

ACCC inquiry into the competitiveness of retail prices for standard groceries

Issues paper

11 February 2008

Contents

1. Background	1
The inquiry	1
2. Consultation process.....	3
Written submissions.....	3
Public hearings.....	4
3. Issues on which the ACCC is seeking comment.....	5
Context of the inquiry	5
Scope of the inquiry	7
Previous work by the ACCC on the grocery industry	7
A. Structure of the grocery industry	9
B. Consumer behaviour and choice of grocery retailer	12
C. Competition in grocery retailing	14
D. Competition in grocery wholesaling	16
E. Buying power in grocery supply markets.....	17
F. Competitive position of small and independent grocery retailers	19
G. Factors influencing the pricing of inputs along the supply chain for standard grocery items.....	22
H. Impediments to efficient pricing of inputs along the supply chain.....	24
I. Horticulture Code of Conduct	25

1. Background

There has been significant public concern regarding the competitiveness of retail prices in the grocery industry in Australia and the pricing of household grocery products.

In particular there is concern that Australia has a highly concentrated grocery industry, and while inflation has been low in Australia over the last few years, grocery food prices have increased at a significantly higher rate than the headline inflation rate.

In response to these concerns, the Australian Government has directed the Australian Competition and Consumer Commission (ACCC) to commence a formal inquiry into the competitiveness of retail prices for standard groceries.

The Government has instructed the ACCC to take into consideration all aspects of the supply chain in the grocery industry including the nature of competition at the supply, wholesale, and retail levels of the grocery industry to ensure consumers are getting a fair deal.

The inquiry

On 22 January 2008, the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs directed the ACCC to undertake an inquiry into grocery prices. The instrument attached to this direction is shown on the next page.

The inquiry commenced on Wednesday 30 January 2008 with the publication of an inquiry notice in the *Gazette* and in newspapers.

The Minister has also asked that the ACCC undertake a separate analysis of fertiliser prices. A report outlining the findings in relation to fertilisers will be provided to the Minister at the same time as the report of the inquiry into the competitiveness of retail prices for standard groceries.

Trade Practices Act 1974

INQUIRY INTO GROCERY PRICES

I, Chris Bowen, Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, pursuant to subsection 95H(1) of the *Trade Practices Act 1974*, hereby require the Australian Competition and Consumer Commission to hold an inquiry into the competitiveness of retail prices for standard groceries.

Matters to be taken into consideration by the inquiry shall include, but not be restricted to:

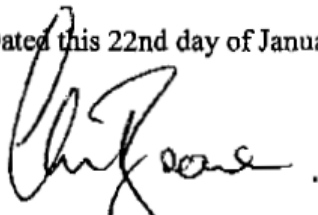
- the current structure of the grocery industry at the supply, wholesale and retail levels including mergers and acquisitions by the national retailers;
- the nature of competition at the supply, wholesale, and retail levels of the grocery industry;
- the competitive position of small and independent retailers;
- the pricing practices of the national grocery retailers and the representation of grocery prices to consumers;
- factors influencing the pricing of inputs along the supply chain for standard grocery items;
- any impediments to efficient pricing of inputs along the supply chain; and
- the effectiveness of the Horticulture Code of Conduct, and whether the inclusion of other major buyers such as retailers would improve the effectiveness of the code.

In undertaking this inquiry the Commission will consult with retailers, businesses along the supply chain, farmers, consumer groups and other interested parties.

The inquiry is not to be an inquiry in relation to the supply of grocery items by any particular person or persons.

The inquiry is to be completed and a report submitted to me by 31st July 2008.

Dated this 22nd day of January 2008.



CHRIS BOWEN

Assistant Treasurer and Minister for Competition Policy and Consumer Affairs

2. Consultation process

The ACCC will be seeking the views of interested parties in both written submissions and through public hearings during the course of the inquiry. Further detail on making a written submission and attending public hearings is provided below.

In addition to seeking information from interested parties on a voluntary basis, a price inquiry pursuant to section 95H(1) of the *Trade Practices Act 1974* (the Act) provides the ACCC with specific information gathering powers. In particular, in the context of a price inquiry pursuant to section 95H(1) of the Act, section 95S(3) enables the ACCC to require a person to provide evidence at a hearing, and section 95ZK(1) enables the ACCC to require a person to furnish specified information or produce specified documents. The ACCC may seek information under these provisions. Given the timetable for the inquiry, such information may be sought at short notice.

Written submissions

Interested parties are invited to make submissions to the ACCC in relation to the issues raised in this paper, or any other issues that they consider relevant to the inquiry.

Submissions should be made to the ACCC by no later than 5:00pm, 11 March 2008.

As this is a public inquiry, the ACCC prefers that all written submissions be publicly available to foster an informed, robust and consultative process. Accordingly, submissions will be considered to be public and posted on the ACCC's website.

In making a submission to this inquiry, please title your document, "*Public Submission to ACCC Grocery Inquiry by [INSERT NAME] on [INSERT DATE]*."

Any information which parties would like to request the ACCC to exclude from the website should be provided in a separate document and clearly marked 'confidential' on every page. Reasons must be provided in support of the request for confidentiality. The document containing confidential information should have a title such as "Confidential Annexure to Submission by [INSERT NAME] on [INSERT DATE]". The ACCC will only accept a claim of confidentiality if the information is truly confidential in nature. Grounds on which confidentiality could be claimed include that the information disclosed is a trade secret or other non-public information such as the costs of manufacturing, producing or marketing goods or the consideration paid for an asset. The ACCC will not accede to a request for confidentiality if it would not be in the public interest to do so. If the ACCC considers the information should be disclosed (either because it is not confidential or because it would not be in the public interest to receive the information without public disclosure) the ACCC will provide the parties with an opportunity to withdraw the submission (or part of the submission) containing the information. If the submission (or part of the submission) is withdrawn then the ACCC will not take it into account. If a party elects not to withdraw the submission (or part of the submission) then the ACCC may disclose the information publicly.

