



Submission to the ACCC Supermarkets Inquiry 2024-25

April 2024

About Us

CHOICE

CHOICE is the leading consumer advocacy group in Australia. CHOICE is independent, not-for-profit and member-funded. Our mission is simple: we work for fair, just and safe markets that meet the needs of Australian consumers. We do that through our independent testing, advocacy and journalism.

To find out more about CHOICE's work visit www.choice.com.au/campaigns

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Introduction

CHOICE welcomes the opportunity to contribute to the ACCC Supermarkets Inquiry 2024-25.

Consumers are concerned about the cost of food and groceries and are questioning whether recent price increases are justified. High levels of concentration in Australia's supermarket sector may have allowed supermarkets to increase prices beyond what would be fair in a more competitive market. Supermarkets also use a number of promotional tactics designed to look like specials that may offer little to no discount. Consumers look for products that are the best value for money but it is becoming increasingly difficult for people to decipher the promotional tags being used by the supermarkets.

New research from CHOICE reveals that many people are confused by many of the promotional labels and terms used at the major supermarkets. For all of the labels included in our research, on average 1 in 4 people did not know whether the label represented a discount on the usual price. In addition, large numbers of consumers from our research incorrectly interpreted labels to mean products were discounted and many said they were not able to quickly and easily determine if a product was discounted or not.

Consumers are increasingly subject to creative and invasive forms of data collection by the major supermarkets that pose risks to competition and privacy. In particular, the immense growth of Everyday Rewards and Flybuys allows Coles and Woolworths to 'lock up' customer bases and lock out competitors, target and potentially manipulate consumers with personalised advertising and offers, expand into non-grocery services, and share personal information with third-parties without informed consent. Additionally, investments into "anti-theft" technology using surveillance and automated systems may infringe on consumer rights to privacy and fair treatment.

This inquiry is a welcome opportunity to investigate the pricing and promotional practices of the major supermarkets. CHOICE's submission makes a number of recommendations around:

- increasing transparency in historical supermarket pricing,
- banning certain promotional tactics,
- access to food for remote communities and
- investigating and building a stronger evidence base about a number of emerging issues such as the growth of online shopping, the barriers to other companies entering the grocery market and the role of homebrand products.

CHOICE also recommends economy wide law reforms to protect consumers, such as the introduction of a ban on unfair trading and changes to the Privacy Act.

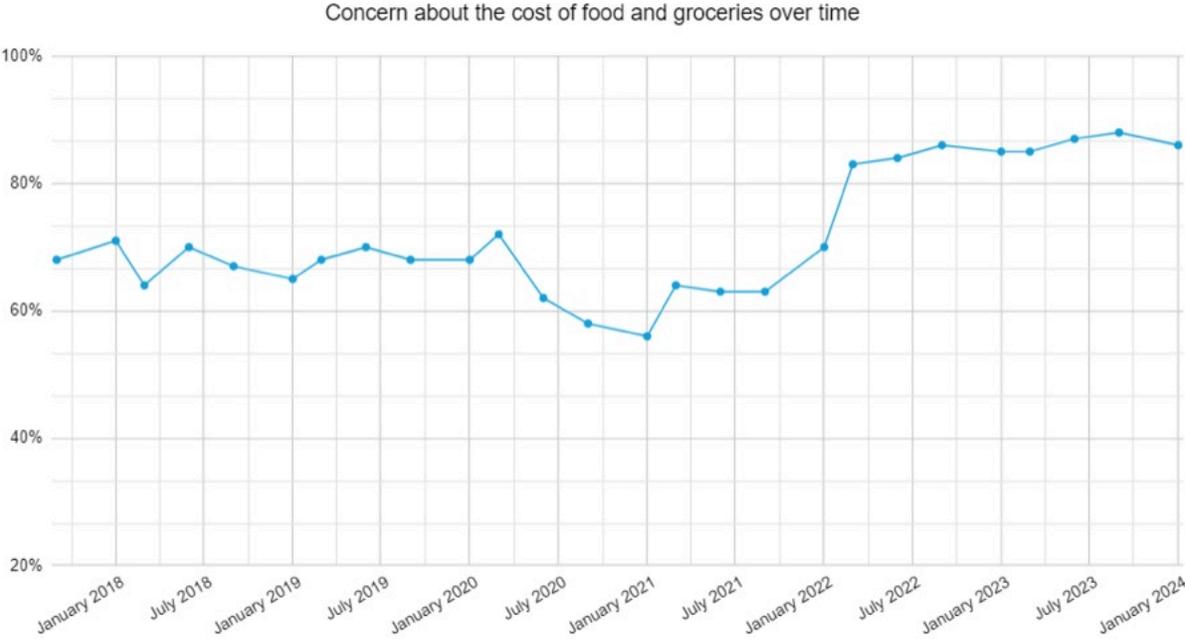
Recommendations

1. The ACCC use its information gathering powers to compel and assess historical pricing data from Coles and Woolworths as part of its inquiry into the supermarket sector
2. The ACCC should recommend that the Federal Government explores reforms to enable greater transparency of supermarket pricing, such as empowering the ACCC to collect and publish supermarket pricing information in a database that enables tracking of price changes over time
3. The ACCC should recommend that the Government introduce a mandatory information standard for supermarkets that ensures their pricing and discounts are clear and consistent with consumer expectations
4. The ACCC should recommend that the Government ban multi-buy discounts on essential items, which could include basic products such as fruit, vegetables, milk, bread, baby formula, sanitary items and pharmaceuticals
5. The ACCC should recommend that governments mandate that supermarkets be required to prominently disclose when a product reduces in size and the unit price increases
6. The ACCC should investigate the role of home brand products in the grocery market as a part of this inquiry
7. This inquiry should undertake a detailed investigation into, and make recommendations on, grocery retailer compliance with the Grocery Unit Pricing Code and the opportunities to increase the effectiveness of the grocery unit pricing system for consumers through changes to the:
 - a. Current compliance monitoring and enforcement arrangements
 - b. Code's provisions and associated guidance documents
 - c. National measurement legislation
8. The ACCC should recommend that the scope of the national unit pricing system be expanded to include the provision of unit prices for packaged products sold by relevant non-grocery retailers such as pet supplies stores, chemists, hardware stores and stationers
9. The ACCC should recommend that the Federal Government prohibit supermarkets' use of app-only and member-only discounts on essential items, which could include basic products such as fruit, vegetables, milk, bread, baby formula, sanitary items and pharmaceuticals
10. The ACCC should investigate the impact of loyalty schemes on competition as part of this inquiry. This should include consideration of how these schemes may be affecting consumer behaviour, entrenching market power or enabling unfair pricing practices
11. The ACCC should recommend that the Government legislates an economy-wide prohibition on unfair trading
12. The ACCC should recommend that the Government legislate reforms to the Privacy Act, including:
 - a. A fair and reasonable use test to ensure businesses are only using consumer data in line with consumer expectations;

- b. Expanding the definition of 'personal information' to include data relating to a person, such as technical and inferred information;
 - c. Individual rights such as the right to access and delete your data held by businesses including supermarket loyalty schemes (including access to an explanation about how data was collected and what it has done with the information), and rights to object to the collection, use or disclosure of personal information;
 - d. A right for consumers to opt-in to or opt-out of targeted advertising;
 - e. Requiring businesses to set out all types of information used in substantially automated decisions in privacy policies and allowing consumers to request meaningful information about how substantially automated decisions with legal or similarly significant effects are made
 - f. Requiring businesses using high-risk data practices to produce a publicly available Privacy Impact Assessment;
 - g. Prohibiting businesses from trading in (i.e. the sale of) personal information; and
13. The ACCC should investigate whether the major supermarkets and loyalty schemes are continuing the practice of linking payment cards to loyalty scheme profiles even when a loyalty card is not scanned
 14. The ACCC should investigate the impact of the growth of online food and grocery shopping on prices and competition as a part of this inquiry. This should include consideration of availability of online prices, the fairness of 'order-by-item' pricing, the role of subscription programs, search functions and the order that products are displayed, 'online only' promotions and product quality and safety when shopping online.
 15. The ACCC supermarket inquiry should consider the competitiveness of supermarkets in remote and regional areas, by collecting and analysing data to better understand the supply chain for food and groceries in remote communities
 16. The ACCC should recommend that the Government develops an affordable pricing policy in consultation with remote communities, which may include price caps, for basic goods in remote communities
 17. The ACCC should recommend that remote community stores are regularly monitored for quality and quantity of stock and prices
 18. The ACCC should recommend that the Government supports innovative community-led approaches to addressing food insecurity through increased grant funding
 19. The ACCC should recommend that the Government increases income support for people living in remote communities to better reflect the high cost of living
 20. The ACCC should recommend that the Government supports consumer protection and engagement in regional and remote areas through increased funding for consumer advocacy, financial counselling and legal services organisations

CHOICE’s national surveys highlight consumer attitudes towards supermarket prices and competition

CHOICE conducts quarterly national surveys which track consumer attitudes towards various issues. In January 2022, concern about the cost of food and groceries sat at 70%, by March 2022 this number had jumped to 83% and has remained consistently above 80% since then. The chart below tracks consumer sentiment around the cost of food and groceries over time.



In September 2023, CHOICE also conducted a national survey that reveals further insights into consumer attitudes towards the major supermarkets:

- **If given a choice, many consumers would shop elsewhere.** Nearly 40% of respondents told us they would stop shopping at Coles and Woolworths if there was another option.¹ A breakdown of responses reveals that sentiment does not change greatly for those living in metropolitan areas compared to those living in regional areas:
 - For Woolworths shoppers, 38% of those living in metro areas and 38% of those living in regional areas said they’d stop shopping at Woolworths if there was another option.

¹ CHOICE Consumer Pulse September 2023 is based on an online survey designed and analysed by CHOICE. 1,035 Australian households responded to the survey with quotas applied to ensure coverage across all age groups, genders and locations in each state and territory across metropolitan and regional areas. The data was weighted to ensure it is representative of the Australian population based on the 2021 ABS Census data. Fieldwork was conducted from 29 August to 18 September 2023.

- For Coles Shoppers, 41% of those living in metro areas and 37% of those living in regional areas said they'd stop shopping at Coles if there was another option.
- For Aldi shoppers, 18% of those living in metro areas and 16% of those living in regional areas said they'd stop shopping at Aldi if there was another option.
- **Consumers have noticed the increase in prices in recent years.** In the 12 months to September 2023, 96% of consumers reported that the cost of everyday items had risen.² 57% of Woolworths or Coles shoppers said prices have increased a lot compared with 21% of Aldi shoppers that said prices have increased a lot.³
- **Consumers are sceptical about whether these price increases are justified.** Almost two thirds of Coles shoppers (66%) and Woolworths shoppers (64%) surveyed said supermarkets are making a lot of money from increasing prices but are blaming price increases on rising costs. In contrast, only 28% of Aldi shoppers believed Aldi is making a lot of money from price increases but are blaming them on rising costs.⁴

Supermarkets' discounts and promotions are confusing consumers

CHOICE has observed drastic price increases on groceries over the past few years, with the major supermarkets regularly rotating products through a variety of different, and often confusing, discounts and promotions. Constantly fluctuating prices and the use of multiple different promotion types could potentially obscure price increases and allow supermarkets to increase prices beyond what they would have been able to, had they simply increased prices transparently over time.

CHOICE supporters have shared their frustration about this pattern of price setting:

"Most common practice is to increase (the) price and then have it at (the) old price on special for (a) very short period. A lot of price increases are huge, especially Coles. I use Heart Active milk which now costs me \$3.80 (an) increase of about \$1.00. Bought same at IGA which pays much higher wholesale price than Woolworths and Coles. Their price was \$3.20."

"I am frustrated and angry with the price dishonesty. Often, when a product is marked at a half price special it has had a price rise from the previous week before being advertised as a half price special."⁵

² CHOICE Consumer Pulse September 2023 is based on an online survey designed and analysed by CHOICE. 1,035 Australian households responded to the survey with quotas applied to ensure coverage across all age groups, genders and locations in each state and territory across metropolitan and regional areas. The data was weighted to ensure it is representative of the Australian population based on the 2021 ABS Census data. Fieldwork was conducted from 29 August to 18 September 2023.

³ ibid

⁴ ibid

⁵ Respondents to CHOICE survey on Supermarket Specials conducted in November 2023

However, because the two major supermarkets don't publish historical pricing data, it's difficult to track the pattern of price setting to understand whether this pattern is fair or whether claims about historical or future prices are accurate. Our analysis of data from websites that scrape prices from supermarket websites suggest there are reasons to question some of these claims (see page 13). CHOICE requests that the ACCC use its information gathering powers to compel and assess this data from major supermarkets as part of its inquiry into the supermarket sector.

The ACCC should also recommend that the Government empower the ACCC to collect and publish food and grocery pricing information in a database that enables tracking of price changes over time. This will give consumers greater confidence that prices are fair by enabling the media, researchers, analysts and organisations like CHOICE to scrutinise pricing over time and verify claims about prices. Currently, everyone is left to rely only on the 'Was' prices provided by the supermarket, which may be chosen at points in time when the price was artificially inflated. CHOICE has also observed a number of products claiming to be on 'special' at major supermarkets, but the price labelling doesn't include the 'Was' price, or even the amount of the discount. Readily available historical pricing data would make it much easier to verify these claims.

Recommendations:

1. The ACCC use its information gathering powers to compel and assess historical pricing data from Coles and Woolworths as part of its inquiry into the supermarket sector
2. The ACCC should recommend that the Federal Government explores reforms to enable greater transparency of supermarket pricing, such as empowering the ACCC to collect and publish supermarket pricing information in a database that enables tracking of price changes over time

New CHOICE research shows that consumers are confused by the pricing practices of major supermarkets

In February 2024, CHOICE conducted a new nationally representative survey of consumers that shows many people are confused by the pricing practices used by major supermarkets.

Over 1000 people were surveyed by CHOICE about their understanding and interpretation of various sales tags and marketing claims. Respondents were asked if they could tell if a variety of real price tags photographed in Woolworths, Coles and Aldi stores represented discounts on the usual price and how easy and quickly they were able to determine whether it was a discount or not.⁶

⁶ CHOICE Consumer Pulse January 2024 is based on an online survey designed and analysed by CHOICE. 1,058 Australian households responded to the survey with quotas applied to ensure coverage across all age groups, genders and locations in each state and territory across metropolitan and regional areas. The data was weighted to

Coles 'While Stocks Last'



Photo taken on 6 December 2023 at Coles Marrickville Metro

This 'while stocks last' tag appeared to cause the most confusion for survey respondents. When asked if they thought this price was a discount on the usual price, 31% believed the product was discounted, 36% believed it wasn't and 33% were not sure.

When asked if they were quickly and easily able to know if it was a discount or not, 38% said that they were not able to quickly and easily identify if the product was discounted, 45% said they were able to, and 17% weren't sure.

