

Public hearing – Canberra

9 April 2008

Time: 12.30pm – 4pm

Address: Rydges Lakeside

London Circuit, Canberra

Room: Hearing - Lake Huron – Level 1

Witness	Submission	Summons
National Association of Retail Grocers of Australia Mr Ken Henrick Chief Executive Officer Mr Gerard Van Rijswijk Senior Policy Officer	14, 129 and 159	No
Colgate-Palmolive Pty Limited Mr Paul Ansell Sales Director	N/a	Summonsed and compelled to appear by ACCC
Australian Table Grape Association Incorporated Mr Nick Muraca Chairman	N/a	No
Golden Circle Limited Mr Geoff Sawyer General Manager – Sales and Marketing	N/a	Summonsed and compelled to appear by ACCC
Australian Pork Limited Mr Andrew Spencer Chief Executive Officer Kathleen Plowman General Manager - Policy	75 & 147	No

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TRANSCRIPT OF PROCEEDINGS

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

MR GRAEME SAMUEL, Chairman
DR STEPHEN KING, Commissioner
MR JOHN MARTIN, Commissioner

GROCERY PRICE INQUIRY HEARING

CONDUCTED AT: RIDGES HOTEL, CANBERRA

DATE: 12.30 PM, WEDNESDAY, 9 APRIL, 2008

THE CHAIRMAN: Right. We'll start now, I think, as of the appointed time. My name is Graeme Samuel, I'm the chairman of the Australian Competition and Consumer Commission, and the chair of this public inquiry into the competitiveness of retail prices of standard groceries. As chair, I welcome you all, and declare the hearing open. I'm joined by my colleagues Commissioner John Martin and Commissioner Stephen King who are the other two presiding members of the inquiry. This hearing is convened under part 7A of the Trade Practices Act 1974. It's held pursuant to a request from the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Minister Chris Bowen received by the ACCC on 26 January 2008.

Matters to be taken into consideration by the inquiry shall include but not be restricted to the current structure of the grocery industry at the supply, wholesale and retail levels, including mergers and acquisitions by the national retailers, the nature of competition at the supply, wholesale and retail levels of the grocery industry, the competitive position of small and independent retailers, the pricing practices of the national grocery retailers, and the representation of grocery price to consumers, factors influencing the pricing of imports along with supply chains for standard grocery items, any impediments to and pricing of imports along with supply chain, and the effectiveness of the Horticultural Code of Conduct, and whether the inclusion of other major buyers such as retailers would improve the effectiveness of the code.

I note that the ACCC has so far received over 150 public submissions to the inquiry as well as confidential submissions. The ACCC will endeavour to take into account all of the information that's been provided, and thanks industry participants for the contributions that have been made. We understand that the competitiveness of retail grocery prices is of significant concern to all Australians. Now, the purpose of these hearings is to give the ACCC an opportunity to investigate in detail the issues raised as part of the inquiry with industry participants. We're organising hearings throughout Australia during April with several hearings occurring in Melbourne in May.

I wish to emphasise the many witnesses of these hearings are not attending voluntarily and have been summonsed to appear under section 95S of the Trade Practices Act. In particular, I note that in general, the ACCC has summonsed all supply companies, therefore no conclusions can be drawn regarding a company's willingness to participate in the inquiry, from the fact that a company is appearing at the hearings. Some of the material covered in hearing sessions will be confidential and commercially sensitive, and therefore parts of the hearings will not be open to the public. Questioning will start in public, but sessions will be moved into a confidential phase when the questioning moves onto confidential matters relating to the witness.

The ACCC has to be able to investigate issues that are commercially sensitive to witnesses without damaging the witnesses' competitive position in commercial relationships. We will be questioning organisations about their commercial

relationships and about confidential documents that we've obtained through using our information gathering powers. This obviously cannot occur in public. In particular, where a witness has not made any submissions to the inquiry and has been summonsed by the ACCC to attend these hearings, the ACCC must be able to hear
5 certain evidence in confidence. Transcripts of the public parts of the hearings are placed on the ACCC's website.

We may disclose some aspects of the confidential components of the transcript a while after the hearing if we consider that some of the material should be in the
10 public domain, but the ACCC will consult with the relevant witness before doing this. Where there are industry associations or representative organisations who are attending voluntarily, it's more likely that most of the hearing sessions will be public. In terms of procedural issues, all witnesses will have received a document of the outlines, how we intend to approach these hearings, so I won't go through those
15 procedural points in detail. I just wish to emphasise that although we are not taking evidence under oath at the hearing, it is a serious offence to give false or misleading evidence to the ACCC.

