumstances for someone. Can you explain to us to what extent the tender actually prescribed the time line for rollout, if at all?

**Mr Pearson**—Did the tender prescribe the time line? Yes, as I recall, I think it did—sorry, I should know that off by heart! Actually, yes, it did, because that was one of the issues that we looked at when we went out in terms of the ability of parties to respond. That is why we actually went out without going to a full tender.

**Senator PRATT**—So there is no possible way that the government or the ACCC could have had some form of foresight about which of those organisations tendering might or might not have certain circumstances that might or might not prevent them from meeting certain tender requirements?

**Mr Pearson**—The ACCC definitely would not. In our view, there were a couple of market participants that we thought would be likely to, and they are the ones that we contacted in particular—Informed Sources and Retail\*Facts, and I am not sure whether the other names are public, so I will not mention those. But, no, we would not have known.

**Senator PRATT**—So it is quite usual in a tender process that you have to judge the tenderer according to the criteria in the tender? There are no second chances; if you do not make the standard then you fall away? You have to turn to your other tenderers to meet the tender, don't you?

**Mr Brocklehurst**—Effectively that is the process in terms of the risk management decision you have to make: the quality of the tender, the submission, whether the times can be met, costs and so forth. It is all done as a risk management answer, effectively, in terms of who the

preferred provider would be. In this case, this was a direct source in terms of seeking a group that we believed could deliver the service.

**Senator PRATT**—Since the end of GROCERYchoice, the government has floated an idea of a possible industry run website. What would the benefits to consumers be there, if major supermarkets established their own website with real-time price information? Are you aware of any progress on this? How does that marry up with other potential ways forward—which might be, for example, consumer participation in pricing? We have had some evidence to the committee that talks about future technologies and consumers exchanging that information for themselves.

**Mr Pearson**—I am not aware of—and as far as I am aware, the ACCC has not been involved in—any discussions on that. I do not know of any developments of websites; nobody has actually brought any forward. Whether it is in this industry or the energy industry, with smart meters and things, you can just see the change in technology—in fact, I am not sure we know where technology is going to go. At the moment some of those things are very expensive. If you have got a teenager who uses their mobile phone you can figure that out pretty quickly! We can see all sorts of developments along the line.

I think Mr Cassidy may have mentioned this before but we would probably say that the supermarket industry—and that is across the board, whether it is the independents, even some of the smaller ones, or the large chains like Woolies, Coles, Franklins and so forth—probably puts out more information into the market than just about anyone, and a lot of it is based on local flyers. I do not know how many I get in my letterbox about who has got what sales on, on milk or whatever. We would probably see that sector as being one of the most aggressive in terms of putting information out. I am sure that there are rocket scientists out there who are figuring out things—

**Senator PRATT**—They sure are!

**Mr Pearson**—in terms of the things you are referring to—without a doubt.

**Senator PRATT**—Has the ACCC looked yet at new technology and participatory pricing from consumers?

**Mr Pearson**—No.

**Senator PRATT**—I suggest that you might begin to. Would you have preferred to have implemented a website that included a greater number of supermarkets and more regions? And, if so, what prevented that from happening?

**Mr Pearson**—If you had unlimited funds, and technical capability—and I know that there are a couple of witnesses here who said that the technology is there now—but I am thinking of some of the issues we have now, even in the ACCC with 700 staff trying to work with it. I think the more the merrier, in a sense, and the more direct you can get the better. But I think that it is, in many respects, a little bit disingenuous to suggest that, because I just do not think it is possible currently to do that.

**Senator PRATT**—Yes. In that sense, I suppose, I have just said, ‘I will just go out and have a look at participatory pricing or whatever,’ but it is actually quite complex to put these structures together, isn’t it?

**Mr Pearson**—Yes.

**Senator PRATT**—What were the major challenges in that regard?

**Mr Pearson**—I would have thought that there would be a huge challenge technically, and also a challenge with the individuals. For example, with supermarkets and the online delivery system—I mean, who does that benefit? In a lot of cases, it is the well-educated, reasonably wealthy, middle or upper middle classes who can do it. Those who we often think about in terms of ‘poor old consumers’ are not the ones to benefit. You are trying to provide some sort of benefit to them, and quite often they are the ones who miss out because they do not have access to the technology. That is what I would see as one of the huge challenges. And then there is just the pure technical cost in how you link it in. For example, I have had a fair bit to do with the smart-meter issue and it is a conceptually similar sort of issue.

**Senator PRATT**—As to what the ACCC was doing in getting this started: it was really a getting-off-the-ground project; it would have been quite hard to see exactly where it was going to go at the outset. But is it worth being in the space to have a go and see if it can be of benefit?

**Mr Pearson**—Yes, that is probably true. When you look back at all the work we did, our views probably would have changed as it developed. There were challenges, like the issue that Senator Barnett raised—a key one and quite legitimate—about the 300 square metre stores in Tasmania. There were some of those sorts of issues. Undoubtedly, we would have been faced with them. In fact, that is one of the reasons the government decided it was probably inappropriate for us to keep running it; their enhancements were not something that an agency like ours was particularly well placed to develop or to put in place.

**Senator PRATT**—NARGA expressed a concern that the Choice-run version of the website could, over time, result in price-matching upwards and become anticompetitive. That is, a retailer would not have an incentive to keep prices low if nearby competitors were selling a product at a higher price. What is your view of that? I do not have an opinion on it.

**Mr Pearson**—The very limited anecdotal evidence we saw in the six months it was run was that perhaps that did not occur—but that evidence is really limited and anecdotal. There is no doubt that sometimes you have too much transparency in a market. Everybody knows everybody’s price, and it is easy to price fix. That tends to be more so in cases where a product is a bit more homogenous. It is a bit difficult with 25,000 lines. I would take it with a grain of salt. I can understand what their concern is but I am not sure that that would actually be the result and I am not sure that that is what we are seeing. But it would definitely be something you would have to look at.

**Senator XENOPHON**—The difference in the tender prices between Informed Sources and Retail\*Facts was \$2.7 million. What protocols and systems to assess tenders are in place at the ACCC when they are dealing with competing tenders? Do you take into account the issue of

price? It is such a huge difference that I would have thought you would have wanted to ensure that the Informed Sources tender was worthy of further investigation.

**Mr Pearson**—Senator, you are quite right. We have really well developed processes internally for tenders.

**Senator XENOPHON**—Are those processes reduced to writing?

**Mr Pearson**—A lot of them are based on the Commonwealth government.

**Mr Brocklehurst**—We have quite a detailed—

**Senator XENOPHON**—Could you provide that to the committee?

**Mr Pearson**—Yes, we can. One of the things that I mentioned earlier was the issue of price. In fact we did take price into account. As I recall, there were six bids, five conforming. It went down to four bids. The bids ranged from \$2 million to upwards of \$16 million. Retail\*Facts may have been the highest compared to the two, if we only had the two bid, but they were the second lowest as well. In fact, two other conforming bids were above. Again, I do not know how much we have said publicly about this, but they were both above. As was given in evidence before, we invited Informed Sources back. They spent two hours in our Melbourne office with a number of staff and the general manager from that area, Anthony Wing, who I think was a witness here some time ago. Also, there were some supplementary questions, which I believe you were given. I think you asked for those on notice. So there was a process around it.

**Senator XENOPHON**—Sure. But weren't you satisfied at the outcome of that subsequent supplementary meeting with Informed Sources that they would be able to deliver within the time frame that was requested?

**Mr Pearson**—We had no doubts about their integrity, their process, the fact that they could do work, because they are doing an extremely good job for us now with petrol. The risk was too high for us, because if they could not do it—

**Senator XENOPHON**—So are you saying that the reason that Informed Sources did not get the job, even though it was \$2.7 million cheaper, was based on a belief, notwithstanding that you have said that they have a track record of doing a good job for the commission and, I think, they were also responsible for undertaking the mammoth task of price monitoring after the introduction of the GST?

**Mr Pearson**—They have done a wonderful job for us. In fact, we signed another contract with them either in June last year or June this year. We extended our petrol monitoring for two years. It was purely within that time frame and the fact that we believed that they did not have the staff ready to put on the ground, and also—

**Senator XENOPHON**—Sorry, Mr Pearson. You said that you did not believe they had the staff ready to be on the ground. Did you put to them whether they could have the staff ready?

**Mr Pearson**—Yes, and I think they have actually come and said they could have trained them. They told us they could train staff. They said they would do some training by internet and some by telephone. We had real concerns about that because, if we were going to do it in this time frame, we needed it to be done extremely well. We needed to be certain that the people doing this work could be on the ground. We could not risk blips or having ill trained or undertrained people in the job. That was our concern.

**Senator XENOPHON**—Can I go back a step. The ACCC's relationship with Informed Sources goes back how many years—since the introduction of the GST?

**Mr Pearson**—A fair while.

**Senator XENOPHON**—About a decade?

**Mr Pearson**—Yes.

**Senator XENOPHON**—Have they ever let you down before in terms of their commitments to the ACCC?

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

**Senator XENOPHON**—I suggest to you that the answer is no. Someone's track record would be important to you in terms of assessing a tender and assessing their ability?

**Mr Pearson**—Definitely. We would not have put as much work into assessing them, we would not have invited them back and we would not have asked the supplementary questions if we did not feel that on one level they were technically capable of doing the job. We went to those extra steps because of that. There is a notion that we did not go a bit further. We could have just looked at the initial proposal and said it is going to be a problem because they did not have the people on the ground. We could have gone straight to Retail\*Facts. But we did not—and that was because of our relationship. So that did come to bear and we did look at it.

**Senator XENOPHON**—Although they previously had an unblemished record with the ACCC, you were holding back because you did not think they could deliver. That is effectively what happened, that is the reason why they did not get the tender, but I still do not understand the basis on which you made that decision.