The 'while stocks last' tag uses the same colour scheme and design elements as the Coles 'Special' and some other discount tags. In a busy supermarket environment, consumers could easily mistake these tags for discount offers. The design of this tag could explain the significant confusion demonstrated by the survey responses.

CHOICE asked Coles if this tag represented a discount for consumers, and if so, what the discount amount was. Disappointingly, Coles did not directly answer these questions.

CHOICE also asked what the criteria for a 'while stocks last' tag is. Coles informed us that:

ensure it is representative of the Australian population based on the 2021 ABS Census data. Fieldwork was conducted from the 16th of January until the 5th of February, 2024

“While Stocks Last tickets also offer customers the chance to buy items which are only available at Coles for a short time, and which are unlikely to be restocked once the products are sold through.”

Whether or not this item is in fact discounted remains a mystery, but based on the explanation of the promotion provided by Coles, it appears unlikely.

Coles ‘Down Down’

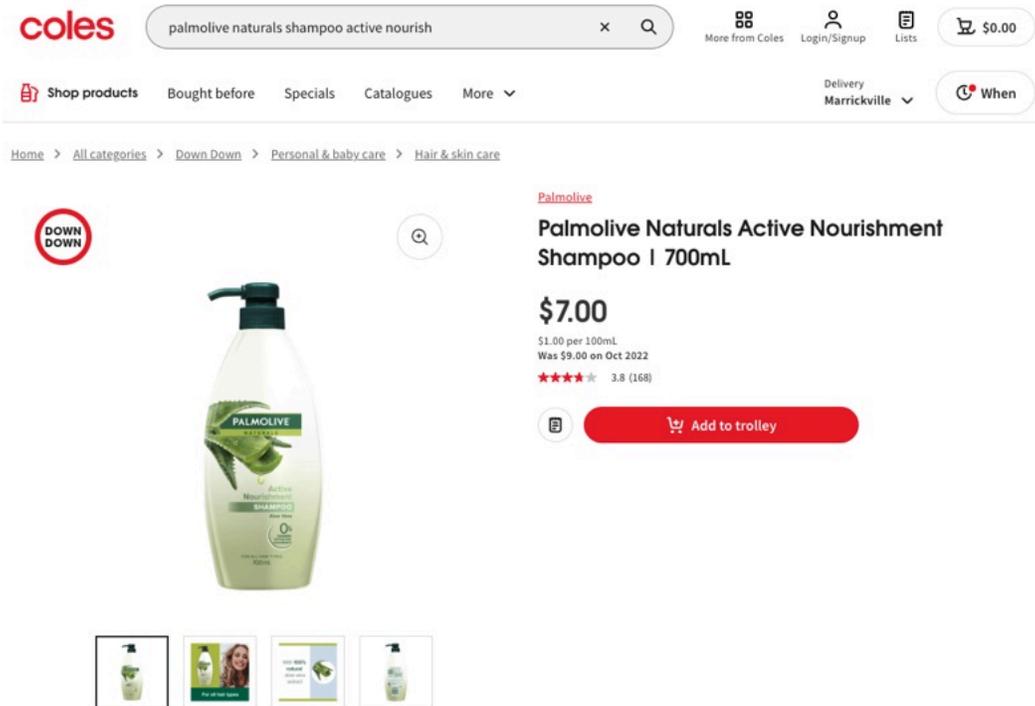


Photo taken on 6 December 2023 at Coles Marrickville Metro

This ‘Down Down’ label does not list a previous higher price or an amount of the discount.

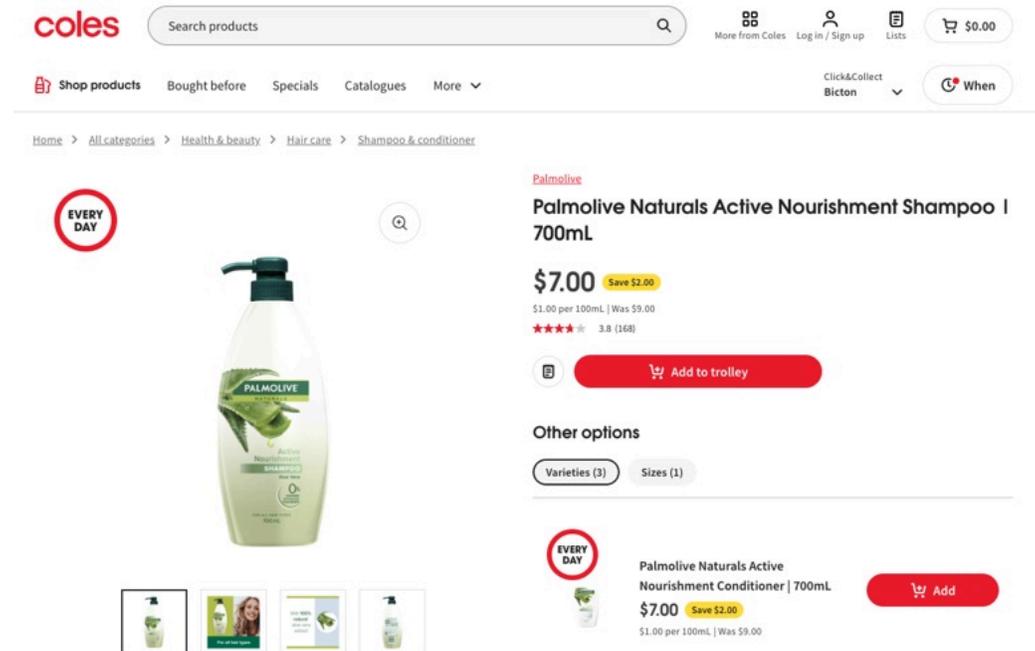
When asked if they thought this was a discount on the usual price, 26% of respondents said they thought this product was discounted, 46% did not think that it was discounted and 28% weren’t sure. When asked if they were quickly and easily able to know if it was a discount or not, 38% said they weren’t able to quickly and easily determine if the product was discounted, 48% said they were able to and 14% weren’t sure.

On the same day the above photo was taken, the Coles website also claimed the product ‘Was \$9 on Oct 2022’.



Screenshot of Coles website captured on 6 December 2023.

By at least 26 February 2024, the Coles website continued to show a 'Was' price for the product of \$9 and the current price being \$7, but the promotion had changed from 'Down Down' to 'Every Day'. Coles also removed the date that the product was \$9 from the description.

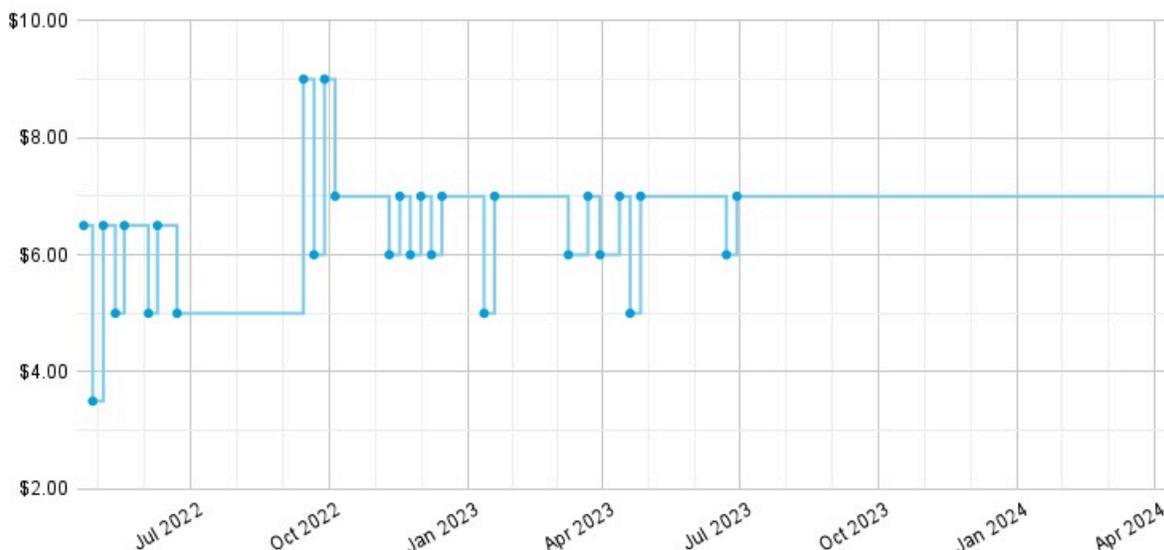


Screenshot of Coles website captured on 26 February 2024

According to Price Hipster, a website that scrapes pricing data of some major retailers, this Palmolive shampoo from Coles was only \$9 for a total period of 14 days in September/October 2022.⁷ Since this period, the website shows the price bounced between \$5 and \$7. Its lowest record price was \$3.50 in April 2022. This Palmolive shampoo has now been \$7 since June 2023.

Palmolive Naturals Active Nourishment Shampoo

Coles price history (data from pricehipster.com)



Source: Price Hipster

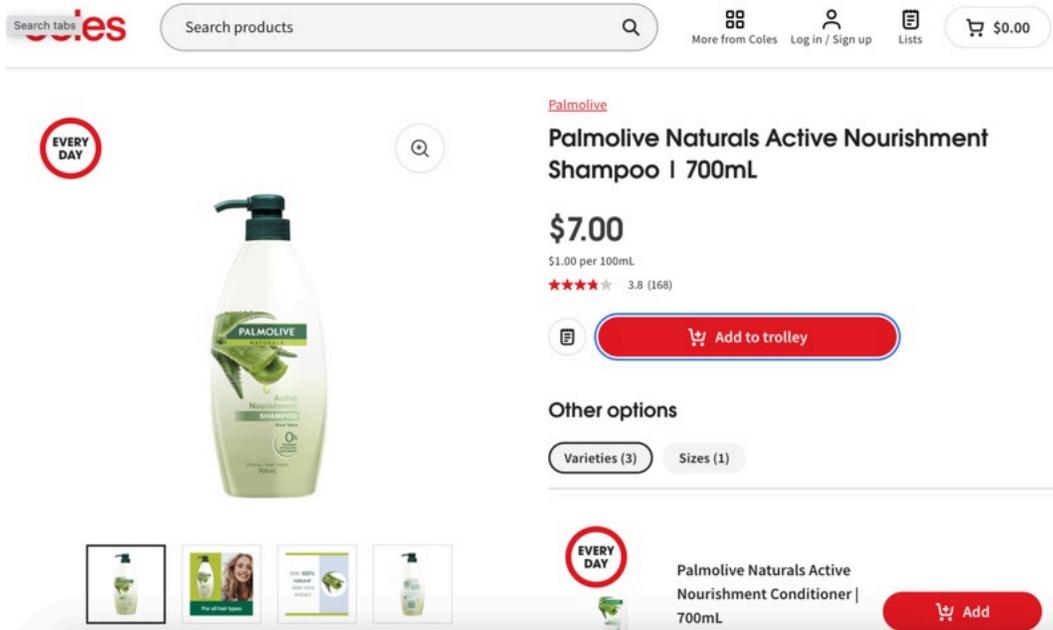
We're unable to verify the data provided by Price Hipster because, like other major supermarkets, Coles doesn't publish historical pricing information. We asked Coles if the price of \$7 represented a discount for consumers and if so, the amount of the discount. We also asked what the previous higher price was, when the product was this price and for how long. Coles did not directly answer these questions. Instead, Coles informed us that:

"The Palmolive Shampoo 700mL is an important essential to many customer baskets. We have worked with our supplier to now offer this at an 'Everyday' price of \$7, which is a stable, consistent price. We take clear and accurate pricing information very seriously and always aim to ensure that our specials represent value for our customers."

Coles also informed CHOICE that 'Down Down' promotional campaigns provide customers certainty that prices will remain at a lower price for up to 13 weeks, this information is not

⁷ Price Hipster, accessed at: <https://pricehipster.com/?q=palmolive%20naturals%20shampoo%20avtice%20nourish%20>

publicly available so there is no way for the consumer to know this. Coles has since removed the reference to the \$9 'Was' price on this product online, now marketed as 'Every Day' at \$7.



Screenshot of Coles website captured on 19 April 2024

Woolworths 'Member price'

The 'member pricing' of this Woolworths tag caused considerable confusion, with 29% incorrectly saying the product was discounted, 39% saying the product wasn't discounted and 32% not sure. 41% were not able to quickly and easily identify if the product was discounted, 42% saying they were able to, and 17% not sure.

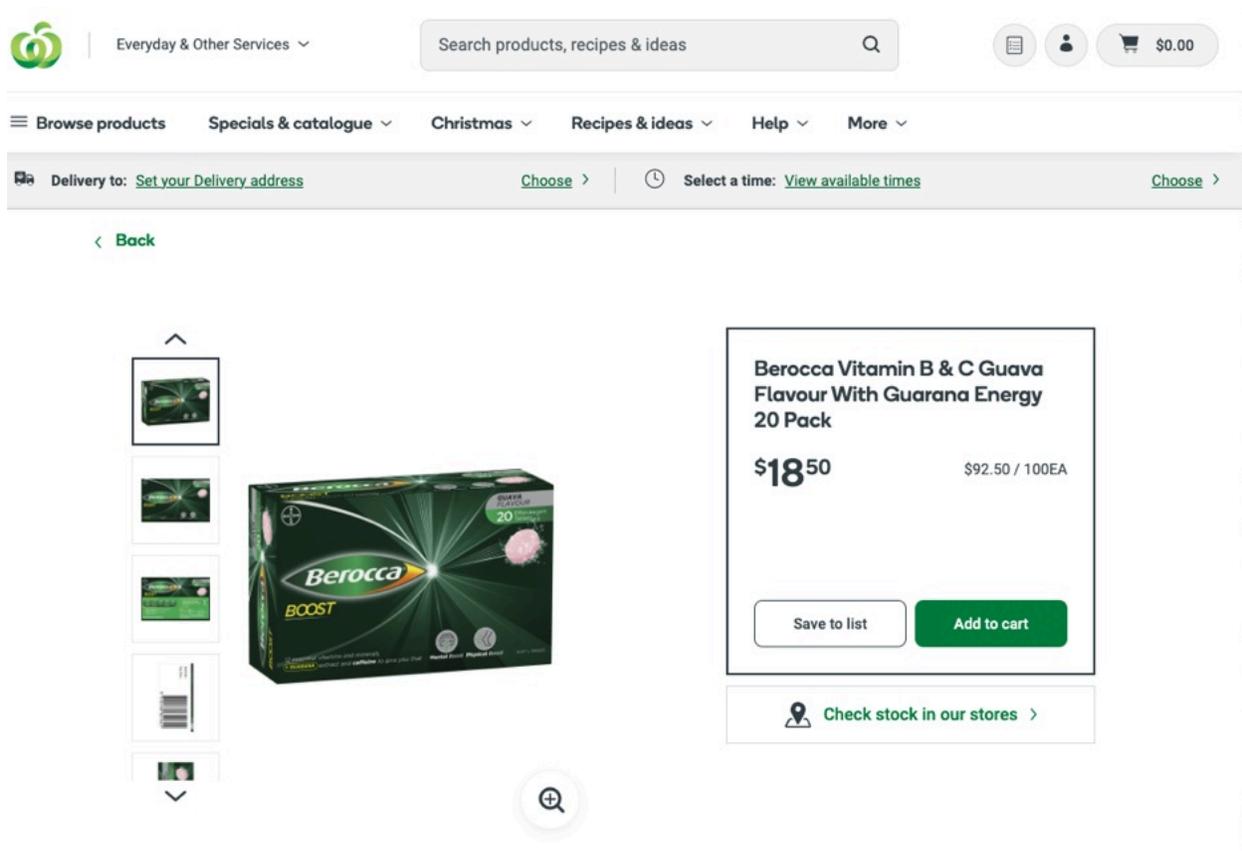


Photo taken on 6 December 2023 at Woolworths Marrickville Metro

We asked Woolworths if this price represented a discount for consumers and if so, what was the discount amount? We also asked what the price is for non-members and was there a reason it was not displayed? Woolworths informed us that:

“This particular product was on a Members Price offer from 29 November 2023 until 5 December 2023. We apologise that in this instance it appears due to an error in the store, that the orange shroud had not been removed by the following day.”