A transcript of the proceedings, apart from any proceedings held in private at the
20 inquiry will be made available on our website. Now, as I've mentioned before, we recognise that some witnesses will be asked to give evidence that, if disclosed, would damage their competitive position, which may, for other reasons, be confidential. If a witness believes that a particular question or a series of questions are likely to require him or her to disclose such information, the witness should indicate an
25 objection to answering a question on that basis. I will then consider whether the inquiry should take evidence in private from the witness. I note that although the ACCC is not using external counsel at this hearing, witnesses will be questioned by the ACCC's internal lawyers.

30 Well, that concludes my preliminary remarks, I thank all witnesses who are attending the hearings, particularly those who have been summonsed to attend. We realise that you are busy people, and that attending these hearings can be a significant imposition on you and your organisation. Now, the first witnesses are those from the National Association of Retail Grocers of Australia. I note again that it is an offence under the
35 Criminal Code to give evidence at this inquiry that a witness knows is false or misleading or omits any matter or thing without which the evidence is misleading. Could you just introduce yourselves for the record, and your role with the organisation, and then I'll hand to Mr O'Donovan to proceed.

40 MR HENRICK: Ken Henrick, CEO, National Association of Retail Grocers of Australia.

MR CUMMINGS: John Cummings, the Chairman of the National Association of Retail Grocers of Australia.

45 MR RIJSWIJK: Gerald Van Rijswijk, the Senior Policy Adviser of the National Association of Retail Grocers of Australia.

THE CHAIRMAN: Thank you. Mr O'Donovan?

MR O'DONOVAN: Could you just briefly outline exactly what the National Association of Retail Grocers is, in terms of how it's formed, who it's members are?

5

MR CUMMINGS: Sure. It's a – under a company structure, it's shareholders are made up of state bodies of independent business representatives. The QRTSA, the New South Wales retailers association, the Master Grocers of Victoria, the Tasmania Independent Retailers, the South Australia State Retailers Association, and the Western Australian Independent Grocers Association.

10

MR O'DONOVAN: In terms of their constituent members, can you describe them, what do they look like?

15 MR CUMMINGS: All of those have independent supermarkets as members in their states, but some of those associations also represent other retailers, as in the case of the QRTSA would represent smaller retailers, mixed businesses, tobacco, some electrical goods suppliers etcetera.

20 MR O'DONOVAN: Sure. So in terms of the people you represent, primarily independent retail grocers.

MR CUMMINGS: Primarily, yes, primarily.

25 MR O'DONOVAN: So the owners of stores like IGA?

MR CUMMINGS: The – our membership base is made up of independent stores, and if you took Western Australia as an example, it's made up of the 225 franchised IGA supermarkets, it's made up of the 15 Farmer Jacks, the 62 Ezyways, whatever, whatever, whatever, which makes up the entire independent grocery sector. We have some co-ops in there, etcetera, etcetera.

30

MR O'DONOVAN: All right. In terms of the – I suppose the funding of the organisation, where does the funding come from?

35

MR CUMMINGS: The funding comes from each of those bodies put in money, and then we obtain funds from suppliers.

MR O'DONOVAN: Sorry, you obtain funding from suppliers?

40

MR CUMMINGS: Yes.

MR O'DONOVAN: Which suppliers?

45 MR CUMMINGS: Well, I don't know how relevant that is, to be honest with you.

MR O'DONOVAN: Well, that's fine, but could you please answer the question?

MR CUMMINGS: Which suppliers, we obtain from a number of suppliers, and I really don't – you know, I just don't see where the – where that's going to, I mean - - -

5 THE CHAIRMAN: Could you answer the question, please, Mr Cummings?

MR CUMMINGS: Well, we obtain money from each of those individual associations, as I said, and we also obtain funds from a major supplier, as in IGA Distribution through Metcash, and we also obtain from smaller suppliers, and we
10 have, in the past, also obtained funds from banks.

MR O'DONOVAN: Sure. Also what proportion of your funding would come from each of those contributors?