Email provision of submissions is preferred. The ACCC encourages organisations and people to make submissions in either PDF or Microsoft Word format. PDF submissions should be comprised of machine-readable text (OCR readable text); i.e. they should be direct conversions from the word processing program, rather than scanned copies in which the text cannot be searched.

Submissions should be sent by email to:

grocerypricesinquiry@accc.gov.au (Submissions should use the word “submission” in the title of the email).

If required, submissions can also be sent by post addressed to:

Grocery prices inquiry - Submissions
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

General inquiries may be directed to the Infocentre on 1300 302 502 or by email to grocerypricesinquiry@accc.gov.au

Public hearings

The ACCC intends to hold public hearings in capital cities and selected rural and regional centres, which will enable the ACCC to hear directly from parties in relation to the information they want to provide to the ACCC. In some instances parties may be required to provide evidence under oath. The exact timing and location of these hearings is yet to be determined.

The timing and location of these hearings will be made available on the ACCC’s website www.accc.gov.au when they have been determined.

3. Issues on which the ACCC is seeking comment

The ACCC has identified a number of issues on which it is seeking information and comment. These have been grouped under broad topics reflecting the terms of reference for the inquiry. However, there is some degree of overlap in this structure and parties should provide information concerning each of these topics as they see fit.

The issues on which the ACCC is seeking comment are extensive. It is not expected that all interested parties will address all of the issues raised, rather that interested parties will address the issues which relate to their business operations or area of concern.

The ACCC is aware that a diverse range of parties will wish to make submissions to this inquiry. Where possible the ACCC has attempted to sign post issues and questions that may be particularly relevant to various groups including consumers, farmers, manufacturers, wholesalers and retailers. The questions are designed to assist parties in making submissions. Parties should not feel compelled to answer all of the questions. For example, some submissions may address only one or two issues or questions.

The ACCC would welcome any further information and comment on issues that may not have been identified below but which could be considered relevant to the inquiry.

Comments should be backed up with supporting evidence and data where possible.