Consumers looking to purchase these Berocca tablets online, would not have been affected by the member-only pricing claim (see screenshot below), as it was only in store that the shroud had been left on the electronic tag. Price tags in stores are still susceptible to human error, even with the introduction of electronic tags, due to the use of these price frame labels that clip to them. In this instance, this may have caused a significant number of people to believe the product was discounted, when it wasn't.



Screenshot of Woolworths website captured on 6 December 2023

Woolworths 'New'



Photo taken on 6 December 2023 at Woolworths Marrickville Metro

'New' price tags caused some confusion, with 7% of respondents incorrectly believing the product was discounted, 72% correctly identifying that the product wasn't discounted and 21% unsure. 33% were not able to quickly and easily establish if the product was discounted, 54% of respondents said they were able to quickly and easily establish if the product was discounted and 13% were not sure

We asked Woolworths if this price represents a discount for consumers, and if so, the amount of the discount. We also asked how long Woolworths advertises 'new' products as 'new'? Woolworths responded that:

"The pink 'New' tag indicates that a product is new in store and highlights new products that customers may want to try. This is not a promotional price and no discount or price reduction representation is made."

Although only a relatively small number of respondents incorrectly identified this as a discounted item, the label still caused confusion and made it harder for some to work out if it was a discount.

Woolworths 'Prices Dropped'



Photo taken on 6 December 2023 at Woolworths Marrickville Metro

This 'Prices dropped' label created confusion for respondents, with 19% saying the product was discounted, 58% believing it wasn't and 23% unsure. This is despite no previous higher price or discount amount being listed on the label. 38% said they were not able to quickly and easily know if the product was discounted, 49% said that they were able to and 13% were unsure.

We asked Woolworths a number of questions about this promotion, including if this price represented a discount for consumers, the discount amount, and what higher price the product was previously sold for and for how long. We also asked about the criteria for a 'Prices Dropped' tag. Woolworths told us that:

"The product was previously priced at \$6, and has been dropped in price since 22/7/2019 to \$4. The ticket shows that the \$4 dropped price has been in place since 22/7/2019."

As Woolworths has offered this coconut water at \$4 for almost 5 years, it's CHOICE's view that this has become the usual price of the product. Consumers drawn to the promotional tag of this item may think they are getting a discount, when the price has been the same, consistently, for almost 5 years. By not providing the previous price, the consumer would also be unaware of how much the price had dropped.

Woolworths also provided us with some additional information on how their 'Prices Dropped' campaigns work:

“For the past few years we have been running our seasonal Prices Dropped program during specific seasons, such as Summer, Autumn, Winter, Spring or Christmas, to help our customers spend less on key products for the season. Each seasonal program typically includes 300-400 seasonally relevant products that remain at a ‘dropped’ price throughout the season to give our customers value on those products and help them better manage their budgets. We also have some products on longer term Prices Dropped that were dropped and have stayed at the lower dropped shelf price to provide price certainty and stable lowered prices for our customers.”

This ‘Prices Dropped’ price tag created considerable confusion for respondents to our survey. Referring to a date 5 years previous is too long for it to still be considered a ‘discount’ to consumers and CHOICE would argue that this does not provide certainty for consumers. Rather the opposite, a ‘Prices Dropped’ tag implies that the price could change again at any point. We note that Woolworths has since removed the ‘Price Dropped’ label on this product, which remains at \$4.

Aldi ‘Super Savers’



Photo taken on 6 December 2023 at Aldi Marrickville Metro

14% of respondents believed that this Aldi ‘Super Savers’ price label was a discount on the usual price, 56% did not think it represented a discount and 30% were unsure of whether it was discounted or not. 39% of people were not able to quickly or easily establish if the product was

discounted, 45% said that they were able to quickly and easily establish if there was a discount and 15% were unsure.

We asked Aldi if this did in fact represent a discount for consumers, but they did not directly address this question:

“Our model of every day low prices means we have permanently low prices across our range creating savings for customers across a whole basket, not just on a select range of products. We do not offer price mark ups and discounts across our grocery range, otherwise known as high low pricing, providing certainty and reliability to our customers.”

If this product is indeed discounted, this price tag omits important contextual information that would help consumers determine if the product was discounted, such as the previous price or the amount of the discount offered. As cucumbers are seasonal products that fluctuate in price based on the season, CHOICE would argue that supermarkets shouldn't be using these kinds of promotional tags to create the impression that they have been discounted. For the same reason, 'Fresh Specials' offered at Coles and Woolworths on fruits and vegetables also cause concern.

Consumers are drawn to promotional tags that make it look like one product is potentially better value or a good deal, compared to other products. The plethora of promotional tags that are being used by the major supermarkets are confusing and potentially misleading. Tags like 'New', 'While Stocks Last', 'Super Savers', 'Down Down', 'Prices Dropped' and 'Member Price' do not always reflect discounts, but without contextual information or historical pricing data, consumers have no way of knowing if they are getting a good deal or not. CHOICE is only able to verify these claims through the respective supermarkets and we are disappointed that Coles and Aldi in particular did not directly address our questions or assist us with verifying these specific claims.

Further evidence of supermarket pricing practices creating confusion for consumers

The major supermarkets employ a number of potentially misleading pricing strategies that make it incredibly hard for consumers to meaningfully compare products and make informed purchasing decisions. It should be clear to consumers that discount claims represent genuine discounts, especially considering the cost of living pressures many people are currently experiencing.

In a survey of 10,468 CHOICE supporters, conducted in November 2023, 83% of supporters surveyed by CHOICE said that they think some Coles and Woolworths 'specials' or other

promotions make it hard to know if you're getting a genuine discount or value for money.⁸ One respondent shared:

"The main problem I see is that there are too many different ways of highlighting a product. You look down an aisle with tickets of different colours which are so confusing (sic). Is this deliberate? All I want to know is (if) the price (is) acceptably discounted. Some tickets that are especially annoying. Price matched - I don't care and don't want to spend my time comparing alternative stores prices to see if it's true... Special price where the discount is so small - forget it. It seems a deliberate attempt to make you think 20c on a price of \$6 is worth considering. The original prices shown on discount tickets are so small, often you have to examine the ticket with a magnifying glass."⁹

Research shows that the way prices are presented has a considerable impact on consumer decision making. In 2010, the UK Office of Fair Trading (OFT) conducted a market study into the advertising of prices. The OFT study stated that:

"We consider that there is now compelling evidence that price framing exerts a powerful effect, that the effect can lead to financial loss and other consumer harm when price frames are used in an inaccurate or misleading way, and that a significant proportion of the population have been affected."¹⁰

The OFT study also outlined the particular features of price framing in the grocery sector that they have identified as most likely to cause harm, including:

- Omitting to give customers the information they need, in a format they can use, to decide whether a volume offer is better or worse value than a smaller pack or quantity;
- Omitting to tell consumers that price comparisons are not like for like or that they are not comprehensive in those circumstances where consumers might reasonably assume that they are.¹¹

UK Consumer group Which? submitted a super-complaint on supermarket pricing practices to the Competition and Markets Authority in 2015 that outlined the circumstances where consumer detriment is likely to arise. Which? Argued that when special offers do not represent a genuine discount and price promotions are so numerous, dynamic and/or complex that consumers' ability to identify the true cost is inhibited, consumer detriment is likely to occur:

"The consumer detriment arises through the impact of various behavioural biases. For example, misleading special offers use consumers' tendency to find an 'anchor' for their

⁸ CHOICE survey on Supermarket Specials conducted in November 2023

⁹ Respondent to CHOICE survey on Supermarket Specials conducted in November 2023

¹⁰ UK Office of Fair Trading, 2010, 'Advertising of Prices' - cited in the Which? UK super-complaint to the Competition and Markets Authority: Misleading and opaque pricing practices in the grocery market, 21 April 2015 <https://www.which.co.uk/policy/food/388/misleading-pricing-practices-which-super-complaint>

¹¹ Ibid

price expectations whilst complex pricing strategies aim to obscure the true price of goods and encourage consumers to use non-price factors to choose.”¹²

The New Zealand Commerce Commission also conducted research at the University of Waikato through the Waikato Experimental Economics Lab (WEEL) to test the impact that promotional mechanisms may be having on consumer choice and competition. The report concluded that genuine discounts can provide value to consumers and drive price competition between retailers, but the prevalence of both complex pricing mechanisms and multiple simple pricing mechanisms can make it very difficult for consumers to make informed decisions about the value it offers them.¹³

The WEEL research found that the use of multiple promotional mechanisms caused participants of the study to make sub-optimal purchasing decisions. Participants were less likely to choose the offer providing the best value when faced with multiple pricing mechanisms, compared with being faced by just one, simple mechanism such as a “special”.¹⁴ Depending on the range of mechanisms that were offered, participants were between 50% and 90% less likely to make the optimal choice to meet their needs, compared to when participants were presented with only one option with no discounting.¹⁵

The research also found that participants were less likely to make the optimal purchase decision (i.e. purchase the correct amount of units) when asked to choose from a complex discount mechanism compared to a simple discount mechanism. The type of pricing mechanism greatly impacted the consumer’s decision:

- Multi-buy: 85% less likely to make the optimal choice
- Buy 3, get 1 free: 59% less like to make the optimal choice
- Member-only discount: 46% less likely to make the optimal choice¹⁶

Consumers in Australia are similarly faced with a large volume of different, and constantly changing, specials and promotions when they do their grocery shopping, whether shopping online or in person. Specials and other promotions are extremely influential on consumer buying behaviour, so it’s crucial that consumers can trust the promotional claims made by supermarkets. ABS data shows that supermarket promotional items can sell up to 70 times their normal rate.¹⁷

¹² Which? UK super-complaint to the Competition and Markets Authority: Misleading and opaque pricing practices in the grocery market, 21 April 2015

<https://www.which.co.uk/policy/food/388/misleading-pricing-practices-which-super-complaint>

¹³ Commerce Commission New Zealand, 2022, ‘Market study into the retail grocery sector’. Final report, pp.285
https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf

¹⁴ The University of Waikato, May 2021, “Consumer Decision-Making Under Complexity”,
https://comcom.govt.nz/data/assets/pdf_file/0023/260375/The-University-of-Waikato-Consumer-decision-making-under-complexity-May-2021.pdf

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Australian Bureau of Statistics, September 2021, Using scanner data to estimate household consumption,
[https://www.abs.gov.au/statistics/research/using-scanner-data-estimate-household-consumption-september-2021#:~:text=The%20Australian%20Bureau%20of%20Statistics.Consumer%20Price%20Index%20\(CPI\).](https://www.abs.gov.au/statistics/research/using-scanner-data-estimate-household-consumption-september-2021#:~:text=The%20Australian%20Bureau%20of%20Statistics.Consumer%20Price%20Index%20(CPI).)

Other types of potentially confusing and misleading claims

Major supermarkets like Coles and Woolworths advertise how they're helping people save during the cost of living crisis by pointing to their specials and other promotions. However, CHOICE is concerned that major supermarkets may be making a number of false pricing claims that could mislead consumers. Even if inadvertent, major corporations should have strict controls in place to ensure pricing claims are correct and clear. CHOICE has identified a number of tags that represent potentially misleading claims around prices, including:

- **'Was/Now' pricing claims** that allow supermarkets to choose a point in the past when the product price was higher and provide a comparison of the higher and lower prices to show a discount. This pricing practice doesn't always show the full picture of price changes between those points in time to the consumer because supermarkets do not publish historical pricing data. Supermarkets could select a point in time many years ago when the price of the product was artificially high for only a short period of time and ignore other fluctuations in price since then – including potentially ignoring points in time when the product was cheaper than the current 'Now' price.
- **Specials and discounts that omit important contextual information** like the previous price of the product and the discount amount. This makes it difficult for consumers to verify claims that a product is discounted. This practice may lead consumers to believe that products are more discounted, or better value, than they actually are.
- **Tags designed to look like special discount offers when the product isn't actually discounted** are often used by major supermarkets to advertise prices that may not be discounted, including tags that have the same, or similar, colours and design elements as the tags used to advertise 'specials'. These tags may lead consumers to believe the product is discounted when it isn't discounted at all. In a busy supermarket environment, it would be easy to mistake the promotion as a discount.

CHOICE supporters from across the country have sent us countless examples of pricing practices that they have found confusing and potentially misleading. A selection of these can be found in the final appendix of this submission and more are available on request.

CHOICE is also concerned that aside from confusing pricing practices, the major supermarkets may also be making false pricing claims that could mislead consumers. In October 2023, CHOICE made a complaint to the ACCC regarding a 'locked' price promotion run by Coles. CHOICE identified that Coles had claimed the price of a product was 'locked' until 31 October 2023 across its supermarket network, but proceeded to raise the price of the product before the end of the promotional period.¹⁸

¹⁸ All attachments can be found at the end of this submission



11 February - 12 October 2023, Coles Marrickville

Following CHOICE’s complaint, Coles identified that it had prematurely raised the prices of 20 different items across the year that it had claimed were ‘locked’¹⁹, including cream, cereals, tinned tomatoes, pregnancy tests and more (see appendix 2). Although Coles says it proactively refunded Flybuys and online customers that it could identify for the full cost of the products if purchased, it’s likely that a significant number of in-store customers did not receive refunds because they were unaware, did not keep receipts, or simply chose not to pursue a refund.

The need for transparent pricing

There needs to be increased price transparency around supermarket pricing to ensure that people are able to effectively compare products, recognise genuine discounts and make informed decisions. The Government should empower the ACCC to collect and publish food and grocery pricing information in a database that enables tracking of price changes over time. This information will also provide the media, researchers and consumer groups, like CHOICE, with the power to monitor prices on behalf of consumers and call out potentially misleading, deceptive or unfair practices. Empowering consumers with this information will mean they are able to make stronger purchasing decisions and not be lured into misleading specials and discounts.