15 MR CUMMINGS: There is no doubt that IGAD, IGA Distribution is one of the major funders of it, as they are of the Master Grocers Association, because a lot of the funding that occurs in our business is – that company IGA Distribution will collect funds on behalf of our business to allocate to those areas. An example of that
20 is a recent thing done by PricewaterhouseCoopers that we all contributed to as individual businesses, but I would think that PricewaterhouseCoopers would have sent the bill to IGA Distribution and IGA Distribution then divvied that up to each store on their weekly account.

MR O'DONOVAN: Sure, but - - -
25

MR CUMMINGS: I think the amount was like 525 bucks, I think.

MR O'DONOVAN: All right. So in terms of – important funding for the operation comes from the wholesale supplier?
30

MR CUMMINGS: Yes.

MR O'DONOVAN: The main wholesale supplier, which is Metcash.

35 MR CUMMINGS: Yes. Yes, and they – they collect funds on behalf of independents to do a number of things. One of them is advertising, as an example. Now, they don't actually spend their money to advertise our business. They spend suppliers money to advertise our business.

40 MR O'DONOVAN: Sure.

MR CUMMINGS: Because they collect the funds on our behalf. In some instances. In other instances, you've got people like Farmer Jacks, as an example – an important thing, Farmer Jacks is an individual, directly – they don't go through that
45 charge back system. They actually collect funds from a number of suppliers that they use in price subsidy, they use in advertising for our businesses, they use for the promotion of the independent sector. Even though I guess you could say that it was

spent by IGA Distribution, I would take the view that they were spending money collected on my behalf from suppliers.

5 MR O'DONOVAN: Right. But the bottom line is the cheque comes from Farmer Jacks - - -

10 MR CUMMINGS: Yes, well, if IGA go and do some – if IGA Distribution go and do some advertising, the advertising people would send them the cheque, and they would send them the – send them the bill, and they would write the cheque out, yes.

MR O'DONOVAN: Sure. Now, in terms of your personal involvement in the sector, do you have direct experience within the sector?

15 MR CUMMINGS: Do I – I'm a part owner of three independent supermarkets in Western Australia, have been for 18 years.

MR O'DONOVAN: Sure.

20 MR CUMMINGS: That is what I do for a living. This is a voluntary job. I'm actually the chairman so we have a director – and I think it's important there if you're trying to obviously bring some close link between IGA distribution and NARGA, is that they do not have board representation on the board of NARGA and the board of directors, Ken Henrick and Gerard Van Rijswijk, report to me, directly. I do this on a voluntary basis, it actually costs me money to do it, me personally.

25 MR O'DONOVAN: Sure, right. Your stores, they operate under which banner?

30 MR CUMMINGS: They are IGA supermarkets, franchise supermarkets, they were, prior to that, Dewsons, they were – one was an Action, one was a Dewsons, one was a Rules, prior to that. Prior to that, it was Cheap Foods. There are many independent supermarkets, that if you look at the history of them, they aren't the same banner today that they were 20 years ago.

35 MR O'DONOVAN: Sure, all right. Now, Mr Henrick, do you directly operate within the grocery industry?

MR HENRICK: No, I'm the CEO of the organisation, I run the secretariat in Sydney.

40 MR O'DONOVAN: Okay. Now, actually one thing I should have asked at the beginning, I'm sorry that I didn't. Did you have a pre-prepared – did you want to add anything orally to your submissions or are you happy for me to just question you directly?

45 MR CUMMINGS: Being the first time, do we get to ask questions back?

MR O'DONOVAN: That is not normally – normally the approach is - - -

THE CHAIRMAN: The answer is no.

MR O'DONOVAN: No?

5 THE CHAIRMAN: No, no. Please proceed, Mr O'Donovan.

MR O'DONOVAN: Okay. Well, let's start in with the wholesale sector.

MR CUMMINGS: Yes.

10

MR O'DONOVAN: In your submission you did make a submission about the barriers to entering the wholesale sector. Now, our understanding of the current situation in wholesaling in terms of groceries is that it is effectively a monopoly that Metcash occupies at that level of the market. Would you agree with that proposition?

15

MR CUMMINGS: In my business if I wanted to sell Kelloggs Cornflakes, right, I've got three alternatives of where I can buy them in Western Australia. I can go and buy them from Coles, I can go and buy them from Woolworths, or I can go and buy them from IGA Distribution.

20

MR O'DONOVAN: Sure. So in terms of sourcing them at the wholesale level really you've only got one choice which is - - -

25 MR CUMMINGS: Well, what is wholesale? I mean, you know, there are people that actually buy Kelloggs Cornflakes from Woolworths and resell them.