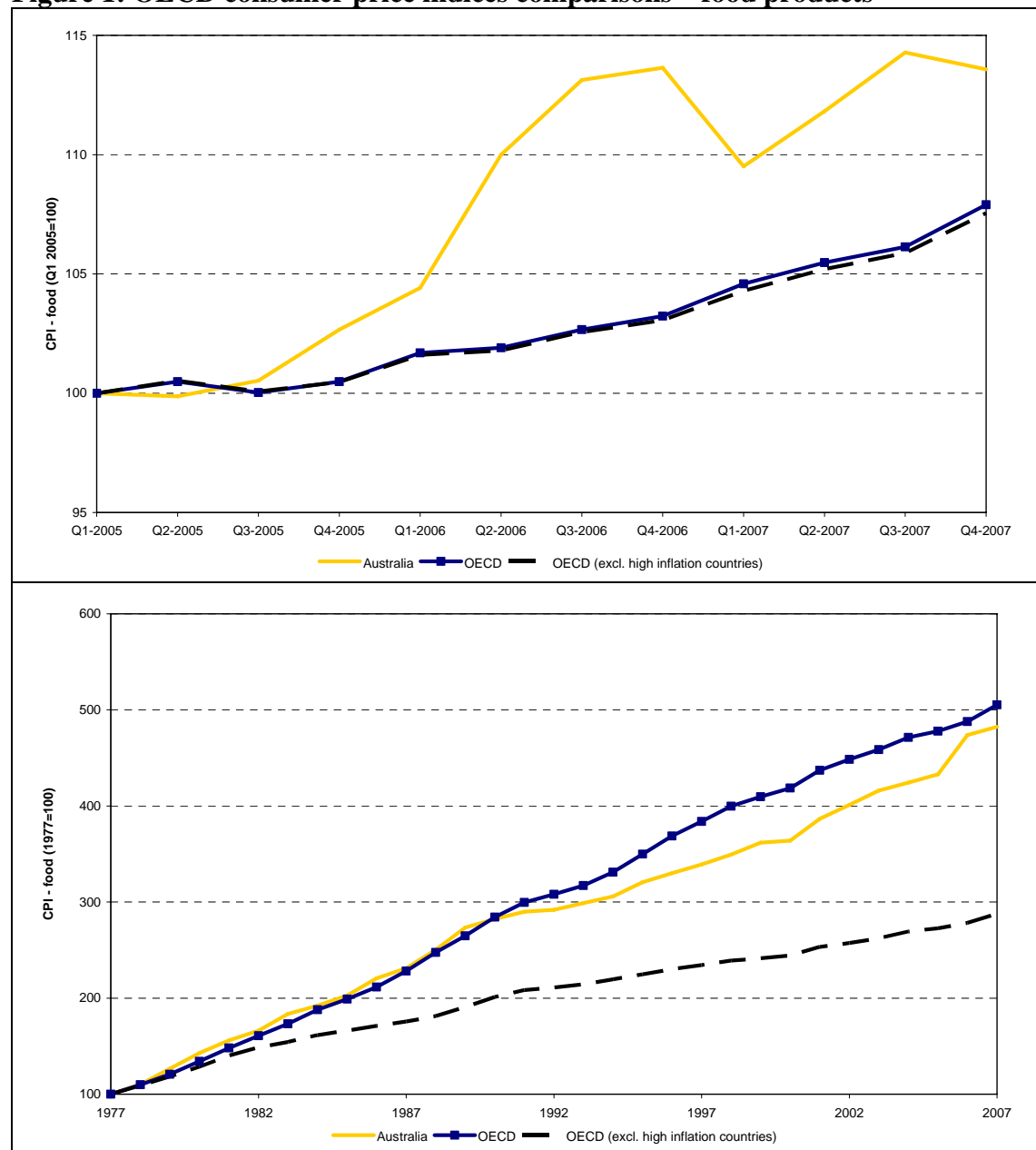
Context of the inquiry

Aggregate OECD data suggests that over the past few years, food price inflation has been higher in Australia than in many other industrialised countries (see Figure 1).¹ The larger price increases in Australia have been for milk, cheese, bread, fruit and vegetables.²

¹ This includes dairy products, bread and cereal products, meat and seafoods, fruit and vegetables, non-alcoholic drinks and snack foods and other foods (such as coffee, spreads, etc.).

² Refer to Australian Bureau of Statistics, *Consumer Price Index*, Cat. No. 6401.0.

Figure 1: OECD consumer price indices comparisons – food products



Source: OECD, *Main Economic Indicators*, various editions

This inquiry will examine the reasons for the increase in food price inflation in Australia and examine where in the supply chain costs and prices are increasing.

The ACCC will assess costs, competition and pricing throughout the supply chain (from farm gate to check out counter). The primary aim of this assessment is to understand factors which affect grocery retail pricing in Australia and the causes of the price increases.

- 1 *What have been the major causes of rising food prices in Australia (e.g. drought, transport costs, etc.)? In particular, what have been major causes of the rising prices of products such as milk, cheese, bread, fruit and vegetables?*

- 2 *Do the OECD comparisons accurately reflect the relative rates of food price inflation in Australia and the OECD countries? Are there other more relevant comparisons? Are there a more appropriate set of countries to compare Australia's food price inflation?*

Scope of the inquiry

This inquiry will focus on basic household grocery items, particularly basic food items. In announcing the inquiry, the Minister for Competition Policy and Consumer Affairs stated:

... we want to know if more can be done to ensure working families have access to a competitive market for basic food items.

The Rudd Government has instructed the ACCC to take a broad approach to its inquiry and ensure all aspects of the chain are included – from the farm gate to the checkout counter.³

With this in mind, it appears sensible to focus the inquiry on the following retail grocery product types or categories:

- packaged food
- frozen food
- fresh meat
- fresh fruit and vegetables
- dairy products
- bakery products
- delicatessen items, and
- packaged non-food items.

Previous work by the ACCC on the grocery industry

The ACCC has made a number of investigations into competition and market conduct in the grocery industry in the past. Although this work will provide useful background, it will not determine the outcomes of the current inquiry.

Recent reports by the ACCC on the grocery industry include:

- *Examination of the prices paid to farmers for livestock and the prices paid by Australian consumers for red meat, February 2007*
- *Assessing shopper docket petrol discounts and acquisitions in the petrol and grocery sectors, February 2004, and*

³ Assistant Treasurer, Minister for Competition Policy and Consumer Affairs, ACCC Inquiry into Grocery Prices, Media Release, 22 January 2008

- *Report to the Senate by the Australian Competition and Consumer Commission on prices paid to suppliers by retailers in the Australian grocery industry, September 2002.*

The ACCC has also investigated competition and market conduct in the grocery industry through:

- informal assessment of a range of mergers and acquisitions in grocery retailing, wholesaling and the grocery supply industry - a list of the recent mergers and acquisitions in grocery retailing and wholesaling publicly assessed by the ACCC is provided in Appendix A
- assessment of a range of notifications of third line forcing in relation to petrol shopper docket schemes⁴, and
- investigation of complaints concerning the conduct of grocery retailers, wholesalers and others under Parts IV and Part V of the *Trade Practices Act*.

⁴ Third line forcing occurs where the supply by one party of a discount or other offering in relation to goods or services is made on the condition that the purchaser has acquired goods or services from a third party. Petrol shopper docket schemes offer consumers discounts on the price of petrol on the condition they purchase a minimum value of products from a particular grocery retailer.

A. Structure of the grocery industry

The grocery industry comprises three broad activities; grocery retailing, grocery wholesaling and the production and supply of grocery products.

Competition among grocery retailers, wholesalers and suppliers and the efficiency of pricing along the supply chain play a vital role in the prices consumers pay at the check out counter.

Industry structure is an important determinant of competition. The number, size and market shares of retailers, wholesalers and suppliers, the vertical relationships between providers at different levels and the scope for providers to enter markets or expand their businesses all affect the nature of competition in the grocery industry and the outcomes for consumers.

Retailing

Grocery retailers stock and display grocery products and make them available for sale to consumers. Grocery retailers include the major supermarket chains (MSCs) Coles and Woolworths, other supermarket/grocery chains such as Aldi, IGA and Foodworks, specialist retailers such as butchers, fruit and vegetable shops and retail bakery outlets and possibly conveniences stores.