Price tags offering specials and discounts should be consistent with consumer expectations and follow a mandatory information standard that outlines what qualifies as a discount and how it should be communicated.

A new mandatory information standard should mandate how the price of an item is displayed. The standard should:

¹⁹ Schultz A, 8 December 2023, ‘Coles offers refunds after raising prices on 20 ‘locked’ items’ <https://www.smh.com.au/national/coles-offers-refunds-after-raising-prices-on-20-locked-items-20231208-p5eq74.html>

- Require clear prices to be displayed on all products sold by supermarkets online and in-store.
- Standardise and rationalise discount and promotional terms, including preventing supermarkets from using terms, designs or colours that indicate a discount is being offered when the product is not discounted.
- Require supermarkets to publish the most recent previous price of the product, with the date, and clearly state the amount the product has been discounted in dollars and as a percentage. This could also include guardrails to ensure the 'Was' price was offered reasonably recently and for a reasonable amount of time, and the 'Was/Now' pricing frame should no longer be used when the 'Now' price is offered for a period longer than the 'Was' price (i.e. becomes the usual price).

Recommendation:

3. The ACCC should recommend that the Government introduce a mandatory information standard for supermarkets that ensures their pricing and discounts are clear and consistent with consumer expectations

Multi-buy offers that make people spend more

Some special offers are only available to consumers when they purchase two, or more, of the same item, meaning the individual will only get a discount if they buy multiple items and spend more than if the consumer bought a single item. In some cases this can be beneficial for a shopper with a big family or a big freezer, but it could also push people to spend more than they had intended and leaves individuals without the means to buy in bulk paying higher prices for single items.

One supporter shared their experience of multi-buy offers as a pensioner:

*"I hate those 2 for specials. I am on pension so I have to be so careful and it seems like punishing poor customers who can't afford to buy 2 items, I usually just end up getting one at full price. Very unfair."*²⁰

As mentioned earlier in this submission, multi-buys can have a dramatically negative impact on a consumer's ability to make optimal choices. According to research from the New Zealand Commerce Commission's market study into the retail grocery sector, a consumer is 85% less likely to make the optimal choice when presented with a multi-buy deal.²¹ If a product is eligible for a discount, it should be applied to the individual item, leaving consumers with the choice to purchase more than one rather than being penalised for purchasing the amount they require.

²⁰ Respondent to CHOICE survey on Supermarket Specials conducted in November 2023

²¹ Commerce Commission New Zealand, 2022, 'Market study into the retail grocery sector'. Final report, pp.285 https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf

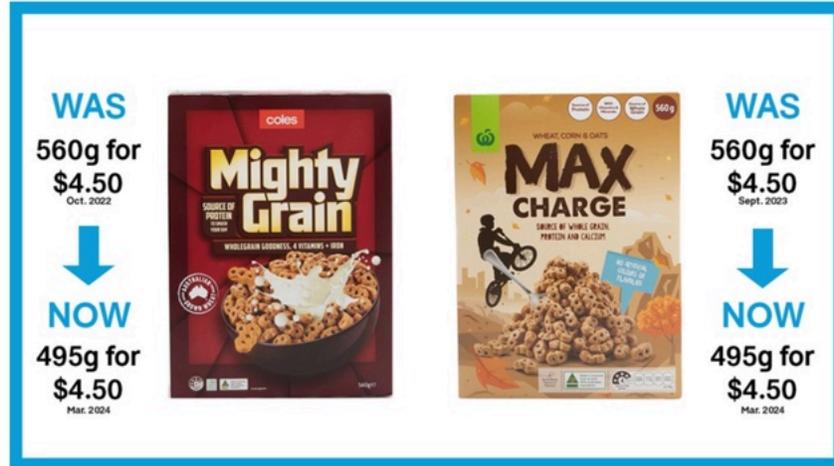
Recommendation:

4. The ACCC should recommend that the Government ban multi-buy discounts on essential items, which could include basic products such as fruit, vegetables, milk, bread, baby formula, sanitary items and pharmaceuticals

The rise of shrinkflation

A recent CHOICE investigation in March 2024 uncovered 10 grocery items that had been affected by ‘shrinkflation’ – the phenomenon where a product is reduced in size but the cost of the item remains the same, or in some cases, it increases.²²

The worst offender in our investigation was cereal products. Coles homebrand Mighty Grain, which was being sold in 560g packages in October 2022, can now only be found in 495g packages. Yet, it has not changed in price, remaining at \$4.50. The same trend was observed with the Woolworths equivalent home brand Max Charge cereal which was being sold in 560g packages until September last year, when the retailer started offering it in 495g portions instead and maintained the same price of \$4.50. A consumer will now be paying 14% more for both versions of this cereal.



This example also illustrates the possibility that the two major supermarkets track each other instead of vigorously competing on price, as both versions of very similar home brand products changed in size and in price identically in a very similar time period.

²² Kennedy L, March 2024, ‘10 Grocery items hit by shrinkflation in 2024’ CHOICE <https://www.choice.com.au/shopping/packaging-labelling-and-advertising/packaging/articles/shrinkflation-investigation>

Our research shows that it is not just cereals being affected by shrinkflation – hot cross buns, corn chips, dips, biscuits and cleaning products are being reduced in size while remaining the same price, and in some cases, becoming more expensive. A full list of affected products can be found in appendix 3.

According to the Australian Bureau of Statistics (ABS), shrinkflation is contributing to inflation, as consumers are paying more for a given amount of a product.²³ Not only are consumers getting less value for their groceries, the phenomenon of shrinkflation is also contributing to cost of living pressures.²⁴

Many respondents to our survey felt frustrated by shrinkflation:

“Woolworths Rose’s English Breakfast marmalade glass jar sizes reduced from 500g to approx 320g along with price increase. Similar situation with biscuits, chocolates, cereals.”

“Can we please talk about ‘shrinkage’, where a product is listed on special and is MUCH smaller than previously, hence for then on in being the smaller size which goes up to the old price. This has to stop.”

“I’m sick & tired of items shrinking in size or packaging & paying a higher price. Eg cat food dry biscuits used to be 1.5kg are now .8 & paying more. Toilet paper quilton used to come in 9 rolls now 8 but pay the same price as 9 at woolies. It’s criminal what they are doing to get money.”²⁵

In France, Carrefour supermarkets recently made the decision to notify consumers when a product on their supermarket shelves had shrunk in size and effective price increase.²⁶ Although a voluntary measure by Carrefour, ‘shrinkflation notices’ should be adopted in Australia to notify consumers when a product has been changed in size and effective price, both in store and online. This will help consumers make better economic choices and likely act as a deterrent for supermarkets and suppliers engaging in the practice.

²³ Taylor D, 2 December 2023, “Does your weekly shop feel a little lighter or smaller? You’re not imagining it, it’s ‘shrinkflation’” <https://www.abc.net.au/news/2023-12-02/shrinkflation-is-happening-how-it-works/103176208>

²⁴ *ibid*

²⁵ Respondents to CHOICE survey on Supermarket Specials conducted in November 2023

²⁶ Vidalon D, 19 September 2023, ‘Carrefour sticks price warnings on food to shame suppliers’

<https://www.reuters.com/business/retail-consumer/carrefour-sticks-price-warnings-food-shame-suppliers-2023-09-14/>



A sign reading "Shrinkflation, This product has seen its litre decrease and the price charged by our supplier increase" REUTERS/Sarah Meyssonier²⁷

Recommendation:

5. The ACCC should recommend that governments mandate that supermarkets be required to prominently disclose when a product reduces in size and the unit price increases

The role of home brand products

CHOICE regularly tests and reviews private label, or home brand, products from major supermarkets, with some private label items outperforming their more expensive brand-name counterparts.²⁸ Home brand products are often cheaper and many consumers choose them as a way to save money on their grocery shopping. However, the impact of home brand products on competition warrants further investigation.

In 2008, the ACCC looked into private label products and found that the sales of private label products was increasing as a share of total grocery sales and that introduction of private label products was offering consumers additional choice and was pro competitive.²⁹ The ACCC report concluded that there was little evidence that the growth of private label products was weakening

²⁷ *ibid*

²⁸ See for example: Richard A, 7 March 2024, 'The cheaper supermarket home-brand products that outperform big-name brands' CHOICE <https://www.choice.com.au/shopping/everyday-shopping/supermarkets/articles/cheaper-home-brand-products-that-to-p-our-testing>

²⁹ ACCC, July 2008, 'Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries' pp.359 <https://www.accc.gov.au/system/files/Grocery%20inquiry%20report%20-%20July%202008.pdf>

competition at the supplier level.³⁰ As this inquiry was conducted around 16 years ago, further investigation is warranted to understand how private label products are impacting competition and food and grocery prices.

The New Zealand Commerce Commission conducted a market study into the retail grocery sector exploring this issue, and found that the overall long-term impact of private label products on outcomes for New Zealand consumers is unclear, but that some aspects could harm competition. The final report stated:

“While the introduction of private label products could increase consumer choice and lower prices in the short term, there is a risk that growth of private labels could crowd out supplier-branded products. This could lead to a loss of consumer choice and higher prices over the longer term.”³¹

Supermarket-owned brands have also expanded their private label offerings from just low-cost ‘no frills’ products to also offer higher priced premium lines of products, as well as products with less obvious supermarket branding, such as La Gina frozen pizza sold at Woolworths, and Daley Street coffee sold at Coles.

It is difficult to ascertain the impact of home brand products on competition in the Australian market. CHOICE encourages the ACCC to investigate this issue further to understand if home brand products are having a positive impact on the market for groceries, or if they are crowding out other options for consumers.

Recommendation:

6. The ACCC should investigate the role of home brand products in the grocery market as a part of this inquiry

Inconsistent unit pricing

Unit pricing is an important resource for consumers in retail settings. It is an objective tool that empowers people to make more informed decisions and ensures they are getting value for money on their purchases. Unfortunately, supermarkets don’t always make it easy for consumers to see, read and understand unit pricing instore and online.

Unit pricing is essential to ensure that people are able to choose the best value products. A CHOICE survey of 1008 grocery shoppers asked people to look at product images and tell us which one they thought was the best value for money. When shown images without a unit price,

³⁰ ibid

³¹ Commerce Commission New Zealand, 2022, ‘Market study into the retail grocery sector’. Final report, pp.376 https://comcom.govt.nz/data/assets/pdf_file/0024/278403/Market-Study-into-the-retail-grocery-sector-Final-report-8-March-2022.pdf

60% of shoppers picked the best value product. When the unit price was included, this number increased to 74%.³²

44% of shoppers surveyed by CHOICE said that they use unit pricing as one of the ways to cut down on spending. 84% were aware of unit pricing, of those who are aware of it 80% use it all or most of the time and 97% find it useful. Of those that use it most or all of the time, an alarming 71% say that they have encountered issues with the unit pricing provided.³³

35% said the unit price was not always displayed, 34% said it was difficult to read for reasons such as the text being too small and 31% said it was obstructed or covered up by another label.³⁴

Across a range of supermarkets, the standard of unit pricing is faltering. Retailers have started to use smaller font sizes, inconsistent units of measure or are simply not providing unit prices for all items. One supporter shared:

“Unit pricing, although a good initiative by the supermarkets, the ticketing is woefully inadequate. Pricing (sic) size is far too small and on the lower shelves the tickets should be at an angle to make reading easier and to save one to get down on one's knees to read the damn things”³⁵

To add to the problem, Woolworths have started to roll out electronic tags in stores. In many cases the unit price provided on these electronic tags are even smaller than on paper tags and are very hard to read, particularly when one tag is used to provide pricing information about two products side-by-side.

The display of unit pricing is often inconsistent across stores and even within stores. Different font sizes and font types are used, which can make it harder for consumers to notice and read. The Grocery Unit Pricing Code should be complemented by a specific and prescriptive mandatory labelling standard outlined in detail for retailers. This could also be addressed within our proposed pricing information standard to address supermarket pricing labelling in general.

The current principles-based approach to the display of unit pricing is open to interpretation and difficult to enforce. Retailers are able to decide how they display unit pricing information and can change how it is displayed to suit their needs. The current system is likely to disproportionately impact those with low vision, as it makes it increasingly difficult for the uniting pricing to be noticed.

³² CHOICE Unit Pricing Survey 2022 is based on a survey of 1008 Australians grocery buyers. The sample includes a spread of age groups, genders and location to ensure coverage in each state and territory across metropolitan and regional areas. Fieldwork was conducted on 14-29 November, 2022

³³ ibid

³⁴ ibid

³⁵ Respondent to CHOICE survey on Supermarket Specials conducted in November 2023

CHOICE supports further resourcing for the ACCC, as the enforcer of the code, in order to prioritise the monitoring and enforcement of retailer compliance with the Grocery Unit Pricing Code.

CHOICE is also very supportive of extending the mandatory Code obligations to other retailers that sell packaged products, such as pet stores, hardware shops, pharmacies and stationary shops. Consumers spend large amounts of money at these retailers, yet these stores are not covered by the mandatory code, and they rarely voluntarily use unit pricing to help consumers make informed purchasing decisions.

CHOICE has endorsed the Consumers' Federation of Australia's submission and recommendations to this inquiry around improving the unit pricing standards and placement. We encourage the ACCC to consider these recommendations in its inquiry.

Recommendations:

7. This inquiry should undertake a detailed investigation into, and make recommendations on, grocery retailer compliance with the Grocery Unit Pricing Code and the opportunities to increase the effectiveness of the grocery unit pricing system for consumers through changes to the:
 - a. Current compliance monitoring and enforcement arrangements
 - b. Code's provisions and associated guidance documents
 - c. National measurement legislation
8. The ACCC should recommend that the scope of the national unit pricing system be expanded to include the provision of unit prices for packaged products sold by relevant non-grocery retailers such as pet supplies stores, chemists, hardware stores and stationers

Impact of increased data collection and technological developments

Supermarkets have invested heavily in data-driven technology to protect and grow their revenue and market share. Many of these technologies are used by businesses across the economy, but due to the size and significance of supermarkets, they have a considerable reach and impact.

These developments are also occurring as trust in businesses handling consumer data has plummeted. National CHOICE research recently found that 65% of consumers do not trust businesses to use their data responsibly, while 78% are concerned about their data being sold

to data brokers and 70% are concerned about their data being used in automated decision-making.³⁶

Customers of both Coles and Woolworths are likely to be familiar with two types of data-driven technology: loyalty schemes and in-store surveillance systems. Both of these technologies raise a number of concerns that should be addressed by regulators and governments.