MR O'DONOVAN: Sorry, they deliver a pallet of Kelloggs Cornflakes?

30 MR CUMMINGS: No, they don't deliver a pallet but again, if you wanted to ring up Kelloggs Cornflakes - Kelloggs, Kelloggs will not deliver a pallet to you no matter what happens. So I have no alternative where to buy it. But that accounts for about 50 to 60 per cent of what I sell and everything else that I can sell, I can go and buy that from wherever I choose to.

35

MR O'DONOVAN: Sure. But I just want to be clear, in packaged groceries and in terms of running a price competitive viable business, really your only alternative is Metcash in terms of that?

40 MR CUMMINGS: Prior to that, it was FAL.

MR O'DONOVAN: Sure, okay. Now, you indicate in your submission that the barriers to entry, you estimate that the cost of setting up a competitive wholesaler is something in the order of 500 million dollars?

45

MR CUMMINGS: No, no, what we said was that the barriers to entry are to get to an economy of scale where it makes it work and that goes back to original evidence

that was given by Barry Alty who was the then managing director of Foodland who gave to the Dawson Inquiry, in his opinion that to operate a wholesaler to break even and make money you would need at least 350 million dollars worth of critical mass to go through that wholesaler.

5

MR O'DONOVAN: So that is throughput volumes?

MR CUMMINGS: Throughput, yes, dollar sales. So and that was confirmed, we - some independents then had discussions with other wholesalers around Australia and they were basically told the same thing. There was amounts that ranged from - you know, we couldn't possibly look at unless you could deliver us, in the first instance, 250 million dollars worth of business or, you know, 300 million dollars, or whatever. So we make the point that, you know, if I'm going to sit here and kid myself that I can go back to Perth, whip up three or four people and start up a wholesaler tomorrow, that ain't going to happen.

15

MR O'DONOVAN: Yes, okay. So it is fair to say that the barriers to entry into the wholesale market are high?

MR CUMMINGS: It is fair to say that in my lifetime I would not think that there would possibly be another wholesaler.

20

MR O'DONOVAN: Right, okay. Now, in terms of improving the competitive dynamic in the market, if someone were able to collect those volumes do you think that the dynamic at the wholesale level would improve?

25

MR CUMMINGS: No, I don't.

MR O'DONOVAN: Did you ever operate a business at a time when there was more than one wholesaler?

30

MR CUMMINGS: In Western Australia there's never been more than one, been more than one wholesaler.

MR O'DONOVAN: Yes, all right, okay. Now, why do you think the competitive dynamic wouldn't improve by having more players at the wholesale level?

35

MR CUMMINGS: Because I would - my understanding, and I'm not a wholesaler, right, but my understanding, if we go back to Western Australia, when FAL was set up, its board of directors was made up of independent supermarket owners. It actually grew out of a cooperative and those blokes' interest was to run the warehouse at a level where it made a return but its primary function was to service the retailer. I think there is a reality in today's market in Australia with the independent sector that - and this is like it or lump it, you know - if I fail, IGA Distribution fails. If IGA Distribution fails, I fail. You can't separate it.

40
45

MR O'DONOVAN: Sure. But it is - - -

MR CUMMINGS: So it's not in their interest to charge me more. You know, it's not in their interest to profiteer out of it. It's not in their interest to push up prices because that ultimately must have a detrimental effect to their business.

5 MR O'DONOVAN: Sure.

MR CUMMINGS: We are so much in this together, we can't separate our futures. I'd love to be able to, but I can't.

10 MR O'DONOVAN: Right. Now, as I understand your criticism of the retail level, is that it is just dominated by two players yet you seem to accept that one player at the wholesale level is enough. Is that your position?

MR CUMMINGS: Well, that becomes a sourcing situation, right? Now, you know, 15 I mean, surely an analogy could be Coca Cola. You know, like it or lump it – well, a better one, right? There is nobody in the world who is perhaps more against cigarette smoking than I. But guess what, I can't run my business if I don't sell cigarettes and guess what, I sell them for no profit. Guess why, because my competitors do. You know, that's a commercial reality.