The supermarket chains have a substantial share of grocery retailing. This is at least partly the result of the one-stop shopping experience offered by large format supermarkets. Mergers and acquisitions and expansion through greenfields development of the MSCs also impact on the structure of grocery retailing.⁵

Wholesaling

Grocery wholesalers provide the primary link between grocery retailers and product suppliers. Grocery wholesalers re-package, store, transport, market and distribute products to grocery retailers. The role of grocery wholesalers vary considerably depending on the product. In some cases the wholesaling activity is largely bypassed. For example, many bakers deliver bakery products directly to supermarkets. The wholesaling arrangements used by individual suppliers and retailers also vary. For example, specialist fruit and vegetable retailers typically source their produce from regional wholesale markets, while some major supermarkets source fruit and vegetables directly from the grower.

The major grocery wholesalers are Coles, Woolworths and Metcash. Coles and Woolworths service their own supermarkets (i.e. Coles and Woolworths are vertically-integrated in grocery wholesaling and retailing). Metcash is an independent grocery wholesaler servicing a range of grocery retailers including IGA. As noted above, there is also a range of grocery wholesalers and wholesaling arrangements that

⁵ The ACCC has reviewed 13 acquisitions in grocery retailing since 2005. The largest of these was the sale of Foodland in 2005 which involved the acquisitions of 61 supermarkets and Actions' West Australian wholesale grocery business by Metcash, and the acquisition of 18 supermarkets and 3 development sites by Woolworths. Most of the acquisitions reviewed by the ACCC involved the acquisition of one supermarket.

fall outside the activities of the major grocery wholesalers.

Grocery supply

The grocery supply sector covers the rest of the industry from the farm gate, the manufacturing plant or the wharf to the grocery wholesaler or retailer. The grocery supply industry comprises a diverse range of products, activities and supply arrangements. Those in the grocery supply industry include farmers, manufacturers, importers, processors and providers of transport and logistic services.

Questions on grocery retailing

- 3 *What have been the major changes to the structure of grocery retailing in Australia over the past 5 to 10 years?*
- 4 *What factors have driven these changes (e.g. changes in trading hours, one-stop convenience of supermarket shopping, mergers and acquisitions, etc.)? What has been the relative importance of these and other factors?*
- 5 *How important are economies of density, scale and scope in grocery retailing⁶?*
- 6 *What are the most appropriate ways of measuring the shares of grocery retailers (value of sales, number of stores, areas of floor space, etc.)? Should industry or market shares be measured across all grocery items or for particular product categories (such as packaged food, bakery products, meat, fruit and vegetables, delicatessen products, etc.)? If possible, please provide quantitative estimates of shares of grocery retailing detailing the data sources and any assumptions made in estimating the shares. How have these shares changed over the past 5 to 10 years?*
- 7 *Please provide details of recent entry and exit in grocery retailing including the reasons for the success or otherwise of new entry and the reasons for exit.*
- 8 *How does the structure of grocery retailing differ between metropolitan, regional and country areas?*
- 9 *How profitable are grocery retailers? What margins over wholesale costs do grocery retailers achieve? Do margins and profitability differ by the size and location of the store? If so, how? What rate of return on capital do grocery retailers achieve? Has this changed over the past 5 to 10 years?*

Questions on grocery wholesaling

- 10 *What have been the major changes to the structure of grocery wholesaling in Australia over the past 5 to 10 years?*

⁶ Economies of density are cost savings achieved by grocery retailers with a larger number of stores in a particular region. Economies of scope are cost savings achieved by grocery retailers that can offer a broad range of products at the one outlet. Economies of scale are cost savings achieved by grocery retailers that operate on a larger scale

- 11 *What factors have driven these changes (such as cost savings from large-scale wholesaling operations, changes to the structure of grocery retailing, mergers and acquisitions, etc.)? What has been the relative importance of these and other factors?*
- 12 *In what ways (if any) do grocery wholesaling operations and arrangements differ by product categories? Please provide details.*
- 13 *How important are economies of scale in grocery wholesaling⁷? What are the sources of these economies of scale? Are economies of scale primarily the result of lower transport costs, lower storage costs, better stock management or the ability to negotiate better deals with suppliers?*
- 14 *What are the most appropriate ways of measuring the shares of grocery wholesalers? Should industry or market shares be measured across all grocery items or for particular product categories (such as packaged food items, bakery, meat, fruit and vegetables, delicatessen products, etc.)? If possible please provide quantitative estimates of shares of grocery wholesaling detailing the data sources and any assumptions made in estimating the shares. How have these shares changed over the past 5 to 10 years?*
- 15 *Are there any structural differences in grocery wholesaling in metropolitan, regional and country areas? If so, please explain.*
- 16 *How profitable are grocery wholesalers? What margins over supply costs do grocery wholesalers achieve? Do these margins differ by size of the wholesaler? If so, how? What rate of return on capital do grocery wholesalers achieve? Has this changed over the past 5 to 10 years?*

Understanding the grocery supply chain

The ACCC is interested in understanding the supply chain and the supply arrangements along the chain (including pricing arrangements) across a broad range of products and circumstances.

The ACCC requests that submissions provide as much detail as possible in relation to the following:

- 17 *identifying each of the steps in the supply chain from supplier to retailer*
- 18 *the activity or value added in each step*
- 19 *the businesses or business types that undertake each activity*
- 20 *the pricing structure in each step (price per unit, price mark-up, etc.)*
- 21 *the proportion of the final retail price of the product accounted for by each part of the supply chain*

⁷ Economies of scale in grocery wholesaling are the cost savings achieved by grocery wholesalers that operate on a larger scale.