Loyalty schemes raise competition concerns

Woolworths and Coles operate two of the largest customer loyalty schemes in Australia: Everyday Rewards with 14.5 million members by the end of the 2023 financial year, and Flybuys (jointly owned with Wesfarmers) with 9 million members as of August 2023.³⁷ IGA also has a rewards program with an unknown number of members, while Aldi currently doesn't have a loyalty scheme. In 2021, CHOICE national research found 84% of consumers were members of a supermarket loyalty scheme.³⁸

Loyalty schemes are strategically vital to both Woolworths and Coles. In 2019, almost a third of consumers only shopped at one supermarket chain, and more than half of those consumers did so because of rewards points, and consumers who had switched their supermarket in the year preceding had also done so for reward points.³⁹ Both Woolworths and Coles have pointed to loyalty programs as key strategic priorities of the past and incoming financial years in their annual reports.⁴⁰

Loyalty schemes offer a range of inducements to members, such as discounts, exclusive offers and the ability to accumulate points that can be used for future purchases. For supermarkets, loyalty schemes provide highly valuable first-party consumer data based on the use of the card during purchase and any other customer information linked to that membership. When aggregated, this data can be analysed to understand patterns of purchasing across time and space, the effect of prices on costs and profits, local market positions, efficient warehousing and logistics and opportunities for growth.⁴¹ This raises a number of competition concerns. The New Zealand Commerce Commission echoed a number of these concerns in 2022, while the

³⁶ CHOICE Consumer Pulse September 2023 is based on an online survey designed and analysed by CHOICE. 1,035 Australian households responded to the survey with quotas applied to ensure coverage across all age groups, genders and locations in each state and territory across metropolitan and regional areas. The data was weighted to ensure it is representative of the Australian population based on the 2021 ABS Census data. Fieldwork was conducted from 29 August to 18 September 2023.

³⁷ Woolworths Group, *2023 Annual Report*, p. 2; Kidman A (2023), "Flybuys is bigger than ever – but it's losing money. Why?", *Finder*, <https://www.finder.com.au/news/flybuys-membership-update-aug-2023>.

³⁸ Page R, 2021, "What are loyalty schemes like Flybuys and Everyday Rewards doing with your data?", CHOICE, <https://www.choice.com.au/consumers-and-data/data-collection-and-use/who-has-your-data/articles/loyalty-program-data-collection>.

³⁹ ACCC, 2019, 'Customer loyalty schemes: final report', p. 8.

⁴⁰ Woolworths Group, *2023 Annual Report*, p. 4, 9; Coles Group, *2023 Annual Report*, p. 8.

⁴¹ ACCC, 2019, *Customer loyalty schemes: final report*, p. 50.

Competitions and Market Authority in the United Kingdom is currently investigating similar issues.⁴²

The exclusive use of aggregated data by major supermarkets is likely to entrench their market power. Smaller food and grocery retailers and retailers without loyalty schemes are operating at an information disadvantage as a result. Competitors to Coles and Woolworths have significantly less access to customer shopping preferences, market opportunities, pricing data and data for targeted advertising. The ACCC previously raised concerns about the potential for loyalty schemes to facilitate “anti-competitive foreclosure” by “locking up” customer bases and raising barriers to smaller and newer entrants into the market.⁴³ These barriers have since compounded as the major supermarkets continue to partner and acquire data capabilities, such as Woolworths’ majority acquisition of data analytics firm Quantium in 2021, and Coles’ recently announced partnership with U.S. data analytics firm and defence contractor Palantir.⁴⁴

Woolworths and Coles also enjoy highly individualised data capabilities, and customers can receive personalised offers through their respective shopping and loyalty apps. Personalisation is based on an individual customer’s shopping preferences and behaviour. From 2023, Coles customers who link a Flybuys account to their app have received personalised offers with bonus points.⁴⁵ Woolworths customers with an Everyday Rewards account can ‘boost’ points on certain products, which are often personalised too. These “real-time” loyalty offerings are a relatively new introduction to these schemes.⁴⁶

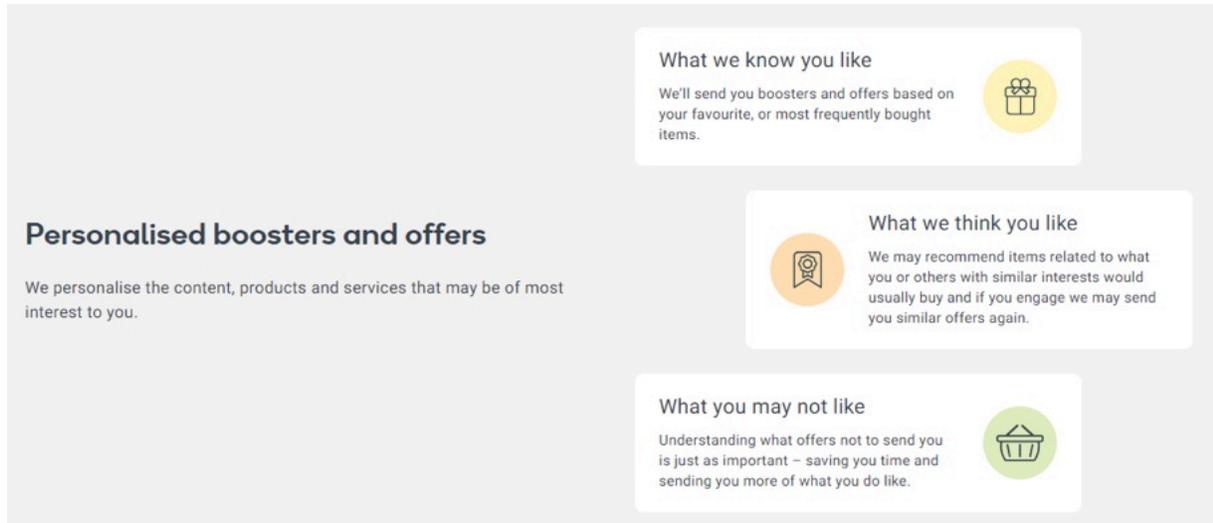
⁴² Commerce Commission New Zealand, 2022, ‘*Market Study into the Grocery Sector*’, <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-retail-grocery-sector>; Competition and Markets Authority (2024), “Loyalty pricing in the groceries sector”, <https://www.gov.uk/cma-cases/loyalty-pricing-in-the-groceries-sector>.

⁴³ ACCC, 2019, *Customer loyalty schemes: final report*, p. 92.

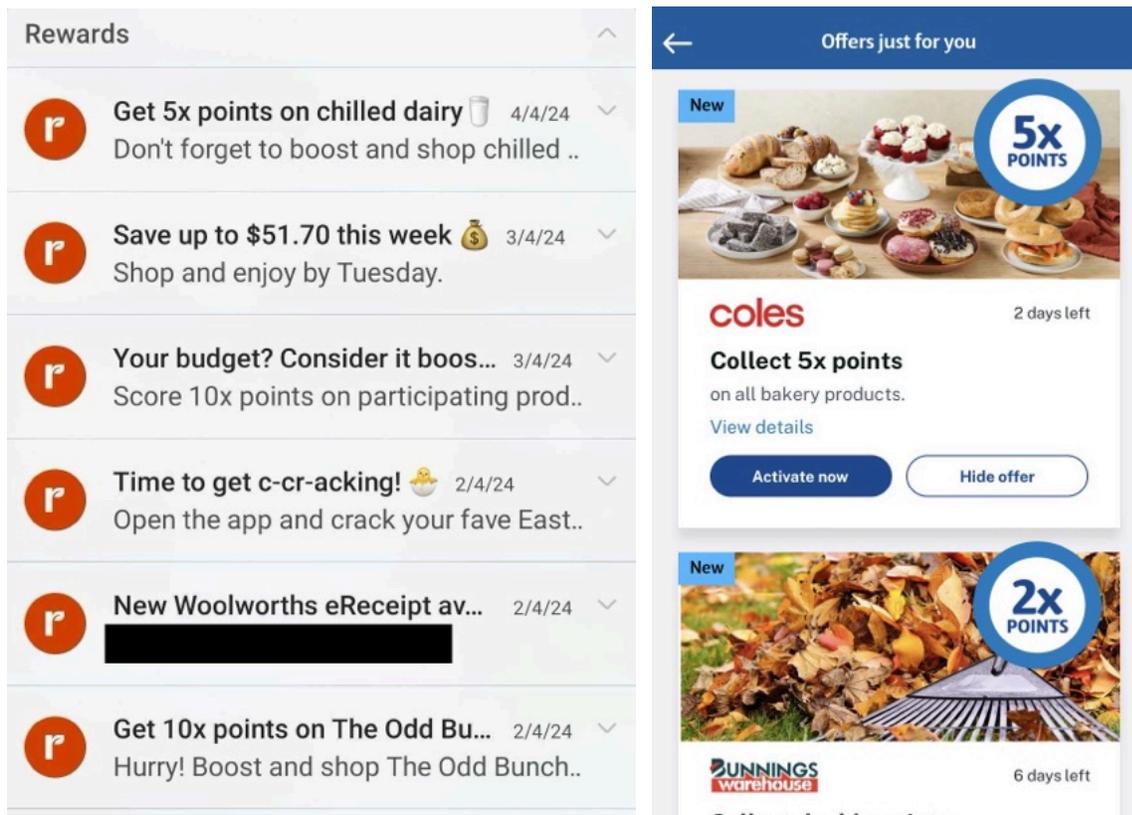
⁴⁴ Mitchell S, 2021, “*Woolworths doubles down on data, takes control of Quantium*”, <https://www.afr.com/companies/retail/woolworths-doubles-down-on-data-takes-control-of-quantium-20210420-p57knw>; Munn L, 2024, “*Solving the supermarket: why Coles just hired US defence contractor Palantir*”, *The Conversation*, <https://theconversation.com/solving-the-supermarket-why-coles-just-hired-us-defence-contractor-palantir-222883>.

⁴⁵ 7News, 2023, “*Coles supermarket confirms major launch of Flybuys loyalty program - here’s how it will work*”, <https://7news.com.au/lifestyle/coles-supermarket-confirms-major-launch-of-flybuys-loyalty-program-heres-how-it-will-work-c-11035425>.

⁴⁶ Mitchell S, 2023, “*Real-time promotions a game-changer for retailers*”, <https://www.afr.com/companies/retail/real-time-promotions-a-game-changer-for-retailers-20230118-p5cdj6>



Screenshot from Everyday Rewards websites⁴⁷



Screenshots from email and in-app offers from Everyday Rewards and Flybuys respectively

These personalised features are likely to reduce the power and position of consumers by reducing price transparency. The ACCC previously noted that the “the combination of

⁴⁷ Everyday Rewards, “Personalise your Rewards experience”, <https://www.woolworthsrewards.com.au/everyday-inspiration/personalise-your-rewards-experience.html>.

point-based offers with consumer contracts that are inherently complex or involve opaque pricing and discounting practices can increase existing difficulties for consumers to evaluate the actual value of the contract and make meaningful comparisons with competing products and services.”⁴⁸ As supermarket loyalty points are non-transferable with one another, customers may also feel penalised for shopping at another supermarket. Recent economic research has also suggested that loyalty programs in their current form may push prices higher for all consumers, members and non-members alike.⁴⁹

Another area of concern for consumers is differential pricing. The introduction of ‘member only’ prices, currently only in Woolworths and IGA, penalises consumers who do not wish to sign up for loyalty schemes. Consumers seeking the best possible prices on groceries during a period of high inflation are unfairly asked to trade their data to access lower prices. This form of price discrimination was noted by the New Zealand Commerce Commission in 2022.⁵⁰ Price discrimination may also disproportionately affect consumers without access to a smartphone but wish to access the lowest possible price. In the future, supermarkets could extend personalised prices based on customer preferences, habits, location, or demographics.⁵¹ In this scenario, consumers will lack genuine transparency on the price of goods, preventing price comparison between supermarkets, and may face intensified discriminatory pricing. Our recommendation about increasing price transparency by, for example, creating a database that enables tracking of price changes over time could go some way to protect against these risks.

In an April 2024 survey, CHOICE surveyed close to 10,000 supporters about their views on loyalty programs. While a number of respondents mentioned occasional discounts on groceries and fuel as a benefit of membership, 79% of respondents said it’s unfair for supermarkets to charge people more for certain grocery items if they don’t sign up to their loyalty programs.⁵² Respondents who found member-only pricing problematic noted a number of issues, such as suspecting inflated base prices, a perception of points devaluation over time and unfair treatment of non-members.

“... influenced to shop at Coles and the items they constantly push. As a consumer I signed up for the benefits... holding prices up for only members or points as a carrot is unfair practice.”

⁴⁸ ACCC, 2019, *Customer loyalty schemes: final report*, p. 104.

⁴⁹ Nichifor A & Kominers S D, 2024, “Loyalty programs may limit competition, and they could be pushing prices up for everyone”, The Conversation, <https://theconversation.com/loyalty-programs-may-limit-competition-and-they-could-be-pushing-prices-up-for-everyone-220669>.

⁵⁰ Commerce Commission New Zealand, 2022, ‘Market Study into the Grocery Sector’, <https://comcom.govt.nz/about-us/our-role/competition-studies/market-study-into-retail-grocery-sector>, p. 315.

⁵¹ Baldwin J, 2023, “Retail tech and how it’s affecting you”, CHOICE, <https://www.choice.com.au/consumers-and-data/data-collection-and-use/who-has-your-data/articles/retail-tech-and-how-it-affects-you>.

⁵² CHOICE survey on loyalty programs conducted in April 2024

“I think it is unfair to charge non members or people who forget their loyalty cards higher prices on some items. I do my major shopping at woollies or coles to try and save money.”⁵³

Member-only pricing also potentially discriminates against people experiencing homelessness as both Everyday Rewards and Flybuys require the customer to have a fixed address.⁵⁴ Those without a fixed address are already experiencing acute disadvantage and will be further disadvantaged if they can't access products and essential items at the cheapest price. Young people also face potential exclusion from accessing lower prices through reward schemes, as those under 16 are not able to join the Flybuys program and those under 18 can only join the Everyday Rewards program with permission from a parent or guardian.⁵⁵

Everyone should have access to essential items at the lowest possible price without having to join a membership program. The ACCC should recommend that the government ban supermarkets' use of app-only and member-only discounts on essential items, which could include basic products such as fruit, vegetables, milk, bread, baby formula, sanitary items and pharmaceuticals.

Recommendations:

9. The ACCC should recommend that the Federal Government prohibit supermarkets' use of app-only and member-only discounts on essential items, which could include basic products such as fruit, vegetables, milk, bread, baby formula, sanitary items and pharmaceuticals
10. The ACCC should investigate the impact of loyalty schemes on competition as part of this inquiry. This should include consideration of how these schemes may be affecting consumer behaviour, entrenching market power or enabling unfair pricing practices

⁵³ Respondents to CHOICE survey on loyalty programs conducted in April 2024

⁵⁴ Flybuys terms and conditions, accessed at: <https://experience.flybuys.com.au/flybuys-terms-and-conditions/>
Everyday Rewards terms and conditions, accessed at: <https://www.woolworthsrewards.com.au/terms.html>

⁵⁵ Ibid

Introduce a ban on unfair trading practices

Coles and Woolworths use a number of practices like tags that look like specials but aren't, potentially misleading 'Was/Now' pricing and other deceptive tools that could result in consumers spending more than they intended or making purchasing decisions they otherwise wouldn't. Many of these practices, while unfair, may not be illegal.