**Mr Pearson**—We just did not believe they would be able to get sufficient well-trained staff on the ground by the August date. That was our concern. We had to weigh up the fact that we had one potential operator who can confirm they had those staff and another one that said they could train the staff in time. We did not believe that time frame would be sufficient.

**Senator XENOPHON**—I think this goes to the nub of it: if a successful tenderer does not deliver the goods for the ACCC, there would be contractual consequences. There would be a breach of contract and you could potentially pursue damages against an entity that does not deliver the goods. Also, that would presumably put a big black mark against them in terms of any further work with the ACCC.

**Mr Pearson**—Yes, without a doubt.

**Senator XENOPHON**—Here is an organisation that has a long track record of providing massive surveys, not just on fuel but also on groceries, for the ACCC in the past. They have never let the ACCC down before. Yet you have a situation where you have the right to have a go at them for breach of contract and get damages—and, clearly, Informed Sources is a company of means—and they would miss out on any future tenders if they let you down. But ultimately it is still based on a belief.

**Mr Pearson**—They would have been doing their risk analysis, and we do our risk analysis. Their risk would have taken exactly the form you have said. I assume they would have looked at the potential of it blowing up in their face. On the other hand we are looking at it not just in terms of being able to go back on a contractual basis by 20 August; by then, we have gone past a launch date that is government policy. It was not something we could just float with and let it run for another six weeks while they sorted out their problems.

**Senator XENOPHON**—Are you saying they had problems with their bid, or that they may have had problems?

**Mr Pearson**—They did not have the staff ready at the time. That was a big issue for us. They had to train those staff. According to the information we were provided, some of those staff would have been trained on the internet and by telephone, not face to face. That caused a huge issue for us. We had to be confident that whoever took this work up was able to have those people on the ground doing that survey work. We were not confident that that would occur. I guess that is the risk judgement we have to make, and we make that fairly regularly.

**Senator XENOPHON**—And the risk judgment is something that is in the protocols? That is something that is a factor? How do you quantify risk? What benchmarks are there in terms of quantifying the risk, which was clearly a key factor in not giving the tender to Informed Sources, despite the fact that it was \$2.7 million cheaper than Retail\*Facts? Do you take into account, in quantifying risk, the track record and the relationship you have had with a tenderer?

**Mr Pearson**—Yes. There is no doubt that that is important. When we get the tenders like that, we cannot sit there and just say, ‘Okay, we have all these doubts, so we’ll run with somebody’s track record.’ If in six weeks or two months time they were not able to provide that work, that would be end of my job. The thing is that you sit there and you have to make those judgments in terms of the information in front of you. You can quantify some risks. Most risks are more a qualitative judgment. I would have to say that between my colleagues there is a fair bit of experience within the ACCC in making those calls in regard to contracts, not just in this area. We have all sorts of contracts across the board, so I think we have a fairly good track record in balancing those sorts of things.

**Senator XENOPHON**—In terms of balancing those risks—if I may, Chair; I do not know how much time we have—

**CHAIR**—We are pretty well out of time.



**Senator XENOPHON**—I will be very quick. Thank you, Chair. Going to Retail\*Facts, risk assessment is clearly a key issue which you quite properly need to consider. There is a debate, obviously, about the weight that you put on various risk factors. But, in respect of Retail\*Facts and the fact that they were actually undertaking work for Woolworths, what risk assessment took place in relation to that in considering the tender, and what sort of assessment was there to ensure that there were safeguards in place so that, for instance, those people on the ground who were collecting retail information for Woolworths were not also collecting it for GROCERYchoice, given the potential for contamination, if you like, of the information?

**Mr Pearson**—I guess in some respects the basic confidentiality arrangements within the contract and their commitment to auditing, their commitment to the staff—I think there were a few staff they had that crossed over between Woolworths and there, but they were in very isolated regional areas. I would have to say that the same issue would have come up with Informed Sources and possibly with the others. Informed Sources were also doing work for others, and we have exactly the same processes with them in terms of their confidentiality agreements. You can go back to what they do with the petrol now. They also do work for the four petrol majors.

We have confidentiality agreements in place, and they have protocols in terms of their ring fencing, Chinese walls and so forth. We had processes in place for when that basket went out, for how long they would have it for; for how long the individuals who were doing the surveys would have that survey information for, to try and limit the period of time that it could be floating around. I think we put in place the same types of demands that you put on any company. It is a similar issue in terms of integrity. If it ever came out that Retail\*Facts were in fact sharing information—and with that sort of information that is pretty hard to hide things like that—

**Senator XENOPHON**—Can I just put some questions on notice, Chair? I am just conscious of the time.

**CHAIR**—By all means.

**Senator XENOPHON**—What processes were there in place to ensure that there was not any transfer of information from one part of Retail\*Facts to another in terms of their work for Woolworths? Secondly, what are the standard protocols in place for the ACCC relating to that, and what mechanisms were there to enforce that? Finally, can you assure the committee that, given that Informed Sources has been so outspoken in relation to this, that will not in any way harm them in any future tenders with respect to the ACCC?

**Mr Pearson**—I can answer the last one without taking it on notice and say definitely not. We already have given them a two-year contract following this. As I say, they are a professional agency.

**Senator XENOPHON**—I appreciate that. Thank you, Mr Pearson.

**Mr Brocklehurst**—Also, Senator, you will find that we have sent back some answers today for the committee which came from the last hearing. I think you will find they cover some of the process questions as well.

**Senator XENOPHON**—I appreciate that. Thank you very much.

**CHAIR**—We thank the ACCC for appearing.

[5.45 pm]

**HADLER, Mr Robert, General Manager, Corporate Affairs, Coles Group**

**MARA, Mr Chris, Adviser, Government Affairs, Coles Group**

**CHAIR**—We welcome you here.

**Senator BARNETT**—Mr Hadler, you probably heard the previous questions to the ACCC, and I want to follow on from Senator Xenophon's questions regarding risk assessment. Did Coles feel concerned that Retail\*Facts was collecting data for the ACCC while at the same time collecting data for Woolworths? If not, why not?

**Mr Hadler**—Just for the record, I am the general manager of corporate affairs for Coles supermarkets. I have been in this position since February this year. I have responsibility for government relations with Coles supermarkets, and I have been responsible for the discussions direct with Choice, with the government and with ANRA on the proposal for GROCERYchoice in that time.

I have to say that that was not a material issue for Coles. We were aware that there were various contractual arrangements, but we were comfortable with those arrangements as they were separate to us.

**Senator BARNETT**—When you say you were 'aware of the contractual arrangements', what were you aware of at the time?

**Mr Hadler**—I will clarify that. We were aware that Choice had a number of consultants and had contractual arrangements with those consultants. We were not aware of what arrangements our competitors may have had in terms of their relationships with those consultants.

**Senator BARNETT**—Were you aware that Woolworths had Retail\*Facts collecting price data for it and Choice had Retail\*Facts collecting price data either the same as or similar to that for Woolworths?

**Mr Hadler**—I was not aware of the relationship between Retail\*Facts and Woolworths and, as they are a competitor, I think that is an issue better addressed to Woolworths.

**Senator BARNETT**—We will certainly be putting those questions to Woolworths. How would you respond to that situation if you were in the same position?

**Mr Hadler**—I would rather not answer a hypothetical question. I just do not have enough information about their position to form an accurate judgment.

**Senator BARNETT**—Mr Hadler, if the ACCC had an entity—let us call it A—collecting price data, the same price data on the same products and services as a major supermarket, would that not give rise to considerable concern to you? In any event, what protocols, procedures,

confidentiality agreements and probity arrangements would you put in place to ensure that there was no conflict of interest and things were done as appropriate?

**Mr Hadler**—We would certainly seek to ensure that any contractual arrangements we had with a consultant that might be doing work for another party involved different people in that consultancy and that there were adequate Chinese walls and confidentiality agreements in place to ensure the integrity of any commercially sensitive data that was provided.

**Senator BARNETT**—Would it be appropriate for the same data collectors, the same people, to collect the same data?

**Mr Hadler**—That would be unusual.

**Senator BARNETT**—It would be unusual. Would it be appropriate?

**Mr Hadler**—It would depend on the nature of the contractual arrangement, and Coles is not privy to those arrangements. I am not trying to be evasive; I just do not think we are in a position to be able to comment directly on that.

**Senator BARNETT**—Do you have a company collecting the price data? Can you describe the type of price data that you collect and the nature of that arrangement?

**Mr Hadler**—We have partial price data centrally on a computer. We monitor that data regularly. We do not monitor real-time price data across all of our supermarkets. Supermarket managers have the flexibility to price match for local competition, and therefore prices can vary daily across our supermarket network. So we do not have that data.

**Senator BARNETT**—Do you have an outside consultant collecting data for you, like Retail\*Facts?

**Mr Hadler**—Not that I am aware of.

**Senator BARNETT**—I will move to another area. Choice has argued that the entry of ANRA into negotiations on your behalf undermined the work of GROCERYchoice, as the supermarkets were able to step away from the negotiating table. How do you respond to Choice's claim that ANRA's ability to block progress on this initiative was anticompetitive?

**Mr Hadler**—I think that is completely false. The motivation for involving ANRA towards the end of the discussions between Choice and the supermarkets was to expedite and facilitate discussions around very complex and difficult issues where we could get the insights of other members about how best to resolve the issues. It is extremely disingenuous to say that that was anticompetitive. In fact, the intention was to be cooperative and to try and meet a very looming deadline. We had no confidence in Choice being able to meet its stated obligations.

**Senator BARNETT**—To what extent does Coles have a national pricing policy? Can you describe your pricing policy? To what extent does an individual store manager have some discretion to vary prices?