B. Consumer behaviour and choice of grocery retailer

The actions and choices of consumers play an important role in driving competition in grocery retailing. The scope for consumers to compare the offers of retailers (including prices) and their willingness or ability to alter where they shop are likely to influence competition between grocery retailers.

Many consumers are attracted to grocery retailers who offer the lowest prices. Consumer surveys suggest other factors are also important including the range of products and brands offered by the retailer, the service and friendliness of the staff, the freshness of perishable items, the distance or time taken to travel to the retailer, the availability of car parking, the convenience of the shopping experience, the number of check-outs and the type of shopping trip (weekly shop, top-up purchases, etc.).

Consumers buy different bundles of grocery items. Bundles of grocery purchases vary significantly depending on household composition, incomes and tastes. The differences in the bundles purchased by consumers makes it difficult for consumers to compare prices across grocery retailers and for retailers to convey to consumers their price offer. Retailers use a range of strategies to attract price conscious consumers including offering discounts on high volume items, every day low pricing offers and shopper dockets schemes (such as petrol shopper dockets).

Questions on consumer behaviour and consumer choice of grocery retailers

- 22 *What options or choices of retailer do consumers have to purchase grocery products? How far will customers travel for their groceries? How does this differ by grocery product (packaged food, meat, fruit and vegetables, etc)? How does this differ depending on the type of shopping trip (weekly shop, top-up purchases, etc)?*
- 23 *Would unit pricing (a requirement that the price per kilogram or per 100 grams etc is displayed on the supermarket shelf or product) improve the ability for customers to compare prices? Should unit pricing be made compulsory? Would unit pricing lower the cost of shopping for customers?*
- 24 *How important to consumers is the convenience of purchasing from a retailer offering a broad range of grocery products (meat, fruit and vegetables, packaged products, etc)?*
- 25 *How important is price for consumers when they decide where to buy groceries? Does this differ depending on the grocery product?*
- 26 *How important are factors such as distance of travel, freshness of perishable items, product range, etc? Does this differ depending on the grocery product? If so, how and why?*
- 27 *How do consumers gain information on the pricing of grocery retailers (advertising by grocery retailers, word of mouth, comparisons of key grocery items, etc.)?*

Questions on the pricing strategies of retailers

- 28 *What strategies do grocery retailers use to signal their price offers to consumers? What strategies do retailers consider to be the most effective? How do retailers assess the effectiveness of their strategies?*
- 29 *How do retailers compare their prices with those of other retailers? How often are such comparisons made? Over which products are such price comparisons made? Against which retailers do they compare prices? Are price comparisons done on a national or local basis, or both?*
- 30 *How effective are shopper dockets schemes (such as petrol shopper dockets) in attracting customers? What is the incidence of the use of petrol discount vouchers? How do the supermarket chains fund petrol discounts? Are the discounts funded from higher grocery prices? Is there any evidence of petrol shopper dockets schemes affecting grocery prices?*

C. Competition in grocery retailing

Grocery retailers employ a diverse range of business models. The major supermarket chains (MSCs) offer a large range of products and brands in large stores located in large metropolitan shopping malls or in large stand-alone retail sites. These chains have their own wholesaling operations and operate on a national scale. Independent supermarkets such as IGA and Foodworks usually retail a smaller range of products and brands in mostly medium-sized stores. Recent entrant Aldi stocks a high proportion of private-label or less well recognised brands. Specialist retailers usually retail a single category of grocery products and often attempt to differentiate themselves from supermarkets through service and quality.

The MSCs dominate the national grocery landscape. A key issue in this inquiry is to assess competition between the MSCs and the competitive discipline other supermarket chains and specialist grocery retailers impose on the MSCs.

Questions on competition in grocery retailing

- 31 *Does the nature of competition in grocery retailing differ across products groups? Does the nature of competition differ across the types of shopping trips? What elements of the customer offer are important in each product group?*
- 32 *Who are the major competitors to the MSCs in each of the products groups?*
- 33 *To what degree do Coles and Woolworths compete against each other? To what degree does the option of shopping at other supermarket chains (e.g. IGA) constrain the conduct of the MSCs? To what degree does the option of shopping at specialist grocery retailers constrain the conduct of the MSCs? To what degree does the option of shopping at convenience stores constrain the conduct of the MSCs? How does this differ by product group? How does this depend on the type of shopping trip (i.e. weekly or “top-up”)?*
- 34 *Has the move by Coles and Woolworths into petrol retailing and the adoption of petrol shopper docket schemes altered competition between the MSCs and competition in grocery retailing more broadly? If so how?*
- 35 *What are the grocery pricing policies of the MSCs, and other grocery retailers that operate in more than one location? Do individual supermarket chains set the same product prices across all their stores? If not, are individual product prices determined regionally or store-by-store? How much, if any, pricing discretion is in the hands of the management of individual stores? To what extent, if any, do major national retailers respond at the store or local levels to changes in the grocery prices of local competitors?*
- 36 *To what degree do grocery prices differ between metropolitan, regional and country areas? How does this differ by product group? What are the major reasons for differences in grocery prices between metropolitan, regional and country areas (transport costs, land costs, market structure and competition, etc.)?*

- 37 *Is the Australian grocery industry of a sufficient size to sustain a third supermarket chain of similar size to Coles and Woolworths?*
- 38 *What are the key inputs that must be assembled to open a new grocery outlet of a given size?*
- 39 *Is access to suitable sites a significant impediment to the entry or expansion of supermarket chains? Do local planning and zoning laws impede access to suitable sites? Please provide details.*
- 40 *Are major shopping centre landlords willing to offer sufficient space to a new supermarket chain? Are there any restrictions (contractual or otherwise) that may limit the ability of landlords to offer such space?*
- 41 *To what degree are smaller supermarket chains discouraged from expanding by higher costs relative to the MSCs. What are the sources of higher costs (e.g. higher costs of wholesale groceries, inability to take advantage of economies of scale or density, etc.)?*

D. Competition in grocery wholesaling

As noted above, there are three major grocery wholesalers, two of which are vertically-integrated. These wholesalers service the major supermarket chains. There is also a range of wholesaling arrangements that fall outside the activities of the major grocery wholesalers, mainly servicing smaller and specialist retailers.