Supermarket loyalty schemes are also an area where there could be unfair but lawful practices. For example, supermarkets can make a "a unilateral reduction in either the earn rate or redemptive value of points" without prior warning, as noted by the ACCC in 2019.⁵⁶ As reward points increasingly act as a valuable form of currency in supermarket shopping, consumers should have access to legal recourse if they face practices that affect their financial position.

The Federal Government is currently considering options to amend the Australian Consumer Law to introduce a ban on unfair trading practices. Introducing a strong ban on unfair trading practices would cultivate a healthier marketplace, ensure more equitable economic transactions and benefit vulnerable individuals and small businesses who may be less able to protect their own interests.

A ban on unfair trading practices should be drawn broadly, and be able to respond to conduct and practices that exist today and that could develop over time. The ban should be accompanied by a guiding principle that requires the consideration of consumer vulnerability and should include a blacklist prohibiting certain practices that should be specified and managed by the ACCC.

A ban on unfair trading practices should be economy-wide and include penalties and remedies, including civil penalties and actions for damages and compensation, for each breach of the prohibition. This would have significant benefits for consumers such as preventing the use of pricing strategies that disadvantage consumers and addressing the unfair practices in the design of loyalty programs.

Recommendation:

11. The ACCC should recommend that the Government legislates an economy-wide prohibition on unfair trading

⁵⁶ ACCC, 2019, *Customer loyalty schemes: final report*, p. vi.

Loyalty schemes raise privacy concerns for consumers

The extent of data collected and held by supermarket loyalty schemes raises significant privacy concerns for consumers. Like other types of consumer data, loyalty scheme data provides personal insights into a customer's behaviour, activities, location and preferences, and breaches of this privacy can be uncomfortable or even dangerous.

As Everyday Rewards and Flybuys have 14 million and 9 million members respectively, a data breach of either loyalty scheme could cause significant and widespread harm. As the ACCC's 2019 report on customer loyalty schemes notes, the cost of data breaches to consumers include financial detriments such as "identity fraud and scams" and non-financial detriments such as "harm to health and safety and reputational injury."⁵⁷ Since the report, data breaches have dramatically increased, and consumer awareness of these risks has likewise increased. Most members of loyalty schemes polled in early 2023 had become more concerned about sharing their data with these programs.⁵⁸ The report also notes the possibility of leaked de-identified data being re-identified as data analytics technology advances.⁵⁹

CHOICE is also concerned by the notice and consent practices at loyalty schemes. The privacy policies and collection notices at Woolworths Group, Everyday Rewards, Flybuys and Coles Group contain references to providing "consent" and how and why personal information is collected, but do not clarify how general consent is gained or how it can be withdrawn. Further, since data collected in loyalty programs is used for such wide and variable reasons, it's unreasonable to expect consumers to be able to give informed consent to a range of purposes. To correct this, CHOICE recommends that businesses be subject to a fair and reasonable use test for consumer data as this will ensure the use of data is fair and reasonable, without placing undue responsibility on consumers.

National CHOICE research found only 9% of consumers will always read their loyalty scheme's privacy policy, meaning that informed consent is even less probable.⁶⁰ However, consumers who do seek greater control and transparency of their data may find obstacles, as found in a CHOICE investigation where a Sydney resident requested deletion of her data from an old Everyday Rewards card but was told it could only be de-identified.⁶¹ This is why CHOICE recommends rights such as the right to access and delete data held by businesses, including supermarket loyalty schemes.

⁵⁷ ACCC, 2019, *Customer loyalty schemes: final report*, p. 78.

⁵⁸ Power Retail, 2023, "Research reveals the barriers to loyalty", <https://powerretail.com.au/research-reveals-the-barriers-to-loyalty>.

⁵⁹ ACCC, 2019, *Customer loyalty schemes: final report*, p. 78.

⁶⁰ CHOICE surveyed 1045 Australians between 15 and 29 September, 2021. The data has been weighted to make sure it is representative of the Australian population according to the 2016 ABS Census data on age, state, sex, household income and education.

⁶¹ Blakkarly J, 2023, "Why companies can keep your data forever", CHOICE, <https://www.choice.com.au/consumers-and-data/data-collection-and-use/who-has-your-data/articles/why-companies-can-keep-your-data-forever>.

Coles, Flybuys and Woolworths were also put on notice in 2019 for automatically linking payment cards to loyalty scheme profiles⁶² – allowing them to track purchases even if a loyalty card was not scanned, further reducing a customer’s ability to consent. Since the report, it is unclear whether this practice has ended or not, particularly as both loyalty schemes are intensifying links between loyalty and payment through their digital payment wallets Everyday Pay and flypay. The ACCC should investigate whether the major supermarkets and loyalty schemes are continuing the practice of linking payment cards to loyalty scheme profiles even when a loyalty card is not scanned.

Targeted advertising

A key area of risk from the collection of personal information – both identified or de-identified – is targeted advertising to consumers. Targeted advertising is a booming business and is no longer solely the domain of digital platforms. However, consumers are less enthusiastic about targeted advertising, with almost three quarters of Australians describing it as intrusive,⁶³ and less than a tenth of Australians felt comfortable with being targeted with advertising without prior permission.⁶⁴ Targeted advertising can manipulate consumer choices and can even recommend unhelpful or harmful products.⁶⁵

The two major supermarkets and their loyalty schemes note their use of personal information to tailor advertising. While this advertising can be used to advertise the supermarket’s own products for a competitive advantage, the Woolworths Group and Flybuys privacy policies also allow the use of personal data for third party advertising. Both Woolworths and Coles operate advertising platforms – Cartology and Coles 360 respectively – for third party use, boasting their ability to connect with customers in a variety of spaces.⁶⁶

⁶² ACCC, 2019, *Customer loyalty schemes: final report*, p. 66.

⁶³ Reset.Tech Australia, 2023, *Intrusive and Unhelpful: Targeted Advertising in Australia*, <https://au.reset.tech/uploads/Reset.Tech-Targeted-Ads-Final.pdf>, p. 6.

⁶⁴ Consumer Policy Research Centre, 2023, *Not a fair trade: Consumer views on how businesses use their data*, <https://cprc.org.au/wp-content/uploads/2023/11/CPRC-working-paper-Not-a-fair-trade-March-2025-1.pdf>, p. 12.

⁶⁵ Alegre S & Christl W, 2023, *Australians for Sale: Targeted Advertising, Data Brokering, and Consumer Manipulation*, Reset.Tech Australia, <https://au.reset.tech/uploads/Reset.Tech-Report-Australians-for-Sale-2023.pdf>.

⁶⁶ Cartology, “Why Cartology?”, <https://www.cartology.com.au/content/cartology/en/home/about/why-cartology.html>; Coles, “Our 360 approach”, <https://www.coles.com.au/coles360/our-approach>.

We get brands closest to customers

We truly understand customers and with more than 14m customer relationships through Everyday Rewards, we get brands closest to customers.

We know when and how they shop, their likes and dislikes. We know where to meet them along their path to purchase and why they shop the way they do. Because they are our customers, we can reach them directly in the moments that matter most. Cartology can make our customers your customers too, driving sales overnight and customers over time.

Three connections that create growth

Coles 360 combines the power of customer connections, media connections and partner connections to offer your brand a one-stop 360 media solution. A solution that allows you to connect with customers at every turn of their lives – their shopping experience, as well as their life outside the supermarket.

Our dedicated team of media experts, strategy planners and operational specialists, partner with you to plan and execute campaigns that create connections between our customers and their favourite brands.

Let's connect

Screenshots from Cartology and Coles 360 websites⁶⁷

Although most of the options offered use traditional mass-marketing such as in-store signage, placement on in-store radio, or placement on supermarket catalogues or websites, both Cartology and Coles 360 offer targeted services too. As of 2023, Cartology allows clients to “connect with Australia’s largest grocery audience, targeting active category and brand buyers outside the Woolworths networks” through YouTube, adding the “guaranteed ability to target qualified audiences who have a high propensity to purchase your brand’s product” and “activate exclusive grocery shopper data across YouTube”.⁶⁸ While Coles 360 provides less information on their website, they also offer access to audiences through social media and YouTube, although it’s unclear if this is targeted.⁶⁹ Both Cartology and Coles 360 offer targeted sampling,

⁶⁷ibid

⁶⁸ Cartology, “Woolworths Media Kit | FY23”, <https://www.cartology.com.au/content/dam/cartology/pdf/media-kit/woolworths-media-kit-fy23.pdf>.

⁶⁹ Coles, “360 media connections”, <https://www.coles.com.au/coles360/360-media-connections>.

which puts free samples tailored to a customer’s preferences and loyalty program history into an online shopper’s basket. Both services have also made significant gains – Coles’ income from media increased by 27% in 2023⁷⁰, while Cartology revenue increased by 29% in the same year.⁷¹

The expansion of Coles and Woolworths into targeted advertising significantly increases the susceptibility of consumers to manipulative marketing based on highly personal choices made while shopping. Vertically integrating the sale and marketing of goods allows Coles and Woolworths to intimately track and manoeuvre the shopping behaviour of consumers to benefit supermarkets and their clients, regardless of how this affects consumers. Meanwhile, consumers who wish to avoid this form of personalised marketing are provided little alternative. Consumers are entitled to legal mechanisms to opt-in or opt-out of targeted advertising, and businesses should only be using their customer data for the purposes it was provided for.

Consumer data is shared with subsidiaries and third-parties

Coles and Woolworths run a number of subsidiary services outside their traditional grocery business, and consumers may be unaware that their customer data can be shared amongst these businesses. A list of these subsidiaries is listed in the table below:

Subsidiaries	Coles / Flybuys	Woolworths / Everyday Rewards
<i>Insurance</i>	Coles Insurance	Everyday Insurance from Woolworths
<i>Credit cards</i>	Coles Credit Cards	Woolworths Credit Cards ⁷²
<i>Loans</i>	Coles Personal Loans	N/A (outside Woolworths Team Bank) ⁷³
<i>Mobile</i>	Coles Mobile	Everyday Mobile from Woolworths
<i>Advertising</i>	Coles 360	Cartology; Shopper Media
<i>Data analytics</i>	Unpacked by Flybuys	Woolies iQ (Woolworths and Quantum joint venture)
<i>Payment systems</i>	Flypay (for consumers)	Everyday Pay (for consumers) / wpay (for businesses)

⁷⁰ Coles Group, *2023 Annual Report*, p. 30.

⁷¹ Woolworths Group, *2023 Annual Report*, p. 34.

⁷² Woolworths Credit Cards were discontinued in 2023 and transitioned into Macquarie credit cards earning Macquarie Reward Points. However, credit is still available through the Woolworths Team Bank.

⁷³ Woolworths Team Bank is an employee credit union that is also available to family of Woolworths employees and anyone with an “affiliation” to Woolworths, including Everyday Rewards members.

Both Coles and Woolworths also note they inversely source customer information from these groups. Flybuys and Woolworths also use this information for data analytics purposes: Flybuys data is used by the Unpacked by Flybuys platform which can offer insights to brands and advertisers, while Woolworths has employed data analytics firm Quantum, now owned by Woolworths, to analyse its loyalty data for many years.⁷⁴

Data from loyalty schemes is also shared with partners of these schemes. Woolworths Group notes that they share personal information with Everyday Rewards Partners so a member’s “points are correctly allocated ... [and they] can receive personalised offers and experiences from us and our Everyday Rewards Partners”, while Flybuys notes they can share and combine information with loyalty scheme participants to facilitate targeted advertising, personalised communications and offers, aggregated insights and other purposes.⁷⁵ Below is a list of participants for each scheme:

Flybuys		Everyday Rewards
Coles	Kmart	Woolworths
Bunnings	Shell Coles Express	BWS
HCF	NAB	Ampol
Citi	Liquorland	Marley Spoon
Catch	mycar	Dinnerly
Officeworks	Kleenheat	Origin Energy
Target		Bupa
Velocity Frequent Flyer (Virgin)		Qantas Frequent Flyer

Data sharing within each supermarket group and outside the group raises both competition and privacy concerns. Financial services operated by Coles and Woolworths, for instance, may draw advantage from the wealth of first-party data compared to its competitors. They will also likely be able to promote their services to a greater number of consumers through their communications

⁷⁴ Flybuys, “Our Solutions”, <https://unpacked.flybuys.com.au/our-solutions>; Quantum, “How can I deliver more personalised offers to my customers?”, <https://quantum.com/how-can-i-deliver-more-personalised-offers-to-my-customers>.

⁷⁵ Woolworths Group, 2022, “Woolworths Group Privacy Policy – Who does Woolworths share my personal information with and why?”, <https://www.woolworthsgroup.com.au/au/en/privacy/policy-documents/privacy-policy.html>; Flybuys, 2021, “Flybuys Privacy Policy – 6.1”, <https://register.flybuys.com.au/cdn/pdf/FLYBUYS-PrivacyPolicy-NOV2021.pdf>.

platforms. Non-supermarket partners of these loyalty schemes may also gain similar competitive advantage to competitors not participating in either scheme.

This data sharing also raises significant privacy concerns for consumers. Many consumers will be completely unaware that personal information they may be willing to share with one business will be shared with a number of other businesses too for use of targeted advertising or consumer insights. Customers may also not expect their shopping data to be shared with financial and insurance services, particularly if this contributes to decisions about the price and inclusion in insurance, loan and credit applications – for instance, Coles Mastercard’s terms and conditions state personal information may be obtained from or disclosed to “reward providers including Flybuys, or Airline or other partners and their service providers”, and Everyday Rewards notes they share information across Woolworths services like Insurance to “create an overall understand of what you like and improve [their] offers and promotions to you.”⁷⁶

Again, amending the privacy law to include a fair and reasonable use test will go some way to helping ensure consumer data is used in line with consumer expectations. Additionally, CHOICE supports expanding the definition of ‘personal information’ in the Privacy Act to include information relating to an individual. Data sharing often involves nominally de-identified information that nonetheless includes personal, valuable, and sometimes re-identifiable information that should be protected from misuse, predatory marketing, and data breaches.

Finally, the major supermarkets are permitted to trade (i.e. buy, sell or barter) personal data, despite 79% of consumers opposing businesses selling their data under any circumstances.⁷⁷ Data trading heightens the risks of data sharing by increasing the number of businesses, including advertising and financial businesses, that can access a consumer’s data without their knowledge.⁷⁸ Consumers are currently expected to trust businesses and their privacy policies that their data won’t be traded with third-parties; and even then, neither Woolworths, Coles, or Flybuys explicitly state they won’t sell personal information in their privacy policies. Prohibiting the trade of personal information in privacy legislation will better protect consumers from current or future harms of this form of data sharing.

Example: Woolworths and Endeavour Group

Since 2021, Woolworths has separated its alcohol and hospitality businesses, creating an independent corporation called Endeavour Group. Endeavour Group operates alcohol retailers such as BWS, Dan Murphy’s and Jimmy Brings.