**Mr Hadler**—As I have discussed just a minute ago, we have a policy in which individual store managers are able to price match with local competition to try to provide the best prices possible for our customers. That is our intent.

**Senator BARNETT**—But to what extent do you have a national pricing policy?

**Mr Hadler**—I was just conferring with my colleague, Chris Mara. We do not have a national pricing policy per se.

**Senator BARNETT**—Can you describe your pricing policy?

**Mr Hadler**—As I said, the pricing policy is aimed at providing the lowest possible prices to our customers every day.

**Senator PRATT**—Choice has given us their version of this. From the point of view of Coles, why were there irreconcilable differences between Choice and major retailers?

**Mr Hadler**—We believe that the Choice proposal, as it unfolded, was extremely ambitious. It took a long time for the full details of the Choice proposal to actually be delivered in hard, cold fact to retailers. In fact, it was not until late May that we had a memorandum of understanding, and I think it was in June that we received the full product list on which Choice wanted retailers to provide real-time data weekly. We were operating in a vacuum for a long period of time. We sought legal certainty from Choice about the ownership and use of the data. They provided some assurance on that, but it did not provide us with the legal certainty and clarity we were seeking and we could not technically provide in real time the information they were seeking from us. So there were two fundamental hurdles—one technical and one legal.

**Senator PRATT**—At that time was there any choice other than to withdraw the project?

**Mr Hadler**—We were prepared to continue looking at options in a cooperative manner, but obviously the government made an independent decision to withdraw support for the proposal.

**Senator PRATT**—What work has Coles done on future pricing trends in terms of how consumers interact with pricing information? Have you done any work on participatory pricing trends?

**Mr Hadler**—We do a lot of research on customer behaviour. That is obviously confidential and competitively sensitive to the company. So we would be reluctant to release that data but it is substantial in nature and quite extensive.

**Senator PRATT**—Does that include price comparisons on mobile phones and internet now that consumers are starting to use more of that?

**Mr Hadler**—We look at a range of delivery mechanisms for customers, including internet and mobile based technologies.

**Senator HURLEY**—You said the Choice proposal was delivered to you in late May with the full product list that you were expected to provide. So Choice had not contacted you before they put in their proposal to the government with any discussion about how it would operate?

**Mr Hadler**—That is correct.

**Mr Mara**—There were preliminary discussions with Choice earlier in the year.

**Mr Hadler**—The senator is talking about prior to the tender with the government last year. As far as we are aware, Coles certainly was not consulted by Choice before it submitted its tender about the feasibility of conducting the proposal.

**Senator HURLEY**—Had Choice had any other discussions, in the course of going about their activities, which would perhaps have led them to think that Coles could technically provide the sort of information they were seeking?

**Mr Hadler**—Choice asked us a lot of questions about our willingness to participate, and we indicated that we would have a constructive approach to the discussions. But we always expressed the technical and legal reservations that I have talked to you about today. We continued to press Choice for further details so that we could resolve the technical and legal issues. Those details were not forthcoming, as I said, until quite late in the piece.

**Senator HURLEY**—But in your view those issues were never fully resolved—and then the government decided not to proceed with the project?

**Mr Hadler**—That is correct.

**Senator HURLEY**—The reason the Labor Party came up with the idea of GROCERYchoice, I suppose, was that there is a perception that there is a lack of competition in the market. You referred earlier to individual stores being able to price-match with local competition. I suppose there is this view that, if there is not local competition around, the prices are relatively high. This is something the committee has touched on previously—this idea of geographic pricing. The policy that the Labor Party took to the election, I suppose, was an attempt to inform people about prices in the local area so they could choose, within a reasonable range, which grocery store they might go to. Do you believe that this is a serious issue and that there are geographic pockets where there is not enough competition between supermarkets?

**Mr Hadler**—We think that the issue is overstated in the general media—debate about the issue. On one hand, the debate is very narrowly focused around supermarket-to-supermarket competition. In fact there are approximately 30,000 other independent retailers operating in the Australian market in the food and grocery sector. It is actually quite a vibrant and competitive market at a local level. Therefore we think the perception about geographic discrimination is overstated. Having said that, we were quite comfortable with the government's original proposal to do price surveys. We have nothing to hide. We facilitated the survey approach by the consultants to the ACCC on the issue. Thirdly, as the ACCC said earlier today, we provide quite a lot of detail to customers, through our catalogues and our media advertising, about products and pricing.

**Senator HURLEY**—Thank you, Mr Hadler.

**Senator JOYCE**—When the conversation moved over to geographic price discrimination, I heard you use the word ‘overstated’. Do you mean ‘not present’ or ‘overstated’? Do you believe there are forms of geographic price discrimination or do you think it just does not exist?

**Mr Hadler**—I do not think it exists.

**Senator JOYCE**—It does not exist?

**Mr Hadler**—I do not think so.

**Senator JOYCE**—Are you certain about that?

**Mr Hadler**—That would be an issue for the ACCC to review and take action over if it did exist.

**Senator JOYCE**—You are on the record as saying it does not exist; I think that is pretty interesting.

**CHAIR**—Do you have any other comments, Senator Joyce?

**Senator JOYCE**—In relation to the GROCERYchoice website, Coles has the capacity to have access to goods online. No doubt you have immediate stocktakes and know when things are available. We have had evidence from Choice that it was basically made nigh impossible for them, when they took over the GROCERYchoice site, to have it operational. What are your views on that?

**Mr Hadler**—I am not sure what difficulties Choice encountered in the transition between the ACCC and Choice. We were not party to those discussions, so I do not want to speculate about the reasons for that. We were only party to the discussions about the next version that Choice was proposing to apply from 1 July.

**Senator JOYCE**—Did you have a problem with that version?

**Mr Hadler**—Significant problems, as I was explaining to Senator Hurley and Senator Pratt before. Our fundamental issues were around the technical collection of the data and the legal certainty and clarity around the use and ownership of the data.

**Senator JOYCE**—Fair enough.

**CHAIR**—That is all. Thank you very much.

**Mr Hadler**—Thank you, Chair and senators.

[6.05 pm]

**HALL, Mr Andrew John, Director, Corporate and Public Affairs, Woolworths Ltd**

**SAMIA, Ms Nathalie Shoshana, Group Manager, Government Relations, Woolworths Ltd**

**Senator JOYCE**—For the record I would like to state that Mr Hall and I had a strong working relationship as he was a former director of the National Party. For the price of 30 pieces of silver, he decided to move on.

**Mr Hall**—I went back to my former employer.

**CHAIR**—Everybody has their price.

**Senator JOYCE**—Congratulations, Mr Hall. Choice made the assertion that you and Coles were impossible people to deal with. Sorry, ‘impossible’ is too strong a word, but that you were making things very difficult in trying to present an effective website. What are your views on that?

**Mr Hall**—If we go to the nub of the issue we had when Choice took over management of the website, Woolworths right up front had three key issues where we had problems with Choice. Choice came and saw us in December. We did not have any engagement with them before that. The model they presented to the government, we felt, once we heard verbally from them in December, was fraught with significant problems. It comes down to this: the Choice model assumes that Woolworths—and I cannot comment for any other retailer—has a central database on a computer that sits in our head office and can tell us exactly the price of a good as it goes through the register and sells in real time. We had to explain to Choice in December that we do not have that. We have about six systems that control our pricing in our business and they do not necessarily talk to one another.

The way our pricing works is that we set a standard shelf price from our head office that goes out to stores and then over that week that price can change. We have around 30 per cent of our lines in our stores change price during the course of the week. When we look at our categories we know exactly how many units we sold at the end of the week and we know how much money was collected. We can divide that by the two and then come up with a figure that gives us the average sell price. We have that information. The problem for Choice, which is an organisation that advocates representing correct prices to consumers, is that the price would be an average price, not necessarily the accurate price because if you have 10 cans of baked beans and you set a price on them of \$1 each, they may not all sell for \$1. Some may sell for 90c, some may sell for 80c or we may have to clear them out.

Our problem right up front with Choice was that type of data that they would be extracting from us would not be accurate. It went deeper than that when we started going through the process with Choice and we realised they were applying pretty poor project management skills to something that was enormously large. At the outset they asked us for 300 items and they then moved that to 1,500. They then said they wanted 7,500 items across our 800 stores and they



wanted it three times a week. To do that we would have to build a whole new IT system to create those data feeds. We estimated that it would cost about half a million dollars if we outsourced that work to India. On top of that we would then probably have the ongoing headcount and capital costs of maintaining it. Once you get to the point of doing 15,000 price checks per store in a week, the error rate would start increasing and we would be significantly concerned about price representations that the website would then be giving consumers.

That is where we came to our final point with Choice. They were not prepared to accept any of the responsibility for the prices they published. They just wanted to be the portal. The ACCC, we know, would not accept that. Our trade practices lawyers would not accept that, and we never got any satisfactory response from them about the sort of disclaimers we would have to put on the website to tell consumers that it was not necessarily accurate information.

**Senator JOYCE**—You would understand that it would appear to be not in your interests for that site to be operational by reason that clear and transparent, on-time price checks would increase the capacity of competition in the market and that a better, transparent model of being able to compare like with like would be an advantage to the customer.

**Mr Hall**—Do you know what? We would love anyone to check our prices any day of the week. We would love anyone to come in and talk about Woolworths's prices. As a company that puts out eight million catalogues a week and publishes every single catalogue that you can get online, we spend millions of dollars on television, radio to talk about our prices. I am happy to sit here and talk to you about prices all day long. Our concern with Choice was not that they would be publishing our prices. It is just that the feed they were looking for does not exist in the IT form and it was going to cost millions of dollars to get that up and running because what they were asking for was real-time prices. You could get the standard shelf price; you could get the discounted specials that are in the catalogues. We are happy to provide those. In fact, you can buy an IT reader today and build one that pulls it down off our website the minute we put up it at 3 am on a Sunday morning and publish it. There are no problems with that.