- 42 *Are there commercial advantages and disadvantages of vertical integration between grocery retailing and wholesaling? What are these advantages and disadvantages?*
- 43 *Does the vertically-integration of the MSCs impede other players from achieving a competitive scale in grocery wholesaling?*
- 44 *Can grocery retailers 'bypass' the large grocery wholesalers? If so, how? Does this vary by the type of product or type of retailer?*
- 45 *What are the impediments to entry into grocery wholesaling? Is large-scale entry likely?*

E. Buying power in grocery supply markets

A key competition issue for this inquiry is the degree to which the major grocery retailers and wholesalers have buying power in grocery supply markets and the implications of buying power for the efficiency of grocery supply arrangements (including pricing) and the supply chain. Issues relevant to assessing the buying power of the major grocery retailers and wholesalers are raised in this section. The implications of buying power for the efficiency of the grocery supply arrangements is discussed further below (see section H).

A grocery wholesaler or retailer with buying power can usually negotiate a better deal from suppliers than its competitors. A grocery wholesaler may gain buying power by purchasing large volumes or by committing to regularly purchase a specific quantity from a supplier. Buying power could also be the result of the exercise of market power. Market power of a grocery wholesaler is the ability to ‘pay less and demand more’ from suppliers on the basis that the supplier has little option but to sell to the wholesaler. A grocery wholesaler may have market power in its own right. Market power can also result from the joint action of number of wholesalers.

Questions on the buying power of grocery wholesalers and retailers

- 46 *Are large grocery wholesalers or retailers able to acquire products from suppliers at lower prices or on better terms than smaller wholesalers or retailers? Does this differ by product type?*
- 47 *Do grocery wholesalers or retailers with buying power pass on the lower prices they can achieve from suppliers to retailers and consumers?*
- 48 *Do suppliers incur lower unit costs in supplying larger wholesalers or retailers? What are the sources of these costs savings (bulk sales, purchase guarantees, etc.)? Are these reflected at the retail level?*
- 49 *Do suppliers offer the same terms and conditions to all grocery wholesalers or retailers? For example, if a small wholesaler offered to purchase the same volume as a large wholesaler, would the small wholesaler receive the same volume discount?*
- 50 *Is there evidence that large grocery wholesalers have market power as acquirers of products and what are its effects at the retail level?*
- 51 *Do slotting fees (fees paid by manufacturers or producers to have their products placed on supermarket shelves) reflect the existence of market power? What is the extent of slotting fees? How do slotting fees affect the competitive dynamic between producers/suppliers and the level of barriers to entry for producers/suppliers? How does the ability of supermarkets to control shelf placement and in-store promotional offers affect the competitive dynamic?*
- 52 *Are there other forms of behaviour or conduct by supermarkets in their dealings with producers or suppliers that may indicate market power?*

- 53 *How could grocery wholesalers or retailers exercise any market power? Could major retailers credibly threaten to 'delist' a product or brand? How would consumers react if their desired brands are not available at their local supermarket? How important is the potential for a grocery retailer to substitute to a private-label or generic brand? Do major retailers threaten to import products in preference to local brands and how credible is the threat? What options do suppliers have if this occurs? Where else could suppliers sell their products (other grocery retailers, exports)? What are the consequences at the retail level?*

F. Competitive position of small and independent grocery retailers

The competitive position of small and independent grocery retailers is affected by a range of factors, some of which have been mentioned above.

- 54 *What are the major sources of competitive advantage and disadvantage of small and independent retailers (e.g. trading hours, scale of operations, density of retail outlets, location of retail outlets, wholesale prices, product and brand range, customer service, etc.)?*
- 55 *To what degree do differences in wholesale prices and other wholesale terms and conditions undermine or otherwise affect the competitive position of small and independent retailers?*
- 56 *Are the wholesale prices independent and small retailers pay affected by the wholesale prices the MSCs pay? For instance, if a MSC puts pressure on a supplier to lower its prices will the supplier:*
- *attempt to ‘make this up’ by charging more to other wholesalers and retailers, or*
 - *reduce the prices it charges other wholesalers and retailers so other wholesalers and retailers can remain competitive with the MSCs?*
- 57 *Please provide any estimates of the differences in wholesale costs faced by small and independent retailers relative to the MSCs?*

Shopper docket schemes

Coles and Woolworths retail petrol as well as groceries. Coles and Woolworths offer a standard 4cpl discount on the price of petrol to customers who have purchased a minimum value of products at their supermarket. These petrol shopper docket schemes have become popular and are a form of competition between the MSCs.