⁷⁶ Coles Credit Cards, 2023, *Coles Mastercard Terms and Conditions and Other Important Information*, <https://www.coles.com.au/content/dam/coles/coles-financial-services/credit-cards/documents-and-forms/pdfs/coles-mastercard-terms-and-conditions-info.pdf>, p. 29; Everyday Rewards, “Sharing your information for a better experience”, <https://www.woolworthsrewards.com.au/privacy/sharing.html>.

⁷⁷ Consumer Policy Research Centre (2023), *Not a fair trade*, <https://cprc.org.au/report/not-a-fair-trade-consumer-views-on-how-businesses-use-their-data>, p. 4.

⁷⁸ Attorney-General’s Department (2022), *Privacy Act Review Report*, pp. 205-206.

BWS is a partner of Everyday Rewards, but Dan Murphy's has its own membership program, My Dan's. However, as Everyday Rewards notes, Dan Murphy's can share offers to consumers based on their purchases at BWS using their Everyday Rewards card.⁷⁹

This highlights not only the benefits of loyalty scheme data sharing to the scheme's partner brands, but also to the corporate groups of each partner brand. Flybuys also notes this in their privacy policy, stating that "Participants may share and combine such Personal Information with other Participants that are part of the same corporate group."⁸⁰

Emerging surveillance and anti-theft technologies create privacy and consumer issues

Consumers have increasingly become concerned about the use of surveillance and other "anti-theft" technologies in major supermarkets. Advancements in technology have facilitated these technologies across the retail market. CHOICE has previously reported on Kmart, Bunnings and The Good Guys for using risky automated facial recognition technology, which has since been paused and the lawfulness of its use investigated by the Office of the Australian Information Commissioner.⁸¹

While the major supermarkets announced they had no intentions to adopt facial recognition technology,⁸² Woolworths and Coles have still invested in other surveillance and anti-theft technologies, including:

- Self-service checkouts fitted with cameras and artificial intelligence systems to track the scanning of items to ensure the correct item is scanned. This may include playing back recordings of the customer scanning the item for staff to assess. Self-service checkouts may also include a live "reflection" of customers at the self-checkout.⁸³
- Anti-theft smart gates installed in Coles and Woolworths stores to prevent customers exiting before payment. This is determined by overhead cameras monitoring customers

⁷⁹ Everyday Rewards, "Sharing your information for a better experience", <https://www.woolworthsrewards.com.au/privacy/sharing.html>.

⁸⁰ Flybuys, 2021, "Flybuys Privacy Policy – 6.1", <https://register.flybuys.com.au/cdn/pdf/FLYBUYS-PrivacyPolicy-NOV2021.pdf>.

⁸¹ Blakkarly J, 2022, "Kmart and Bunnings back down on facial recognition after CHOICE investigation", CHOICE, <https://www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/facial-recognition-win>.

⁸² Bower K, 2022, "Woolworths, Coles, Aldi: No plans to use facial recognition technology", CHOICE, <https://www.choice.com.au/consumers-and-data/data-collection-and-use/how-your-data-is-used/articles/facial-recognition-scorecard>.

⁸³ Kelly L K, 2024, "The secret sauce of Coles' and Woolworths' profits: high-tech surveillance and control", The Conversation, <https://theconversation.com/the-secret-sauce-of-coles-and-woolworths-profits-high-tech-surveillance-and-control-224076>; Taylor J, 2023, "Woolworths expands self-checkout AI that critics say treats 'every customer as a suspect'", The Guardian, <https://www.theguardian.com/business/2023/feb/19/woolworths-expands-self-checkout-ai-that-critics-say-treats-every-customer-as-a-suspect>.

in-store and artificial intelligence. However, customers have reported errors with these gates, resulting in wrongful obstruction, being “trapped”, and embarrassment.⁸⁴

- Shelves equipped with cameras and sensors to monitor stock levels, but also as part of a “number of initiatives, both covert and overt, to minimise instances of retail crime.” Customers are allegedly silhouetted out of any footage.⁸⁵
- The services of Auror which uses artificial intelligence and data from crime reports, CCTV footage, tracking of licence plates, and other information for its “crime intelligence” systems to predict and prevent crime.⁸⁶

These surveillance and anti-theft technologies raise a number of risks to consumers. Some of these risks include detrimental consumer experiences, such as inconvenience from errors, feelings of embarrassment if wrongfully accused, frustrations with customer service being replaced by customer surveillance, and even physical harm in the case of anti-theft gates. These technologies also raise data-based harms too, such as wrongful and discriminatory exclusion through algorithmic anti-theft systems in its self-service checkouts and crime intelligence infrastructure.

To address these risks, CHOICE supports a number of reforms to privacy laws to better protect consumers from high risk data practices. These would require the supermarkets to:

- set out all types of information used in substantially automated decisions in their anti-theft systems, and
- produce a publicly available Privacy Impact Assessment for any high risk data uses.

Recommendations:

12. The ACCC should recommend that the Government legislate the following reforms to the Privacy Act, including:
 - a. A fair and reasonable use test to ensure businesses including supermarkets are only using consumer data in line with consumer expectations;
 - b. Expanding the definition of ‘personal information’ to include data relating to a person, such as technical and inferred information;

⁸⁴ Kelly L K, 2024, “*The secret sauce of Coles’ and Woolworths’ profits: high-tech surveillance and control*”, The Conversation, <https://theconversation.com/the-secret-sauce-of-coles-and-woolworths-profits-high-tech-surveillance-and-control-224076>.

⁸⁵ Schultz A, 2023, “*Up to 70 cameras watch you buy groceries. What happens to that footage?*”, Sydney Morning Herald, <https://www.smh.com.au/national/nsw/up-to-70-cameras-watch-you-buy-groceries-what-happens-to-that-footage-20230819-p5dxtp.html>.

⁸⁶ Vyver J, 2023, “*Australian retail giants and police using artificial intelligence software Auror to catch repeat shoplifters*”, ABC News, <https://www.abc.net.au/news/2023-06-10/retail-stores-using-ai-auror-to-catch-shoplifters/102452744>.

- c. Individual rights such as the right to access and delete your data held by businesses including supermarket loyalty schemes (including access to an explanation about how data was collected and what it has done with the information), and rights to object to the collection, use or disclosure of personal information;
 - d. A right for consumers to opt-in to or opt-out of targeted advertising;
 - e. Requiring businesses to set out all types of information used in substantially automated decisions in privacy policies and allowing consumers to request meaningful information about how substantially automated decisions with legal or similarly significant effects are made
 - f. Requiring businesses using high-risk data practices to produce a publicly available Privacy Impact Assessment;
 - g. Prohibiting businesses from trading in (i.e. the sale of) personal information; and
13. The ACCC should investigate whether the major supermarkets and loyalty schemes are continuing the practice of linking payment cards to loyalty scheme profiles even when a loyalty card is not scanned

Competition in the food and grocery market is not working for consumers

The market for groceries in Australia is highly concentrated, with only four companies controlling over 80% of the total grocery market. The Woolworths Group has the largest share at 37%, followed by Coles at 28%, Aldi at 10% and Metcash at 7%.⁸⁷

In a concentrated market consumers have less choice on where they do their grocery shopping. Coles and Woolworths stores are located across suburban and regional centres often meaning they are the closest and most conveniently located store, or for many, the only options.

CHOICE supports merger reforms

Australia's supermarket sector is a cautionary tale for why strong, enforceable merger laws matter for consumers.

Our supermarket sector is highly concentrated and the major supermarkets have grown in size and power in a way that very likely harms consumers. A key reason for this concentration is the steady acquisition of smaller independent supermarkets by Coles and Woolworths over a number of decades. For example, in 1960, Coles bought the biggest retailer in NSW, Matthews

⁸⁷ IbisWorld, August 2023, Supermarkets and Grocery Stores in Australia - Market Size, Industry Analysis, Trends and Forecasts (2024-2029), accessed at: <https://www.ibisworld.com/au/industry/supermarkets-grocery-stores/1834/>

Thompson, acquiring 248 stores. In 1985, Woolworths purchased Safeway, which had 126 stores.⁸⁸ These individual acquisitions may not have contravened competition laws, but taken together the impact of these ‘creeping acquisitions’ is very likely to have harmed competition in the supermarket sector. This has been the focus of a number of past inquiries⁸⁹ and highlights the importance of getting merger laws right.

New Zealand’s history with merger reforms and supermarket mergers is another example worth highlighting. In May 2001, on the day before stronger merger laws took effect, the second and third largest supermarket chains in New Zealand applied for merger clearance. If the new stronger merger test had been applied, the merger would not have been permitted. However, after a legal appeal process confirmed it was the old, weaker merger test that was to be applied, the acquisition proceeded. As a result, New Zealand went from having three major supermarkets to a supermarket duopoly.⁹⁰ New Zealand’s Commerce Commission has also recently found “competition is not working well for consumers in the retail grocery sector”⁹¹.

CHOICE welcomes the Government’s recent announcement that new reforms to merger laws should, if passed, come into effect in January 2026.⁹² The proposal would require notification for merger proposals above specified thresholds to the ACCC and will specifically empower the ACCC to consider creeping acquisitions⁹³. Adequate merger laws are key to ensuring we don’t have further consolidation in the supermarket sector that harms consumers.

The ACCC should consider the impact of online shopping on competition

Anecdotally, many people turned to online grocery shopping during the COVID-19 pandemic and a significant number of people continue to rely on it, including to help with the cost of living as online shopping may allow consumers to shop across supermarkets. A study of 2500

⁸⁸ Baker N & Leake J, 23 February 2024, “How did Coles and Woolworths become so powerful? The story of the big two supermarkets” <https://www.abc.net.au/news/2024-02-23/a-history-of-the-duopoly-coles-woolworths/103494070>

⁸⁹ See for example Joint Select Committee on the Retailing Sector, Parliament of Australia, Fair Market or Market Failure? A Review of Australia’s Retailing Sector (1999) (‘Baird Report’)

⁹⁰ Fallow B, 11 June 2022, ‘Supermarket Merger Defies Government Intervention’, <https://www.nzherald.co.nz/business/ibrian-fallowi-supermarket-merger-defies-government-intention/W75NYK3HR7XS5W3C3GKOSFPE5U/>

⁹¹ Commerce Commission New Zealand, 2022, ‘Market study into the retail grocery sector’. Final report - Executive Summary https://comcom.govt.nz/_data/assets/pdf_file/0023/278402/Market-study-into-the-retail-grocery-sector-Executive-summary-8-March-2022.pdf

⁹² Joint media release, 10 April 2024, ‘Merger reform for a more competitive economy’ <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/merger-reform-more-competitive-economy>

⁹³ Australian Government, The Treasury, 10 April 2024, ‘Merger Reform: A Faster, Stronger and Simpler System for a More Competitive Economy’, https://treasury.gov.au/sites/default/files/2024-04/p2024-518262-merger-reforms-paper_r.pdf

Australian consumers in 2022 found that 48% buy at least some of their groceries online, and almost 15% have switched to ordering most or all of their groceries online⁹⁴.

Whilst providing benefits to many consumers, there are risks to shopping online that could do with further investigation by the ACCC to better understand the impact of online food and grocery shopping on competition, and to ensure that online shopping is a fair and affordable way for consumers to purchase food and groceries.

Not all supermarkets offer online shopping or prices

Currently, Coles and Woolworths offer online shopping and display prices online, but Aldi and IGA do not. This limits the ability of consumers to compare across supermarkets to determine which offers the best deal. It also may enable prices to be higher. In Israel, following regulation requiring supermarkets to publish prices online, research has found that prices fell by 7%.⁹⁵ The ACCC may want to consider whether mandating this kind of price transparency across all major supermarkets may also have benefits for comparability and prices in Australia

Fairness of pricing for online shopping

In 2023, CHOICE reviewed online shopping services at Coles, Woolworths, Harris Farm Markets and IGA. When it comes to ordering fresh produce online, all supermarkets in our test had shifted to an order-by-item count system for most fruit and vegetables.⁹⁶ This means that the consumer must purchase a number of items rather than items by weight as you would in-store for the same items. Once the consumer has said how many items of produce they would like, the amount that they buy is charged based on the weight for Coles and IGA and by item at Woolworths and Harris Farm Markets. Woolworths and Harris Farm Markets also do not display the per kilo amount for products they sell by item, making it incredibly difficult for consumers to compare the unit price of similar or sometimes the same, product.

This system creates inconsistencies and consumers may find that they receive items of fruit or vegetables that are smaller or larger than average. CHOICE found that the discrepancy sat at around 200 grams above and below the average.

Subscription programs may discourage shopping at multiple supermarkets

To have their groceries delivered to their door, consumers are offered a range of delivery options. For a basic one-off delivery the consumer will likely be charged a delivery fee, and to be eligible for free delivery at both Coles and Woolworths you must spend over \$250 in one order.

⁹⁴ Spryker & Appinio, 2022, 'The online grocery report 2022: Australian Online Grocery Insights in 2022 and Beyond' https://www.efoodinsights.com/australia-online-grocery-report/?utm_source=Press%20release&utm_medium=&utm_campaign=2022_Global_PR_Australia%20eFood%20press%20release

⁹⁵ Rigbi O & Ater I, 2018, 'The effects of mandatory disclosure of supermarket prices' <https://cepr.org/voxeu/columns/effects-mandatory-disclosure-supermarket-prices>

⁹⁶ Smith G & Zaluzny P, 29 June 2023, 'Using online grocery delivery services', CHOICE <https://www.choice.com.au/shopping/everyday-shopping/supermarkets/buying-guides/online-grocery-delivery>

To access free deliveries frequently, customers of both Coles and Woolworths are encouraged to join delivery subscription programs, usually with an initial free trial that automatically renews which could pose a potential subscription trap. At Woolworths, consumers can pay \$15 a month, or \$119 a year, to access this delivery scheme, but all orders must be over \$75. With Coles Plus, consumers are offered free deliveries if they spend over \$50 for a \$19 month subscription.

These paid subscriptions likely pose further barriers to consumers switching to shopping with another supermarket, as the consumer has already paid for the included delivery service, which they'd need to forgo, and incur additional delivery expenses to shop at a competitor.

Search functions and the order products are displayed online may be distorting consumer choices

A number of consumers have shared with us that they find the search function tricky to use, as it defaults to ordering results based on 'relevance' or 'closest match'. At Woolworths, if the consumer changes between categories of products, it will again default back — allowing the supermarkets to have more control over what products consumers see.

One supporter shared their thoughts on the difficulties on online shopping with us in our November 2023 survey:

"I have shopped online for my groceries from Woolies for at least the past 8 years if not longer. It is now much harder to find the Woolies specials when shopping online. Some of the product range also appears to be hidden when doing searches and you need to identify specific brand name not just product category."⁹⁷

'Online only' promotions also create confusion

There are also potential issues around checking the prices of produce and grocery items online. On the websites of the major supermarkets, consumers are bombarded by promotions and promoted to join loyalty schemes which may influence consumer choices.