The problem with food retailing, and that is the nature of this business, is that if you have apples, they start to go off. You have to clear them out. If you have cans that are slightly damaged, a shopper will not pick them up and you have to clear them out. If it is really hot, there is a run on soft drinks. If it is really cold and you have bought a heap of soft drink and you cannot sell it, you have to mark it down. Food retailing changes every hour, every day. I think that was probably the problem that we had with Choice. They were trying to capture that information and nowhere in the world have they been able to build that sort of ability to capture that information.

**Senator JOYCE**—Prior to that you said it was going to cost \$500,000 to build the system to link your six systems or whatever together to give online prices. But then you said later on it was going to cost millions of dollars. Is it going to cost \$500,000 or millions of dollars?

**Mr Hall**—If we outsourced it to India it would cost about \$500,000. That was the initial quote. What then happened was that as the project progressed Choice started adding more and more complication to it. They started asking us for people who could provide data feeds on the type of trolleys that each store had, so across 800 stores we were required to tell Choice what types of trolleys we had. They asked us to identify stores and their public transport options. They

asked us to identify whether we had on-grade car parking. They then said as a measure of course they were going have consumers do their own surveys of the prices published and they would then come back to us and ask us to provide explanations as to any discrepancies between what was published and what they saw the website. So we then ended up with a headcount of at least half a dozen people who were going to have to support the project.

**Senator JOYCE**—You then also said it was going to cost millions of dollars to do the advertising. If it is costing millions of dollars to advertise with 8 million publications a week, surely you would be saving money with an online, transparent costing system?

**Mr Hall**—The problem is we would not stop sending out catalogues. You would have to be nuts. It would be like, if you were a politician suddenly relying on somebody else like news.com.au to represent your political views—

**Senator JOYCE**—They generally do.

**Mr Hall**—and not actually doing the publication of your own brochures yourself. We are going to keep doing that. It comes back to the business case which was part of the conversation with Choice. I have to present a business case to the business to participate with Choice on this, and with the expenditure of millions of dollars and only a handful of people using a website with a bunch of disclaimers on it and which once they have used it once they get so confused they do not want to use it again, it does not stack up. They are the fundamental problems that we had.

**Senator JOYCE**—Do you believe the consumer is at a disadvantage—and you know I am going to say this—by reason of the capacity for market centralisation in certain areas to exclude competition from the marketplace?

**Mr Hall**—Competition always serves the consumer very well, and Woolworths is an absolute supporter of competition.

**Senator JOYCE**—How big a market share does someone get before the competition is no longer there?

**Mr Hall**—It is a hypothetical question. If you do not have competition, obviously then you are a single operator, but I know that in our business we operate in dozens of different markets.

**Senator JOYCE**—Are you going to follow the Melbourne Cup next week?

**Mr Hall**—I am not a betting person, and I have actually never picked a winner on the cup, Senator Joyce, so do not ask me for a tip.

**Senator JOYCE**—How many horses are going to be in the race?

**Mr Hall**—You know, as a young journalist I had to cover horseracing in Grafton, and I was so good at it that I ended up in another job later on, so I do not know.

**Senator JOYCE**—Would there be more than two?

**Mr Hall**—There are 13, but what is the point of your question?

**Senator JOYCE**—The point of my question is that all of this is ipso facto to try and bring about competition. The reason we have got to this point is that the centralisation of the marketplace has led, I believe, to the fact that competition is starting to be removed by the capacity of people with an excessive market share to exploit the consumer. People use the word ‘competition’. They throw the word ‘competition’ around. Any competition talks about a multiplicity of players, and obviously you do not have a multiplicity of players if predominantly you only have two. This is where we are heading to in a lot of areas. If you had an NRL competition with two teams winning 80 per cent of the games, that would be a farce not a competition. If we had the Melbourne Cup with two horses and then a donkey, that would not be the Melbourne Cup; that would be a farce. Do you think there is any issue of any extent of the continual march forward of market share of the major players that will get us to a point where they have too much market share? Is it possible to have too much market share?

**Mr Hall**—I guess that is a matter for the ACCC to determine, and I guess they do, every day of the week. They have cases brought before them. But, to bring it back to the grocery industry, if that is what you are asking about, I am not sure if you saw but last week we released our sales results and our major competitor released their sales results. They talked about the fact that sales had slowed at Woolworths. They had picked up at Coles. I noticed two weeks ago that the German retailer Aldi is growing at twice the rate of Woolworths in Australia. I noticed that Costco, which is the eighth largest retailer in the world but employs only half the number of people that Woolworths employs, has just announced that it is going to inject another \$43 million into the Australian marketplace. I noticed that the independent banner groups have grown at their fastest rate in the last couple of years, faster than they have over the last 20 years—and that came out last year.

The grocery marketplace is shifting sands. It is highly competitive in every market that we operate in. Whenever we open a store, there are four or five independent grocers, independent butchers, fruit and vegetable shops and chicken shops that are parked out the front of our store. We could not operate a successful supermarket without that competition because Australian consumers push for choice. They love the choice, and that keeps us on our toes. These global entrants that are coming into this country keep us on our toes, and I am sure that some of our major competitors like Coles and Franklins keep us on our toes.

**Senator JOYCE**—I have no issue with the fact that overseas competitors are coming in; I just find it sad that it is only overseas competitors who have the capacity to come in, that our capacity to grow a retailer within the supermarkets that you work in is pretty well not there. Unless they come in with a capacity for major market share that is somehow comparable to you, the Australian marketplace has not provided the mechanism for the growth of a competitor. For your average anchor tenancy in a supermarket, what would be the price per square metre that you would have to pay?

**Mr Hall**—I would have to take that on notice. It varies depending on whether the supermarket is in Dalby or whether it is in Bondi Junction.

**Senator JOYCE**—Okay, let us talk about metropolitan Australia. Can you give a range of the prices per square metre?

**Mr Hall**—I would have to take that on notice, sorry. I do not manage property at Woolworths, so I am afraid I cannot give you that answer.

**Senator JOYCE**—Do you reckon the competitors that you say are parked out the front door would be on three or four times your price per square metre, or do you think they would be on more?

**Mr Hall**—Again, I am not familiar with the rent we pay. I am sure it varies per—

**Senator HURLEY**—Senator, we are straying a little far from the GROCERYchoice website.

**CHAIR**—I think we do have to focus on the issue before us, and your time is just about up, Senator Joyce.

**Senator JOYCE**—That is fair enough. My lackadaisical approach to this is that basically the GROCERYchoice website is dead, so I am trying to work out why we are having an inquiry into it.

**Mr Hall**—I am happy to answer questions. I have a dinner to go to, though.

**CHAIR**—Have you further questions, Senator Joyce?

**Senator JOYCE**—Do you have anything to add to that, Mrs Samia?

**Mr Hall**—She is not married yet.

**Ms Samia**—No, I do not. I am happy to answer any other questions, though, if there are any questions.

**Senator PRATT**—I want to ask quickly about future trends in pricing and what consumers are reacting to. I asked Coles the same question. Clearly, more and more consumers are seeking to get information online and Woolworths supplies a lot of information on the television and in the letterbox. Consumers are now looking for information online, but they are also looking to use their mobile phones and other price participation measures. What work if any are you doing in this area?

**Mr Hall**—We are doing a lot, and in a short period of time you will be delighted with what we launch, but I am afraid I am sitting in a room full of competitors and others are probably watching this online, so if you do not mind—

**Senator PRATT**—No, that is fine. I appreciate that. I suppose I am just trying to see where the retailers are up to, compared to where the ACCC's thinking might be. Maybe they have some catching up to do.

**Mr Hall**—I think if you look around the world the trend is to put more and more online and to make it more and more accessible, within the capacity to make sure that the information is correct—that the products are in stock and they are available and all the other things you need to take into consideration—the same way you would when you are putting an ad in a newspaper. If

I look around the world, I see companies like Tesco, and Sobeys and Loblaw in Canada. A number of them are creating quite innovative websites that really allow you to dig down and understand where they sit on that value spectrum. At the end of the day, I think what you will see in the Australian marketplace is more retailers pushing online. It will create a second market of aggregators that will go in, pull that information down and tell you what I think the government was trying to do in the first place with the GROCERYchoice website.

**Senator PRATT**—So that information will be harvested from the internet. People will commit to creating websites that will do that?

**Mr Hall**—Yes.

**Senator BARNETT**—I want to ask about the issues of risk assessments. To start with, could you confirm that Retail\*Facts provide data collection for Woolworths, and can you outline and describe the nature and the terms and conditions of the contract and arrangements with Retail\*Facts?

**Mr Hall**—Retail\*Facts is one of the many companies that do work for us. They do price checks for us. In terms of the contract, that is obviously a commercial-in-confidence contract, but to put it in perspective, from what I heard today, the size of the contract they have with the ACCC was considerably larger than the one that they have with us.

**Senator BARNETT**—Without going into confidential matters, obviously, can you describe the nature and extent of it? What type of data and price collection products and services do they collect for you? Can you describe that? Then I would like you to describe the arrangements that you have in place to ensure confidentiality and the avoidance of conflicts of interest.

**Mr Hall**—What Retail\*Facts do for Woolworths, as I understand it, is they provide a backup mechanism to our stores that do price checking with their local competition. So they have a range of stores and a range of different baskets that our data collection guys ask them to go out and do price checking on. They also do other work for us, like compliance checking to make sure that stores are putting the right tickets on the right products with the right specials on the right day of the week and that sort of thing.