The ACCC examined petrol shopper docket schemes in its recent inquiry *Petrol Prices and Australian Consumers*. Although the focus of that inquiry was on competition in petrol retailing, the ACCC found no evidence ‘to support a view that the supermarkets recoup the cost of their shopper dockets schemes via higher grocery prices’⁸. This inquiry will focus on the effects of shopper docket schemes on competition in grocery retailing, in particular the competitive position of grocery retailers that do not retail petrol.⁹

⁸ Australian Competition and Consumer Commission, *Petrol Prices and Australian Consumers, Report of the ACCC inquiry into the price of unleaded petrol*, December 2007, p.197.

⁹ The ACCC has examined the effect of petrol shopper docket schemes on competition in grocery retailing through a large number of third line forcing notifications. Third line forcing occurs where one party offer consumers a discount on a product on the condition that the consumer purchases a good from a third party. Although the ACCC has found that the petrol shopper docket schemes may have, to a limited extent, adversely affected small and independent grocery retailers, their overall effect has been to increase competition in grocery retailing. The ACCC will re-examine this issue in detail in this current inquiry.

- 58 *What impact have petrol shopper docket schemes had on small and independent grocery retailers? If shopper dockets are not offered, does this affect the ability to compete with the MSCs?*
- 59 *Have independent grocery retailers attempted to implement their own petrol discount schemes or other discount schemes? What has been the success of those schemes?*

Mergers and acquisitions in grocery retailing

There have been a number of mergers and acquisitions in grocery retailing in recent times many of which are reviewed by the ACCC (see Appendix A, which lists grocery mergers and acquisitions considered by the ACCC in the last three years). Each acquisition and the combination of acquisitions have the potential to affect competition in grocery retailing both directly, by eliminating competition from other grocery retailers, and indirectly by altering the structure of the grocery wholesaling sector.

Independent grocery wholesalers can potentially suffer two sources of competitive disadvantage from acquisitions in grocery retailing:

- loss of scale economies in wholesaling relative to MSCs, and
- loss of bargaining power in negotiations with suppliers relative to MSCs.¹⁰

Suppliers can also potentially suffer if they confront increased buyer power through accretion of market power as the MSCs grow at the expense of other acquirers of suppliers' products.

The ACCC continually revisits the issue of acquisitions in grocery retailing through its assessment of mergers in the industry. If it believes that a particular transaction is likely to result in a substantial lessening of competition, the ACCC will pursue remedies under section 50 of the TPA. In the absence of a remedy to deal with cumulative acquisitions if they are likely to substantially lessen competition (sometimes referred to as "creeping acquisitions"), the ACCC has recognised the need to continually monitor and scrutinise acquisitions of independent supermarkets by the MSCs.¹¹ The ACCC will re-examine this issue in detail in this current inquiry.

- 60 *Have there been acquisitions of independent stores by the MSCs in the past three years that have not been brought to the ACCC's attention and are not listed in Attachment A?*

¹⁰ For example, if the buying power of the MSCs increase as a result of the acquisitions, they will place greater pressure on suppliers to lower their prices. If suppliers are already pricing at cost they have two options, exit the industry or find higher prices elsewhere. The latter is likely to be through increasing their price to independent wholesalers.

¹¹ See ACCC, *Assessing shopper dockets petrol discounts and acquisitions in petrol and grocery sectors*, February 2004. Also note the ACCC's development of the Charter for the Competitive Sale of Independent Supermarkets. Under the charter, Metcash, Woolworths and Coles are not able to limit the ability of independent supermarket retailers to seek alternative purchasers for their stores.

- 61 *What has been the effect of acquisitions, particularly combinations of acquisitions, on the competitiveness of independent wholesalers and retailers?*
- 62 *In particular, have the relative costs of independent wholesalers been affected by recent merger activity in supermarkets? If possible, please provide evidence. Have prices paid by independent wholesalers and retailers to suppliers or terms of trade with suppliers been adversely affected? If possible, please provide evidence. Have there been flow-on effects to independent grocery retailers?*

Conduct of grocery retailers

The ACCC has received and investigated a range of complaints concerning possible anti-competitive conduct in grocery retailing. Many of these matters involve allegations of predatory pricing. Predatory pricing occurs when a firm temporarily reduces its prices with the aim of attaining greater profits over time through altering the structure of, or behaviour in, the markets in which it operates. Many of the complaints investigated by the ACCC have involved one or both of the MSCs allegedly reducing prices below cost with the alleged purpose of forcing smaller competitors out of business. The ACCC takes these allegations seriously.

- 63 *Is there evidence of any anti-competitive conduct in grocery retailing? What types of market conduct are of most concern to grocery retailers and wholesalers?*
- 64 *Is there any evidence of predatory pricing by larger retailers and wholesalers, and if so, is there any evidence of any adverse impact on independent/smaller retailers and wholesalers?*
- 65 *Please describe any such conduct (including specific instances) and the effect of the conduct on competition in grocery retailing.*

G. Factors influencing the pricing of inputs along the supply chain for standard grocery items

A range of factors may influence the pricing of grocery products along the supply chain. For packaged food groceries, the costs of producing or importing the goods, transport, storage and holding costs are likely to be important factors. Prices of perishable items along the supply chain may be similarly influenced by production, import, transport, storage and holding costs, and can also vary from day to day or season to season depending on the supply and demand balance and the remaining shelf life of the item.

The ACCC is interested in understanding the supply chain and the supply arrangements along the chain (including pricing arrangements) across a broad range of products and circumstances.