To add to the confusion, certain specials are only available online, as a CHOICE supporter shared:

"Advertised special in 'member' newsletter, but when you get to the store the special isn't available to personal shoppers, only available to online orders. I don't want to order online."⁹⁸

Consumers also reported frustration at finding products advertised on special online were out of stock in store::

⁹⁷ Respondent to CHOICE survey on Supermarket Specials conducted in November 2023

⁹⁸ *ibid*

“Both Coles and Woolworths allow catalogue specials to run out of stock well before (the) advertised end date. This routinely happens around where I live... They won't replenish stock until after (the) sale finishes. Coles will allow raincheck (but don't advertise it and staff often don't know what it is) Woolworths don't allow rainchecks any more, but they are the store I notice most doing this practice.”⁹⁹

Product safety and quality when shopping online

CHOICE also has previously expressed concerns about the safety of online shopping for some food items¹⁰⁰. According to Food Standards Australia¹⁰¹ potentially hazardous foods such as meat and dairy must be stored at 5 degrees or colder, the longer it is left out, the greater risk of it becoming unsafe to eat. In our 2023 online grocery delivery test, almost all Coles, most Woolworths and IGA items were delivered above the 5 degree safe limit, while all Harris Farm items fell within the Food Standards safety guidelines. The worst example was a block of cheese from Coles that recorded 7.7 degrees on arrival.¹⁰²

Another concern is the lack of control consumers have over the quality and freshness of products when ordering online, with one supporter sharing their frustrations with receiving poor quality items through online delivery:

“Woolworths constantly (delivers) poor quality Lebanese cucumbers... Increasing minimum amount for free home delivery spend - from \$50 to \$75. Stale in store bakery bread, almost out of date coleslaw mix - nearly every week... I have to add a note asking for 'longest' expiry date on almost every 'fresh' dairy/deli item.”

Given these issues, we ask that the ACCC investigate the effect of online grocery shopping on prices and competition to ensure that consumers who rely on it, are able to access groceries at fair and competitive prices

Recommendation

14. The ACCC should investigate the impact of the growth of online food and grocery shopping on prices and competition as a part of this inquiry. This should include consideration of availability of online prices, the fairness of 'order-by-item' pricing, the role of subscription programs, search functions and the order that products are displayed, 'online only' promotions and product quality and safety when shopping online

⁹⁹ Ibid

¹⁰⁰ Smith G & Zaluzny P, 29 June 2023, 'Using online grocery delivery services', CHOICE <https://www.choice.com.au/shopping/everyday-shopping/supermarkets/buying-guides/online-grocery-delivery>

¹⁰¹ Food Standards Australia, New Zealand, 'Storing Food Safely', accessed at: <https://www.foodstandards.gov.au/business/food-safety/fact-sheets/storing-food-safely>

¹⁰² Smith G & Zaluzny P, 29 June 2023, 'Using online grocery delivery services', CHOICE <https://www.choice.com.au/shopping/everyday-shopping/supermarkets/buying-guides/online-grocery-delivery>

The ACCC should consider competitiveness of supermarkets in remote and regional areas

Those living in rural and remote areas face higher food prices. This could be due to transportation costs and a lack of competition amongst supermarkets, with reports that almost two thirds of people living in regional and remote areas feel stressed as a result of not having enough food.¹⁰³ In WA alone, the price of a basket of goods was 26 per cent higher in remote community stores than anywhere else in the state.¹⁰⁴

The ACCC's inquiry provides a unique opportunity to interrogate the true contribution of, for example, transportation costs to food prices in remote and regional communities. As such, we recommend the ACCC inquiry considers the costs and margins in the supply chain for food and groceries in remote communities.

Recommendation:

15. The ACCC supermarket inquiry should consider the competitiveness of supermarkets in remote and regional areas, by collecting and analysing data to better understand the supply chain for food and groceries in remote communities

In 2020, the House of Representatives, Standing Committee on Indigenous Affairs conducted an inquiry into the cost of food in Indigenous communities. CHOICE, in partnership with Financial Counselling Australia, the Indigenous Consumer Assistance Network and Consumer Credit Legal Service (WA) prepared a joint submission that highlighted principles to inform policy in this area:

- **Fair and reasonable pricing** on essential goods such as fresh produce and pantry staples.
- **Clear and transparent pricing** that offers an explanation where prices are unreasonably high.
- **Community decision-making** on the supply of goods provided locally.
- **Recourse to justice** where pricing for essential goods is unjustifiably high.

Alongside these consumer-centric principles, the joint submission also made a number of recommendations that we ask the ACCC to consider in the process of this inquiry.

¹⁰³ WA Council of Social Services and Lotterywest 2019, *WA Food Relief Framework Report 2019*, p 27, https://wacoss.org.au/wp-content/uploads/2019/10/FRF-report_pages_DIGITAL_compressed.pdf

¹⁰⁴ *Ibid*

Recommendations:

16. The ACCC should recommend that the Government develops an affordable pricing policy in consultation with remote communities, which may include price caps, for basic goods in remote communities
17. The ACCC should recommend that remote community stores are regularly monitored for quality and quantity of stock and prices
18. The ACCC should recommend that the Government supports innovative community-led approaches to addressing food insecurity through increased grant funding
19. The ACCC should recommend that the Government increases income support for people living in remote communities to better reflect the high cost of living
20. The ACCC should recommend that the Government supports consumer protection and engagement in regional and remote areas through increased funding for consumer advocacy, financial counselling and legal services organisations

Appendix 1

In February 2024, CHOICE emailed our supporters asking them to share examples of potentially dodgy or confusing specials that they had seen in the supermarket. 1,468 people signed up to be supermarket pricing champions and sent through almost 100 examples. CHOICE has shared some of these examples below, further examples can be provided on request.

Tags designed to look like special discount offers when the product doesn't appear to be discounted	
<p>Photo taken at Coles Croydon NSW on February 29, 2024</p> <p>The promotional label states that the item is on 'clearance' at \$4, but the original price is visible behind the tag, showing that the item was \$4 previously. This item does not appear to be genuinely discounted.</p>	
Lower price claims, but the regular price behind the tag is the same	
<p>Photo taken at Woolworths Innisfail QLD in June 2023</p> <p>Supporter quote: <i>"I buy these biscuits all the time and know they were \$3.00 as you can see, never was \$3.50, I had to move the red ticket to see the normal price."</i></p> <p>The 'prices dropped' label states that the item dropped from \$3.50 to \$3. But when the tag is moved, it reveals the regular price of \$3. Indicating that the item is not discounted.</p>	

Photo taken at Woolworths Modbury Heights SA on 6 March 2024

The 'low price' label suggests that this item is now being offered for a lower price than it previously was by including a 'was' price. However the tag behind shows that \$3.50 was the regular price. The 'low price' label does not appear to reflect a lower price as it states.



Photo taken at Woolworths Modbury Heights SA on 6 March 2024

A 'prices dropped' tag is placed above the original tag to suggest a discount. However the label behind indicates that the 'dropped' price is the regular price of the item.



Multi-buy offers on essential items

Photo taken at Woolworths Modbury Heights SA on 6 March 2024

In order to get a discounted price on these overnight pads, the consumer would have to purchase two of the same product. Sanitary items are essential and any discount should be applied to the purchase of a singular unit so that they can continue to be available as affordably as possible to those that need them.



Unfair member-only pricing

Photos taken at Woolworths in Brighton SA on 7 March 2024

Supporter quote: *“If you’re a member you get rewarded with a special, but if you’re not, it appears you get punished and pay even more than the original price underneath.”*

In this example, a member-only price tag has been used for a multi-buy offer on sparkling water. A non member is penalised and forced to pay more than the original price of the item, compared to members who can access the discount, but only if they purchase two. *The non-member price is also higher than the ticketed price behind the tag.*



Photo taken at Woolworths Shoreline, Hobart TAS on 8 March 2024

Supporter quote: *“The regular price is \$2.80. If you're a member it's \$4.20 for two bottles. If you're not a member it seems you're taxed an extra \$.20.”*

Again we can see that a multi-buy member only offer has been applied to sparkling water. Further inflating the price for a non-member and forcing members to purchase two in order to obtain a discount. *The non-member price is also higher than the original price included on the tag.*



Specials and discounts that omit contextual information

Photo taken at Woolworths Deloraine TAS on 7 March 2024

A 'fresh special' label is used here to indicate that the price of the item is somehow different to the regular price. But no further information is provided for the consumer to be able to reasonably verify the claim.



Photo taken at Woolworths Deloraine TAS on 7 March 2024

A 'fresh special' label is used here to indicate that the price of the item is somehow different to the regular price. But no further information is provided for the consumer to be able to reasonably verify the claim.



Photo taken at Goulburn Coles, NSW, date unknown.

Supporter quote *“Down down. But from what? How much am I ‘saving’ from ‘last time’? Who knows.”*

A 'Down Down' label is used here to indicate that the price has dropped from a previously higher price. But no further information is provided, so the consumer is unable to verify the claim.



Photo taken at Coles Mosman Park Perth WA on 14 March 2024

A 'Down Down' label is used here to indicate that the price has dropped from a previously higher price. But no further information is provided, so the consumer is unable to verify the claim.



Photo taken at Woolworths The Range Toowoomba QLD on 7 March 2024

The 'prices dropped' tag suggests that the consumer is obtaining a discount at \$4. The tag underneath also reads \$4, suggesting that this is the regular price of the product. The tag states that the item has been dropped since 22/08/2017, almost 7 years ago..



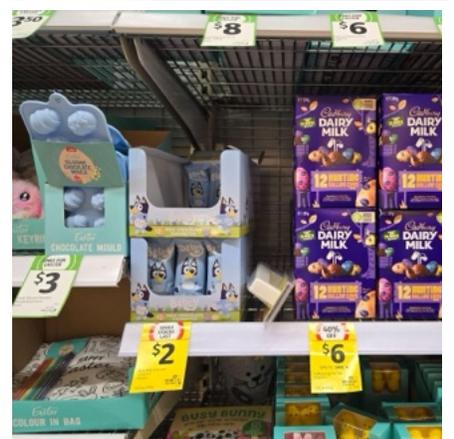
Tags designed to look like specials that don't appear to represent genuine discounts

Photo taken at Coles in Tumut NSW on 12 March 2024

Supporter quote: *"Slightly off centre is some Bluey chocolates with what appears to be a yellow special tag but its not actually a special, it's a while stocks last tag which looks to similar to a special tag so in my opinion it is misleading."*

The 'While Stocks Last' tag is presented in the same colours and style as a tag that represents a sale or discount. It attracts people to the product and makes them think that they are getting a discount, when there is no way to confirm that the product is discounted.

Further to this, the 'While Stocks Last' tag is seen beside a tag that reads '40% off'. This is potentially confusing for consumers as both tags use the same design.



Inconsistent use of unit pricing

Photos taken at Coles Indooroopilly Shopping Centre QLD on 20 March 2024

These two tags have been placed in front of two boxes of Lipton tea bags both containing 100 packs. Yet, the unit price of the first image is '\$0.07 per ea' and the second reads '\$3.25 per 100g'. A consumer trying to compare the price of tea bags across a range will be unable to easily do so, when the same products are showing different metrics.



Photos taken at Woolworths Marrickville Metro NSW on 13 April 2024

In this example, the unit price is only provided for the box of Quilton tissues that are not on special. The box of tissues on special, does not have a unit price displayed. A consumer may be misled into thinking the item on special is better value, however the tissues that are not on special are cheaper. Without the unit price it is harder for a consumer to compare and find the best price.



Photos taken at Woolworths Marrickville Metro NSW on 13 April 2024

In this example we can see two brands of smoked trout displaying different units of measurement in their unit price. The Woolworths brand of smoked trout states that it is '\$5.95 per 100g'. The Ocean Blue brand of smoked trout states that it is '\$85 per kg. Meaningful comparison of the two products is harder to do when the units of measurement are not the same or consistent across similar product types.



Appendix 2

The 20 items identified by Coles that it had prematurely raised the price of, but had claimed were 'locked' price items.

Affected products:

Product	Advertised price	Price charged	Dates
Bulla Thickened Cream 300ml	\$2.85	\$3.50	08/03/2023–04/07/2023
Bulla Thickened Cream 600ml	\$5.35	\$6.00	08/03/2023–04/07/2023
Bulla Thickened Cream Lite 300ml	\$2.85	\$3.50	08/03/2023–04/07/2023
Somat Excellence Dishwashing Tablets 30pk	\$18.00	\$30.00	07/04/2023–11/04/2023
Somat Excellence Dishwashing Tablets 45pk	\$21.00	\$35.00	07/04/2023–11/04/2023
Somat Gold Dishwashing Tablets 25pk	\$9.60	\$16.00	07/04/2023–11/04/2023
Somat Gold Dishwashing Tablets 51pk	\$18.00	\$30.00	07/04/2023–11/04/2023
Somat Rinser & Drying Booster Dishwasher Rinse Aid 500mL	\$4.75	\$8.00	7/04/2023–11/04/2023
Coles BBQ Briquettes	\$10.00	\$10.60	30/08/2023–31/10/2023
Napolina Chopped Tomatoes 4pk	\$4.00	\$6.00	07/06/2023–04/07/2023
Bran Flakes With Sultanas 580g	\$4.05	\$4.50	14/09/2023–01/12/2023
Kellogg's Corn Flakes	\$6.00	\$6.50	30/08/2023–01/12/2023
Coles Ankle Support Premium	\$8.00	\$8.50	20/09/2023–01/12/2023
Coles Heat Pack Silicone Bead	\$14.00	\$14.50	20/09/2023–01/12/2023

Coles Medistrips Fabric Pk 50	\$2.70	\$3.00	24/05/2023–25/07/2023
Coles Pregnancy Midstream Test 1 Pack	\$6.00	\$6.50	20/09/2023- 01/12/2023
Coles Pregnancy Midstream Test 3 Pack	\$10.00	\$10.50	20/09/2023–01/12/2023
Coles Wrist Support Premium	\$8.00	\$8.50	20/09/2023–01/12/2023
Fehlbergs Jalapeños Sliced 470g	\$4.00	\$5.00	04/10/2023–17/10/2023

Appendix 3

List of items from CHOICE's research that were impacted by shrinkflation in 2024¹⁰⁵

Affected products:

Coles' Mighty grain cereal
Corn flakes cereal
Woolworths' Max charge cereal
Community Co's traditional and chocolate hot cross buns
Woolworths' original salted corn chips
Red rock Deli dip
McVities Go Ahead biscuits
McVities digestive biscuits
Jif Power & Shine bathroom cleaner

¹⁰⁵ CHOICE, March 2024, '10 Grocery items hit by shrinkflation in 2024'
<https://www.choice.com.au/shopping/packaging-labelling-and-advertising/packaging/articles/shrinkflation-investigation#:~:text=Easter%20favourites%2C%20breakfast%20cereals%2C%20chips,and%20attempts%20to%20simplify%20production.>