To go to the nub of your question, there are only a few companies in Australia that specialise in that sort of work, obviously, and there are only a few who do it very well. You want to get it right, because if they give you the wrong price and you set your price wrong then you are out in the marketplace and your customer misses out. I could only assume that they have in place the right sort of framework to be able to service multiple clients with the right confidentiality. We definitely demand it of them when they are doing work for us. If any supplier is doing work for us and a major competitor we have got all the right contractual arrangements in place, obviously.

**Senator BARNETT**—Do you see that gives rise to considerable questions regarding, firstly, confidentiality and secondly, conflict of interest concerns, whereby the ACCC have a contract with Retail\*Facts to collect the data, while at the same time Woolworths has a contract to collect either the same or similar data?

**Mr Hall**—I would hope that in the same way they would treat our contract with total confidentiality and not breach any of that, it must be the case that they do that with any other client they work with. We were not aware they were doing work for the ACCC—not that I am aware of. That is a matter where the ACCC went into the marketplace and sought tenders, as I understand it.

**Senator BARNETT**—You were not aware of that?

**Mr Hall**—No we were not.

**Senator BARNETT**—When you subsequently became aware of it, through the media or other sources, what did you do?

**Mr Hall**—I guess it probably did not surprise us that they were one of the companies doing the work, since there are only a couple of companies in Australia that do that sort of work. Informed Sources is one of them, and has also done work for us. You then move on to the accounting firms, I think: PricewaterhouseCoopers or KPMG, those types of auditing forms that also have the capacity and who also do work for us in this regard from time to time as well.

**Senator BARNETT**—Would you expect that they would have a separate field force?

**Mr Hall**—I am not sure how they would set up. You would need to ask them that question. In the force that works for us we would look for the competencies to do the job right and to maintain the confidentiality of the contract. It sounds like straightforward work, but we know from our experience that they can get it wrong. Literally, if they have got someone who is poorly trained who walks into the store and looks at the shelf above rather than below the ticket and records a price, it could set off a chain of events that could cost us millions when we set the price wrong on a product.

**Senator BARNETT**—I appreciate that, but I am really asking the question as to whether you would find it unusual. To quote Mr Hadler from Coles, he said it was unusual—and I do not want to misrepresent his position; you can check the *Hansard*—to have the same company or the same field force collecting the same data for a major retailer while, at the same time, the ACCC was contracting the same company to collect the same data.

**Mr Hall**—I do not know whether I would say it is unusual. Again, I would probably just put it in the context that the value of our contract with them is far less than the value of what I heard the ACCC was spending on them. Given the size of the price monitoring that I know they would have to have undertaken already for GROCERYchoice 1, one would assume that they were using a workforce far in excess of the people that they were using for us.

**Senator BARNETT**—I will read to you from a letter, which has been tabled as a public document, from Informed Sources to Rod Middleton of ACCC dated 3 June 2008. Under ‘staff recruitment’ it says:

As outlined in our proposal and in our follow up discussions, we have decided to operate a completely separate field force for this ACCC grocery programme of collections. This ensures that there are minimal confidentiality issues and absolutely no conflict of interest issues.

And it goes on. I am concerned and I think that others are concerned that that tender was not accepted but a company providing data to Woolworths was accepted by the ACCC. We do not know and we will find out shortly when Retail\*Facts appears where there was a completely separate field force and what measures were put in place to ensure confidentiality and to ensure that conflict of issues were minimised or negated altogether. Can you see that those issues are important?

**Mr Hall**—I know that if had a company or a supplier doing work for us that we would expect them to meet all of their contractual obligations. Upfront, a contractual obligation for us would be complete confidentiality of the work that they do for us. Whether it is the ACCC or a competitor, they are doing the work for us, no-one else, so we would not expect them to share it with anybody else. That is all I can really say. It is a matter between the ACCC and Retail\*Facts as to how they ran that tender and what they did.

**Senator BARNETT**—Moving on, your CEO, Mr Luscombe stated at the ACCC grocery inquiry that Woolworths was moving to uniform pricing across its stores. If Woolworths eventually moves to national pricing on packaged groceries, what would be the objection to providing data to the GROCERYchoice website?

**Mr Hall**—We already have national pricing on about 1,500 lines and we are working constantly to increase that number. The history of Woolies is that we had a federated system of supermarkets. Every state had its own buying office and had its own pricing structure. Within those states, there were various regions. I understand that there used to be around about 89 price regions in Australia. We have consolidated that down to roughly following state boundaries. On things like private label and the like, we have moved as much as we can to try to get national pricing. But it comes back to this issue about the food retail market. You could set a national price for baked beans of \$2 but once you put that can of baked beans in every local market there are a lot of factors that affect the price. A store manager has discretion to change that price down to be able to meet competition. There are a whole range of things. You have overstocks and different things that happen during the course of the week. Food retailing is a complicated science. When you get into the fresh area, it is even harder. No retailer has national pricing in this country on fresh, because we have at least seven markets operating—the capital cities—and we have big regional markets in places like Townsville. A glut of bananas in Townsville will depress the price in Townsville, but the price may still be totally different down in Melbourne. That is the nature of that market.

**Senator BARNETT**—Thanks for that. Choice has argued that the entry of ANRA into the negotiations on your behalf and on the behalf of Coles and others undermines the work of the GROCERYchoice website because the supermarkets were able to step away from the negotiating table. How do you respond to Choice's claims that that was anticompetitive and antidemocratic?

**Mr Hall**—It is silly. They were already talking to other bodies, like NARGA, who walked away from the table in January. But they never chose to criticise that. From Woolworths' perspective, we never ceased discussions with Choice. There was a point at which they were not answering any of these fundamental questions about liability and the accuracy of the prices. They were not providing us with the sort of data that we needed to be able to properly scope out the systems. That is when the need to amplify our voice emerged and ANRA really facilitated that at roundtable discussions. That is the role of an industry body. It was not Woolworths alone

in those meetings. Coles and Franklins were there as well. As I read the minutes, as wider industry forums were happening other retailers were raising the same concerns. From our perspective, we never stopped talking to Choice. It is just that it was a one-way discussion. We would ask them questions and never get an answer back.

**Senator BARNETT**—A follow-up question relates to the government's proposal of an industry website. Have you had discussions with the government in recent times regarding the establishment of an industry website? If so, can you tell us about those discussions?

**Mr Hall**—The government is taking a keen interest in where retailers are going with online. As I mentioned to Senator Pratt, we are doing a lot of work on it. I hope you will all be really thrilled with the product that Woolworths will be able to deliver to the market fairly soon. My view and the Woolworths view are that, if you look around the world, the advances that are happening at the moment in the online space are happening fairly quickly. We are starting to learn that. We are starting to look at the technology we can get and to get those brought into the Australian marketplace. I think you will see that online participation area slowly increase.

**Senator BARNETT**—With that Woolworths initiative, has the government approached Woolworths or other major retailers, to your knowledge, to establish an industry based website?

**Mr Hall**—They have been having those discussions with ANRA, as I understand it. As a member of ANRA we have been participating in those discussions at our regular ANRA meetings. But of course it is a point of competitive advantage that we are not going to talk about what we are doing as a company in this space until we are ready to release it to our customers.

**Senator JOYCE**—Who makes up ANRA?

**Mr Hall**—It is 20 of Australia's largest retailers.

**Senator JOYCE**—In the grocery sector, who are they?

**Mr Hall**—You have to have a turnover of more than \$100 million, so it is Coles, Franklins, Woolworths, DJs, Harvey Norman—

**Senator JOYCE**—But Coles, Franklins and Woolworths are the only food ones.

**Mr Hall**—Correct.

**Senator JOYCE**—Is that because they are the only ones with a turnover of more than \$100 million?

**Mr Hall**—That is the requirement, off the top of my head.

**CHAIR**—We have a list of ANRA members, Senator Joyce, which I am sure the secretariat can provide you with again.

**Senator HURLEY**—I am interested in this idea of the Choice requirement going up to 1,500 items and you not being consulted about or given any rationale for that. How did that occur?



**Mr Hall**—That is right. At the initial discussions there was discussion of 300, and then it became 1,500 in about February. We then quizzed them about how they were going to choose those lines, because we carry 30,000. You could easily pick some lines that are rather obscure. To be honest, some of the suggestions were obscure. I remember seeing things like budgerigar food and the like and thinking to myself, 'I'm not sure what the criteria are to get onto the list.' They said that they were getting consultations from an external party called Freshlogic. There was a report that they allegedly had done by a company called Freshlogic that was advising them on top-selling lines. We are not sure we would use Freshlogic to give us at advice, because there are other companies that do that work. We were never provided with that report. By about May, we were being told that number had increased to 7,500 lines, which, extrapolated by being requested three times a week—

**Senator HURLEY**—You were saying that you have something like 1,500 nationally priced items.

**Mr Hall**—Yes. They are generally in things like private labels: Home Brand, generic type products—tissues, for example.

**Senator HURLEY**—I heard one argument that, because you produce brochures like this and the prices are therefore fixed, you could have provided that information to Choice.

**Mr Hall**—We can do that. Choice could buy an internet reader tomorrow and download all that information. That was never the point of it. We put our brochures out over Sunday night and Monday morning, and they are basically out of date by Monday afternoon. On Monday the store manager in my area in Sydney will take the catalogue and have all his specials up. He will then go and price-check it against his major competition outside the front door and adjust the prices accordingly.

**Senator HURLEY**—So these brochure prices are only fixed from going upwards and can go down from the advertised price.

**Mr Hall**—They cannot go up, but they can go down.

**Senator HURLEY**—Given those kinds of figures—7½ thousand, three times a week—clearly the smaller supermarkets as well as Franklins and you, from what you tell me, were going to have trouble with the IT resources to produce that information. Did Choice explain how they were going to deal with that, or was it going to come down to just requiring Coles and Woolworths to provide that data?