As noted in section A, the ACCC is particularly interested in:

- identifying each of the steps in the supply chain from supplier to retailer
- the activity or value added in each step
- the businesses or business types that undertake each activity
- the pricing structure in each step (price per unit, price mark-up, etc.), and
- the proportion of the final retail price of the product accounted for by each part of the supply chain.

Questions for suppliers of grocery products

- 66 *What are the major influences on the prices you receive for your produce? How are your prices determined? What proportion of the retail price of the product do you receive?*
- 67 *Have the prices you receive for your produce changed over the past 1 to 3 years? What have been the major reasons for any changes in the prices you receive? Have your costs of production changed over the past 1 to 3 years? Have the prices you receive for your produce changed by more or less than your cost of production? Please provide details?*
- 68 *To whom do you sell your produce? What supply arrangements do you have with the buyers of your produce? Do you sell any of your produce to the MSCs? If so, what options do you have if you decided not to sell to the MSCs (other grocery retailers or wholesalers, food processors, exports, etc?)*
- 69 *If a MSC put pressure on you to lower your prices would you attempt to ‘make this up’ by charging more to other wholesalers and retailers, or would you also lower your prices to other wholesalers and retailers so they can remain competitive in grocery wholesaling and retailing?*

Questions for wholesalers and retailers of grocery products

- 70 *Do changes in retail grocery prices reflect changes in the prices you pay your suppliers? For example, do retail grocery prices reflect changes in farm gate prices? Please provide details.*
- 71 *Do cost savings in the supply chain flow through to lower retail prices for consumers?*
- 72 *What is the nature of the supply arrangements you have with suppliers? How are prices determined under these arrangements?*

H. Impediments to efficient pricing of inputs along the supply chain

Grocery products typically move along the supply chain from the initial producer to the final consumer by way of one or more commercial transactions. Competition and pricing at each stage of the supply chain can affect the price consumers pay at the check-out. Impediments to competition and efficient pricing (such as the existence of market power) can increase the prices consumer pay at the check-out.

The ACCC will examine pricing and supply agreements along supply chains to determine if there are impediments to the efficient pricing of inputs.

- 73 *Is there evidence of market power in the supply of grocery products to retailers or wholesalers? Please identify specifically which grocery products and explain the sources of market power?*
- 74 *Are there any impediments to cost savings flowing through the supply chain to consumers?*
- 75 *What are the consequences for suppliers of any market power of grocery wholesalers or retailers in the acquisition of grocery products (e.g. lower prices to suppliers, transfer of risk and/or costs to suppliers, decreased incentive for investment and innovation along the grocery supply chain, etc.)?*
- 76 *What are the potential consequences of suppliers having any market power along the grocery supply chain?*
- 77 *Has the degree of vertical integration in the supply chain had an effect on the pricing of inputs? If so, in what way?*
- 78 *What impact, if any, does the presence of direct supply agreements have on the level of competition in the markets for those individual products?*
- 79 *How has the sale of private-label or generic products by grocery retailers changed in recent times? Has this change had any impact on the level of competition along the grocery supply chain?*
- 80 *Do the pricing arrangements, terms and conditions of supply, or contracts between suppliers and wholesalers/retailers limit the degree to which suppliers can pass on cost savings or cost increases?*

I. Horticulture Code of Conduct

The effectiveness of a prescribed industry code is typically assessed on the basis of how well the code has achieved its objectives.

The Code's objectives are:

- (a) to regulate trade in horticulture produce between growers and traders to ensure transparency and clarity of transactions (the Code does not seek to regulate prices), and
- (b) to provide a fair and equitable dispute resolution procedure for disputes arising under the Code or a horticulture produce agreement.

The ACCC will examine a range of issues in relation to the effectiveness of the Code.

- 81 *What has been the impact (if any) of the Code on market behaviour along the supply chain for horticultural products?*
- 82 *What would be the impact on market behaviour along the supply chain for horticultural products if retailers and other major buyers were also included in the Code?*
- 83 *Would such inclusion improve the effectiveness of the Code?*

Appendix A: ACCC public reviews of mergers and acquisitions in grocery retailing since 2005

Since 2005, the ACCC has publicly reviewed 11 transactions resulting in the acquisition of a total of 91 supermarkets, three development sites and one wholesale grocery business. During the same period, the ACCC also assessed two proposed mergers on a confidential basis, involving the acquisition of two supermarkets.

Year	Acquirer	Target	No. of supermarkets / Wholesale businesses
2005	Metcash	Foodland	<ul style="list-style-type: none"> ▪ 82 supermarkets (actually acquired 61) ▪ Foodland's West Australian wholesale grocery business
	Woolworths	22 Action Stores and development sites	19 stores; 3 development sites (actually acquired 18 stores and 3 development sites) ¹²
	Coles Myer	Action Supermarket, Busselton (WA)	1
	Coles Myer	Hallam Supermarket (Vic)	1
	Woolworths	Eli Foodworks, Hervey Bay (NSW)	1
2006	Woolworths	Nardi's Foodworks, Bannockburn (Vic)	1
2007	Woolworths	Roger and Dale's IGA, Thurgoona (NSW)	1
	Woolworths	Supa IGA, Capalaba (Qld)	1
	Woolworths	Festival Jindabyne IGA (NSW)	1
	Woolworths	Mallam's Spar Supermarket (NSW)	1
2008	Woolworths	Ritchies Super IGA, Kelvin Grove (Qld)	1

¹² Woolworth's had intended to acquire 22 Action Stores, but decided not to proceed with the acquisition of the Spearwood store in Western Australia. Metcash ultimately acquired the Spearwood store.