**Mr Hall**—It was upfront. At the industry forum that I attended, which I think was in February, they had the IGA there, through NARGA, and the ARA, who represent FoodWorks. If you look back at the minutes of those meetings, they were upfront about the compliance burden that would have been on them. I have no doubt that if you were an independent store operator, or even an IGA—there are IGAs of 4,000 square metres—faced with having to send the prices of 7,500 items, you would have been dedicating two or three staff do the job of filling out forms, or entering it in or having some download function in your computer, and sending them to Choice. I think they were upfront, right there and then, that it was going to be a burden and a cost to their business.

**Senator HURLEY**—ANRA, I believe, said they could have made a system work, so where was the problem? Did you understand it to be a government requirement or Choice's requirement?

**Mr Hall**—As I understand it, Choice had a concept in mind. They went to the government with it and worked backwards from there. If Woolworths were going to execute a project like this, we probably would not have approached it in the way Choice approached it. Choice, as an organisation, has a solid and strong reputation as a very good advocate for the consumer. It has a very solid track record in the product safety space and the like. I suspect what they were trying to do with this website was to insert themselves into an area of relevancy that they felt they were missing out on. They were already doing supermarket surveys but they were never doing this level of survey. We understand what they were trying to do; it was just that they were missing the fundamental point that we do not have a system that can tell us—and download—the exact price of a product as it scans and sells. We could build it—it would cost millions of dollars—and maintain it, but we have no need for it from a business point of view. The only reason we would have been doing it is to support Choice's website.

**Senator HURLEY**—You mentioned also a list of other factors that they were taking into account, such as car parking space and the availability of public transport. I can certainly understand why, with consumers' interests in mind, they might be looking at that. But you mentioned in passing something that I, as a person who does weekly shopping for the family, also take into account, and that is staffing. Aldi—which does not exist in my state of South Australia—has very few staff. I take that into account when deciding which supermarket I go to because I like to get in and out quickly and have a reasonable number of staff to respond to my query when I want a product to be stocked. Is staffing one of the issues that Choice was interested in knowing about? Is that something they were going to put on their website?

**Mr Hall**—This is part of the information that their project manager asked to be able to download—things like home delivery, unit pricing and packing. With packing, for example, I assume they were talking about literally having someone packing for you at the end of the checkout lane.

**Senator HURLEY**—I think that went out a long time ago, didn't it? It did in South Australia anyway.

**Mr Hall**—It is funny, but Australians actually do not like it. They prefer the current system we have got. When you look at the different supermarket chains around the world, every culture has its own way of doing it. We understand that there are a range of factors people look for when they do their shopping. We know that price is only one factor that they take into account. There is also service, range, ease of parking and the quality and availability of food. There are a whole bunch of things that people take into account. The hard discounters, particularly international ones like Aldi, are built on a model of having as few staff as possible on the shop floor and having customers help themselves. That serves a particular customer base. That is why, when you get down to like-for-like comparisons of product, it becomes quite complicated—and we were concerned about that.

**Senator HURLEY**—Hence, I presume, the reason that Choice did want that extra information. But, of course, it is always a trade-off between what can be provided and what is

desirable. Finally, Coles said that the technical and legal problems were what summed up the difficulties for them, as well as the cost. Would you agree with that?

**Mr Hall**—There were three things for us: technical, the legal issues of misrepresenting our price to consumers and like-for-like. Woolworths has a quality assurance program, particularly around its fresh that is unique. It is one of a very high standard. We know from past experience that when our meat is compared with some of our competitors' meat, our meat comes out more expensive, but that is because they are doing incorrect like-for-like comparisons. They are comparing cow meat with quality rump. We are very sensitive to that. That was another issue that we could not get a resolution on that was satisfactory from Choice. They were insisting they were to apply their own standards, and we felt that ignored the standards of our suppliers and that we abide by within our own store. We were not comfortable about a third party applying their own standards on information we give them and then publishing it and then taking the liability for that.

**Senator HURLEY**—Thank you.

**CHAIR**—Thank you for appearing.

[6.47 pm]

**KELLY, Mr James, Customer Business Manager, Retail\*Facts**

**MARSHALL, Mr Anthony, Managing Director, Bailey Group**

**CHAIR**—Welcome. Senator Barnett will commence with questions.

**Senator BARNETT**—Mr Marshall, could you describe to the committee the arrangement you had in place with the ACCC and, secondly, the arrangements you had in place in terms of data collection for Woolworths?

**Mr Marshall**—Certainly, Senator. Chair, given that we did not make a submission, I would like to provide some information to the committee. I think it would help to answer some of the questions.

**CHAIR**—Yes, I should have asked if you would like to make an opening statement. Please proceed. Are you happy with that, Senator Barnett?

**Senator BARNETT**—Yes, please go ahead.

**Mr Marshall**—Both James Kelly and I have accepted the invitation to attend the inquiry on behalf of Retail\*Facts. We are looking to more fully and accurately explain the role and the contractual obligations that Retail\*Facts undertook and fulfilled with the ACCC.

By way of introduction I would like to provide a brief summation of both James's role and my role and an overview of Retail\*Facts the business. My role is Managing Director of the Bailey Group. Within this role I am responsible for the management of four business units. All these business units are involved in various what we call merchandising-field marketing activities, Retail\*Facts being one of those four business units. James's role is Customer Business Manager for Retail\*Facts. He is responsible for the operation of Retail\*Facts on a day-to-day basis. I will move back to Retail\*Facts because it is of most interest to you here today.

The business is one of four business units within the Bailey Group, and the Bailey Group are part of an ASX publicly listed company called Photon Group. The Bailey Group employ around 1,200 people nationally in a full-time and casual capacity across the nation. We offer a broad range of retail-field merchandising services to a variety of customers and also through a variety of different retail channels. Some of our customers, by way of reference, include Vodafone, Microsoft, Fosters and Mars Food. Some of our retail partners, as you are aware, include Woolworths, Aldi, retailers like The Good Guys and 7-Eleven.

If I go back to Retail\*Facts, however, which was established in 1999, and focus on the opportunity to explain the role played within GROCERYchoice, there are three key areas that we believe are very important and that we would like to focus on in our summation. This will hopefully provide a more accurate understanding for the committee. Firstly, we want to talk about the integrity and the transparency of our offer to the ACCC and, secondly, about the many

process steps that applied to ensure that there was a confidentiality that was maintained in all instances and that any potential for conflict was certainly negated. The third point, and it has been referenced in the committee, is that there was some talk about crossover or passing of data between customers—specifically Woolworths and the ACCC—to the financial advantage of Retail\*Facts. We certainly want to address that point and make the record clear as to what actually did happen versus the supposition that has been proposed by some people. On a more positive note, however, I would also like to mention that there has not been one example of where Retail\*Facts or any of its employees have not acted with total integrity nor confidentiality.

If I can just quickly now run through and further explain the three key areas that I have referenced, we believe it highlights how we do operate. Firstly, I mentioned that Retail\*Facts operate off high integrity and transparency to all key stakeholders. It certainly was not an insurance bid, as was suggested by one of our competitors. The first relevant point to support the integrity of Retail\*Facts' offer is that, for the record, within the RFQ document to the ACCC we disclosed our relationships with Woolworths and ALDI to the extent that we nominated them as referees for the ACCC to contact should they wish. In addition, as has been referenced to the committee, Andrew Tindal from ALDI has provided written acknowledgement to the committee on 15 October that ALDI—without quoting him—managed the relationship with Retail\*Facts in a manner that does not give us cause for concern in terms of conflict of interest. I would also like to point out that within the contract we had with the ACCC there was provided an access for a case manager to conduct both infield audits and systems audits of the Retail\*Facts' offer at any time and under any conditions.

Secondly, by way of explanation I would like to explore in more detail the processes and systems developed and used by the Retail\*Facts team to ensure the highest levels of confidentiality were maintained and that this negated any potential conflicts. The key points to support this are—and some of these have been mentioned by the ACCC—that every employee in the Retail\*Facts team was committed to the undertakings required by the ACCC and signed confidentiality agreements to that extent. In addition, we developed proprietary systems to provide specific product information to the price collectors and had that information available on a limited time. In most instances it was no more than 48 hours when that information was then taken away from their identification. Also to ensure confidentiality, specific and separately designed databases were used for each customer. And I want to highlight that point. The notion that there was one database—that there was a price collector in a store collecting across a multiple number of our customers—is absolutely wrong. Every price collection that was undertaken was undertaken in a dedicated way. By way of explanation, every customer has different price audit requirements in relation to products, timings and the specific stores that are required. So there is no commonality apart from the fact that they are collecting price. To further explain how the specifically designed processes and systems protected the confidentiality and negated any potential conflicts, I will ask James, in no more than five minutes, to detail the key areas that ensured the confidentiality was maintained.

**Mr Kelly**—From a system and process perspective, there are three key areas that I would like to detail to you today that provide greater understanding of how the program was operated. These three areas are system design, specific timings and robust validation processes. Firstly, on system design, Retail\*Facts operates with a firewall that blocks any incoming connections from the outside world through a 128-bit encryption SLS collection to the server for authorised connections. Database servers are isolated from the internet servers and operate on different

zones. All databases and data warehouses are password protected, and physical access is restricted. Additionally, as Tony mentioned, Retail\*Facts runs dedicated database management systems for every individual client. This ensures that no data will be exchanged from one database to another, further prohibiting any chance of transfer of information. This was particularly critical for the GROCERYchoice program, as specific developments were required to factor in basket price calculations. These calculations included expenditure class, subclass weight and product weight. This was all information that was provided to us by the ACCC only days before the collection.

All databases are proprietarily developed to further ensure confidentiality of process and information and of the methodology behind the collections. These databases send and receive data through our PDA GPRS network, which all Retail\*Facts collectors are equipped with. A monthly collection process involved collectors downloading information the night before the two-day collection period. The maximum period for which this information is available is these two days. Once the collection was completed, the data was transferred to our databases and the collection information disappears off their PDA. A further benefit of our PDA system is that collectors were not able to download this information in its entirety and would therefore not be able to obtain a full copy of the products. Secondly, stores were primarily divided into splits. This provided a further method to ensure that no one collector had access to both components, and in addition it minimised the possibility of a store identifying specific collection products.

Moving on to specific timings, Retail\*Facts provides all its clients with a highly adaptable program, including timings for collection, data points to be collected and reporting time lines and formats. Within the GROCERYchoice program, the days of the month which we were to check on were dictated to us, and they changed on a month-to-month basis. The ACCC provided Retail\*Facts with a finalised store and product listing only days before the check. As previously stated, monthly collections were completed in a two-day window and collectors, through our PDA network, would only have access for this period. Upon completion of the collection, Retail\*Facts provided validated data within one week from collection to be reviewed and for any results to be cleared by the ACCC.

Lastly, on robust validation processes, Retail\*Facts developed a specific and extensive validation process for the GROCERYchoice data. This linked in with the existing process from PDA entry through to final checking. Our PDA system incorporates two validation processes: point of entry validation and an automatic save function. Firstly, on point of entry validation, based on historical and regional data Retail\*Facts collectors are alerted to any prices which fall outside an agreed percentage which we, through discussions with the ACCC, set at a 10 per cent variance. This also applies in the event of any discrepancy of collection size data. Our system developed a pro rata price and alerted collectors if the price fell outside this agreed percentage. The second validation process is an automatic save function. Our PDA system automatically saves the entered price, size, promotional price and comments for every individual product. This process ensures that all entered information remains saved on our PDA network and therefore is transferred to our databases.

Post check, within two days from completion of the audit, the Retail\*Facts supervisory team conducted mystery audits on a minimum of 10 per cent of stores to review data that had been collected by the Retail\*Facts collection team. Upon receiving the data, Retail\*Facts conducted a manual validation process product by product to ensure that no data anomalies existed. Our

methodology involves assessing variances and national and regional averages. Following this process, all data was run through a query to identify any products that fell outside two standard deviations from the mean. These were reviewed one by one to further ensure accuracy of data, and this process was conducted a minimum of three times per check. These systems and processes were designed and developed and continued to run seamlessly throughout the duration of the GROCERYchoice program.

**Mr Marshall**—Thanks, James. Finally, the third key point I would like to make before we take questions is the inference that the price data that was being collected had a one price collection activity and then passed on or sold to multiple numbers of customers. That clearly shows a lack of detailed understanding in relation to what actually did take place. As I mentioned, the list of products varied significantly, the list of stores very significantly and the requested timings also changed on a sometimes short notice period but certainly on a regular period. The notion that one price collection, or dual collecting, as it has been referred to, could be used for all customers is ridiculous. It not only shows a lack of understanding but a complete disregard for the way Retail\*Facts does and will continue to do business, both with integrity and transparency.

A point that supports this is that throughout the 11 months that Retail\*Facts conducted the price collections for the ACCC we visited some 6,255 stores across Australia and we collected details on approximately 2,400,000 products, which totalled, for the record, nearly 12 million at the points. It also should be noted that during the price collection process, throughout this massive undertaking, there was not one instance of dual collecting presented to us or to anybody that I am aware of. We are very proud of and would put on record the job we have done with the ACCC.

Drawing towards the conclusion of the points we wanted to make, I would also like to highlight that it is not our intention to add to the speculation or try to explain why the Retail\*Facts tender was selected from four other tenders. It is up to the ACCC, we believe, to determine the selection criteria. Our bid followed our normal commercial and charging processes. Secondly, we do not think it is appropriate how Retail\*Facts service offer differs to the Informed Sources offer. The third point we would like to make is that we do not believe it is appropriate to outline specific details of our contractual obligations with other Retail\*Facts clients. In the end it comes down to ensuring that all committee members, other interested parties and, most importantly, our current and future customers know Retail\*Facts has operated and will continue to operate appropriately. If we were to allow a conflict of interest to exist or a breach of confidentiality, we would be perceived to lack integrity and thereby damage our business standing. Our reputation, as has been referred to earlier, is everything in the offer that we provide our customers.

**CHAIR**—Senator Barnett.

**Senator BARNETT**—Thanks very much for that introduction. I wonder whether Mr Kelly and Mr Marshall had considered the merits of providing this submission to the committee prior to today.

**Mr Marshall**—Certainly we had, Senator. We were watching the transcripts over the last couple of months. We would have anticipated and hoped that things may have been

communicated and discussed in a different way. At the point we believed it was appropriate to represent ourselves in the first instance, we took that opportunity and accepted the invitation.

**Senator BARNETT**—I appreciate your introductory remarks, which I presume are in writing and you could table for the committee. If they had been forwarded in advance, it may have assisted committee members to review your remarks and ask questions accordingly. But I leave that with you for future consideration.

**Mr Marshall**—We requested to provide this information prior to the hearing today but the time lines as we were indicated prohibited that being made available.

**CHAIR**—You may table the document now if you wish to do so. Do you wish to table the document?

**Mr Marshall**—I would be fine with that.

**Senator HURLEY**—Perhaps they would like to keep the documents with them and if they need to refer to it—

**Mr Marshall**—For reference, yes, but at the end of the hearing we would be happy to table those documents.

**CHAIR**—Yes, but if you table the document the secretariat then include it in the papers of this hearing and it will be placed on the web. If the committee is in agreement, yes. Please proceed, Senator Barnett.

**Senator BARNETT**—Thank you for the outline of your protocols and procedures. Are there any other documents in terms of protocols and procedures that Retail\*Facts has that would assist us and that you would like to forward to the committee which may outline in further detail remarks provided as introductory remarks?

**Mr Marshall**—We believe that what we have provided, given the confidentiality of the offer that we make, is sufficient. We prefer to maintain any further detail within our own business.

**Senator BARNETT**—That is all right, but let me ask you this: do you have a protocol, other than what you have just outlined, in writing within Retail\*Facts in terms of confidentiality and the like?

**Mr Marshall**—As I referenced, every person that was involved with the ACCC tender and the contract was committed to and had signed a confidentiality agreement.

**Senator BARNETT**—All right. Can you confirm or otherwise whether a completely separate field force was used for the collection of ACCC GROCERYchoice website data to that used for the collection of data with Woolworths?

**Mr Marshall**—We did not use a completely separate field team. The point I would like to make, though, is that the way our business operates is that every activity that was undertaken for the ACCC, or for any price audit, is what we call a dedicated activity. That particular price audit



person would be in the store and only operating for that particular customer on that particular day.

**Senator BARNETT**—Was it the same field force?

**Mr Marshall**—There would be instances where some people would be collecting on behalf of the ACCC and those same people, in a different situation—a different circumstance—and different stores, may be collecting on behalf of Woolworths. The point I would also like to make is that those persons do not have the knowledge of who they are collecting on behalf of. There is actually an identification process that does not share with them who they are collecting data on behalf of.

**Senator BARNETT**—Right. Is it fair to say that those persons who are collecting data were collecting the same or similar data?

**Mr Marshall**—In some instances, by its own definition, collecting price data is going to have some similarities.

**Senator BARNETT**—Right. A document has been tabled today by the ACCC outlining a letter to the minister, Chris Bowen, on 22 February 2008. It is headed ‘Memorandum: ACCC periodic survey of grocery prices’ and makes a recommended method for collecting this data. In that document, under the section on data collection and processing, it refers to the fact that each month, on a random and confidential day during that month, the data collectors of the price survey attend to each of the supermarkets. It then goes on to say:

The ACCC would then analyse the data, deal with flaws in the data, and then calculate the respective basket and sub-baskets prices, and publish the results on the dedicated website.

Did the ACCC ever respond or provide feedback to you with respect to their analysis of the data or the flaws in the data?

**Mr Marshall**—No. Our responsibility was to provide accurate and timely data. We were not involved in the analysis of the data.

**Senator BARNETT**—Were you ever aware of the ACCC’s analysis of that data and feeding back to you on any flaws in the data?

**Mr Marshall**—The information that you are looking for there I am not in a position to answer. James may be able to answer that, as he was more operationally involved.

**Mr Kelly**—The process that we followed, as I detailed before, was that we provided the ACCC the collected data within the period of the week. They had the opportunity to query any results with us. As a percentage, it ended up being 0.0001 per cent of results that they queried with us. In a literal sense they queried 50 to 100 products per check with us that we are then obviously queried and provided them feedback on.

**Senator HURLEY**—I am sorry, Senator Barnett; could I just interrupt. Mr Kelly, the ACCC talking about flaws may also mean in terms of their analysis, not necessarily in terms of

inaccuracy of the data. When you are analysing something you may take out some sort of spike or something that will adversely affect the data. It is not necessarily a flaw in the data as such but a flaw in the analysis.

**Mr Kelly**—I believe that is a question that we did not necessarily have an involvement in; that was an analysis that they conducted.

**Senator HURLEY**—Exactly.

**Mr Kelly**—And it was not our role.

**Senator BARNETT**—Could I go on, Chair?

**CHAIR**—Please proceed, Senator Barnett.

**Senator BARNETT**—You made references to the audit that you undertook of your collection process. I wonder if you could further describe the audit process. Secondly, was there ever an independent audit undertaken of your collection process by the ACCC or anybody else?

**Mr Marshall**—By way of the commitment to the program, we provided what we call our field sales managers. We have a national operations team. They would audit the price collection in the context of ensuring that the auditors were fully aware of and understood the responsibilities they had. So that was an audit process that was conducted from within Retail\*Facts. On the second part of your question—did the ACCC conduct any in-field audits?—I am not aware of any in-field audits that they did conduct.

**Senator BARNETT**—Did that surprise you?

**Mr Marshall**—Not necessarily, in the sense that we were quite confident, as James has outlined, with the effective analysis and the way that we were collecting the data.

**Senator BARNETT**—We were provided with a copy of the agreement between the ACCC and Retail\*Facts—I think it was in our Canberra hearing—appropriately marked to relate to confidentiality matters. In that agreement it did make a provision for an audit. You would be aware, no doubt, of the provision in the agreement to allow the ACCC to have an audit. Is that your understanding of the agreement?

**Mr Marshall**—Yes, as I referenced in those opening comments, we were aware of the obligation we had under the contract to offer an audit availability.

**Senator BARNETT**—Why wouldn't the ACCC act on that provision and have an audit to ensure the objectivity and independence of the data collection process?

**Mr Marshall**—Again, that is not a question that I would be in a position to answer. They would be better able to respond to that question, I believe.

**Senator BARNETT**—Do you have access to point-of-sale data for your data collection activities?

**Mr Kelly**—No, we do not.

**Senator BARNETT**—So you always provide an on-ground data collection process?

**Mr Kelly**—That is correct.

**Senator BARNETT**—Finally, would you like to respond in any other way to the submission of Informed Sources, based on the evidence that they have put? You have read the transcript, and they put their views very strongly. If you wanted to respond to any of those comments, that would be appreciated; otherwise, they stay on the record and they have to be considered on their merit.

**Mr Marshall**—We are quite comfortable with those comments being considered on their merit. As I suggested earlier, we do not believe there is any value whatsoever in adding to the speculation or the hypothesis that has been provided by Informed Sources. Suffice it to say that, in our estimation and in our understanding, a lot of what was provided by Informed Sources was wildly off the mark.

**Senator BARNETT**—I will move to another topic—that is, the comparison of fresh produce. The independents and indeed I think other witnesses have argued that it is very difficult to compare like with like. Indeed, Woolworths have just indicated that that was one of their three reasons why they believed the GROCERYchoice website was not going to operate effectively. What are your views with respect to it being appropriate or possible to compare like with like and fresh produce in particular?

**Mr Kelly**—We were given a methodology from the ACCC in reference to fresh produce. Obviously, it is always going to be a difficult assessment; however, the general assessment was on things such as discolouration. That was one of the main reasons why we were not to collect a price if necessary, if, in the case of fresh produce, it appeared not to be of a certain quality.

**Senator BARNETT**—Can you table that methodology for us, or take that on notice?

**Mr Kelly**—I believe that is something that the ACCC would be able to provide.

**Senator BARNETT**—You were provided with it and you have a copy of it. That is a question that we are asking you, so you will have to take that on notice.

**Mr Kelly**—Not a problem. We can take that on notice and provide that methodology.

**Senator BARNETT**—That would be appreciated. The issue of comparing cow meat with Angus beef rump steak has been raised. How do you compare the two?

**Mr Marshall**—If I can answer that, the methodology that we used—which we will table—will give you an example of the information that we were provided in order to make that assessment. Suffice to say, I think it has been recognised by a number of different parties that there are certainly challenges in comparing an apple with an apple in that situation.

**Senator BARNETT**—Or comparing a Tasmania apple with a Victorian apple, for example.

**Mr Marshall**—I do not think there would be a comparison, Senator!

**Senator BARNETT**—There you go, you have got me now! Are you dismissing or are you recanting the views of NARGA and those who say it is pretty much impossible to compare fresh fruit and vegetables accordingly, or do you simply say that you do the best you can and, based on the methodology, it is a pretty good estimate?

**Mr Marshall**—I think the reference to the industry bodies and NARGA is certainly not one for us to judge. We were provided with information and did what we believed was the best with that information.

**Senator BARNETT**—All right. Thanks very much for your evidence.

**Senator JOYCE**—Mr Kelly, you sound like you are a pretty smart bloke. I was listening to your statistical modelling and the process that you set out. You have got a great aptitude for computer programming, is that correct?

**Mr Kelly**—My computer programming is limited to a certain extent. The understanding that I provided to you today was probably the extent of it, predominantly due to—

**Senator JOYCE**—I hope it is more than five minutes worth.

**Mr Kelly**—It was predominantly due to my interest in the overall program to understand that we could provide the agreements that we entailed to the ACCC.

**Senator JOYCE**—You gave a lot of evidence about how you could keep a separation between systems and a separation between data sets. That is what you were implying in your evidence. So there is a capacity to create that separation in your data sets and a separation between systems?

**Mr Kelly**—Absolutely. As I stated, we ran completely separate databases. Obviously there are a number of queries in between that but, in essence, there were separate databases, so we never had the opportunity of combined data sources.

**Senator JOYCE**—How many are in a team that keeps it separate? Would there be 10 of you in that cell, or eight in that cell, as computer programmers?

**Mr Kelly**—No. We have got what I would say is a limited IT team. There are only three people who would have that capability and access to look at that.

**Senator JOYCE**—I take your word for it absolutely that you are trying to keep them separate. But if those three programmers decided that, instead of keeping it separate, they wanted to link it up, they could do it, couldn't they—very easily?

**Mr Marshall**—Could I answer that question?

**Senator JOYCE**—Yes, sure.

**Mr Marshall**—Yes, absolutely, there is a possibility for that to happen. We run checks and balances, as we suggested earlier, on those persons who are involved in the confidentiality agreements that we have. To date, we would be confident that there has not been a situation where that confidentiality has been broken in any way.

**Senator JOYCE**—I am not querying that. So we have these three programmers out there and they would have the capacity to link different systems together to provide a generic report. If you asked them to do that, they could do that. It is definitely possible; in fact it is quite feasible.

**Mr Marshall**—The hypothesis you propose could be feasible.

**Senator JOYCE**—The reason I asked is that in evidence given previously we heard that there were six systems that were apparently very difficult to link together to get a unified and generic report. But obviously we should send your three IT people around to the previous witness and get them to do the job for them, because they were telling us how difficult it would be!

**Mr Marshall**—You referenced before that my colleague was a somewhat ‘smart-looking’ individual. I am not going to suggest I am in the same camp. What I would suggest, however, is the comparison between the price collection that we provide to our customers and the pricing that a major retailer would be managing would be like chalk and cheese.

**Senator JOYCE**—So there is the capacity to do it. The assertion that was made—to be completely blunt—is that you were paid for the same job twice. That is what you are dispelling and that is the assertion that was made. In that order process, if I were to go and do an audit check myself—go back to my accountancy days and be sent out there to do an audit on you—one of the first things I would ask for is the billing sheets. If you had people in the store, they would have to send in their time sheets showing exactly what they were doing and where they went, and they would have to talk about the client they were with at the time.

You said that the same field team may be working for two different clients. I have no problem with that—as an accountant I worked with two different clients every day. It is when you do work for one and bill the other that it is illegal. It is fraud, because you have sent out a bill which you are not entitled to and it is punishable under the Crimes Act. You would be able to see those billing sheets and clearly identify that this is the base of the time sheet for person X in the field working for this company and then this is person X working in the field for that company. They are two different time sheets and two completely identifiable bills. I can understand how it actually works in your favour, because if you are working for two different clients—and I am saying you did it honestly—you actually make more money. There is nothing to be gained by cutting corners unless it is exactly the same data set that both people want, and you would have to be fraudulent and literally have to put forward a new billing sheet for work you never did. Did you ever check for that?

**Mr Marshall**—The explanation or the hypothesis that you have shared with us is exactly the opposite of what does take place. There are absolutely separate billing sheets. There are absolutely separate tasks loaded through the PDA that are designated to individual price collectors. There is a total separation in that sense.

**Senator JOYCE**—So you would be able to table a diary or something—I am not asking you to do it—but they would be able to look and say, ‘That is when I was working in that field, in that area and at that time. That is what I did.’ I am thinking of all the things I would do. If you were getting down to prickles, they would be on fuel cards or something like that. You could check the fuel cards and see where the fuel cards were at that time and where there was a correlation between external factors that would corroborate where they were, and that they were doing what they said they were doing. Do you ever do that?

**Mr Marshall**—Not just for the price ordering. I mentioned before that our business runs across many different fields—the marketing field and merchandising activities. Price ordering is but one of those. So, given that 73 per cent of our total costs of doing business or thereabouts are labour costs, it would be ridiculous not to do that. As a consequence, we have very stringent and very strong audit processes around different ratios on time taken for the same tasks and travel time. We actually use Google mapping to ensure that people are not driving further or claiming more kilometres than they should be.

**Senator JOYCE**—It is a very specialised field you are in. The ACCC would be a major client, but there are really only three or four supermarkets. How many people do you deal with? What is the potential size of your marketplace?

**Mr Marshall**—As I mentioned earlier, given the confidentiality of our customers, we are happy to put on record—

**Senator JOYCE**—I do not want to know who they are, but what is the rough number? Are we talking about 20, 40, 10?

**Mr Marshall**—Price auditing could work across any retail banner, any retail group.

**Senator JOYCE**—Right. If it is a small data set, more than likely at times you are going to be dealing with the same people in different fields, because of the small marketplace. If there are 500 potential clients, then it becomes unusual for you to be dealing with two major clients in the same area. It is not illegal; it is just unusual. But if the potential client base is, say, 10 customers, then more than likely you would be bumping into them all the time.

**Mr Marshall**—Hypothetically, yes.

**Senator JOYCE**—I have no more questions.

**CHAIR**—With that, we conclude the hearing. We thank you for appearing. Mr Marshall, if you could provide the secretariat with your document that would be very much appreciated.

**Mr Marshall**—Yes, certainly.

**CHAIR**—I thank the secretariat and the senators. Senator Barnett, thank you for being available. That concludes this hearing altogether.

**Committee adjourned at 7.26 pm**