20 MR O'DONOVAN: Sure, but looking at, as I understand your submission, you are advocating, I think, legal changes to the law to deal with the fact that there are only two supermarkets operating at the retail level. I'm wondering whether you have a similar level of concern about

25 MR CUMMINGS: I don't think any changes – no, I - - -

MR O'DONOVAN: - - - that there is only one wholesaler operating at the 30 wholesale level?

MR CUMMINGS: Look, if you got that impression from the submission that was put in, I'm awfully sorry because that was never the intention. I mean, we've actually never kidded ourselves that changes to any trade practices law is going to alter the fact that Coles and Woolworths have 80 per cent of the grocery market in 35 Western Australia. I mean, they're entrenched, that isn't going to go away. You know, the only thing that we might have been – that we are suggesting, and we have for some time, is that there can be changes that might make the playing field a little bit leveller, that might prevent the continual market share by acquisition, by creeping acquisitions by a number of perhaps anti-competitive activities of continuing to the point of that 35 per cent of market share in 1975 that ended up being 79 per cent in 40 2006.

MR O'DONOVAN: Sure.

45 MR CUMMINGS: The growth which we've been consistent in saying has been constant and consistent over that period of time. Now, I don't think you have to be

Einstein to figure out that if nothing's done, that growth will continue to be constant and consistent.

5 MR O'DONOVAN: All right. But I understood your submission as saying that there were legislative changes in the planning area, in the price discrimination area, and in the area?

10 MR CUMMINGS: Certainly, I think – and we concur with everybody else in that regard, you know, with other people that have put submissions are, that there are barriers to the independent sector to get into some sites, right? You know, you don't have to go back too far. Examples of that is when it was determined by the government that it wasn't a good idea for all of the Franklin stores to be taken over by Coles or Woolworths. Then they went down the path of trying to separate that, which we congratulate the government at the time of doing that, and it did booster –
15 boost up the independent sector. But then the reality was, when it got down to, okay, that store should be bought by an independent, that independent then went with the backing of a public company in some instances, guaranteeing the lease, and said, “Hey, will you sign a lease for us, Mr owner” and he said, “No, nick off, it's Coles or Woolworths or nobody.” You know, that's commercial realities. Now, you know,
20 there have been other instances where the independent sector hasn't had a look in, in some sites.

MR O'DONOVAN: Sorry, but if I could just take you back to my - - -

25 MR CUMMINGS: Sure.

MR O'DONOVAN: My earlier question was your understanding that you firstly had concern about market concentration at the retail level. Secondly, you think there should be some legislative change about that.

30 MR CUMMINGS: Yes.

MR O'DONOVAN: The question I'm asking is, given that there is a player in the supply chain that has 100 per cent market share at the wholesale level - - -

35 MR CUMMINGS: Yes.

MR O'DONOVAN: - - - what I want to know is why you're not advocating some change at that level which may improve competition in the market?

40 MR CUMMINGS: Well, because – I think we just went through it, I mean, it's never going to happen. You know, I mean, I could sit here and say, “Why don't we open up 10 wholesalers in Western Australia” if that's where you're trying to get to, but you're in – you know, well, I'm in Disneyland if I think that, with the greatest of respect.
45

MR HENRICK: If I could just point out that back in the early '90s, there was a wholesaler in every state, and the independent sector was actually losing market share under that arrangement. It's only because of the consolidation of the independent sector with a supplier with critical mass that can buy on equal terms
5 with the chains, pretty much, that that situation has turned around in more recent years. There's been a massive market share shift to the chain since the mid '70s, there's a been a slight turnaround in that market share shift in the last few years. So the big picture has been market share shift to the chains, the turnaround has come when there's been a significant wholesaler they're able to compete with.

10 MR O'DONOVAN: For sure. So in terms of the – I mean, the picture that you've given in your submission is that the market share is – of Coles and Woolworths is enormous and is unstoppable unless we do something about it.

15 MR HENRICK: Yes.

MR O'DONOVAN: You suggest there that it has started to turn around?

MR HENRICK: Just in the past couple of years, there's been a – the independent
20 sector has been performing well.

MR CUMMINGS: Yes, the independent sector has been picking up some market share, at a very, very, very small rate. In Western Australia, you know, we're talking percent of a percentage point in pick up of market share. Now, there's a number of
25 reasons for that, one is that we're a bit more confident about the business, another is the locations that we're involved in in that state, and that is the case Australia wide as well. People are reinvesting in their business, people are more confident about the future of their businesses. So all of that is creating that competitive dynamic that I think everybody's looking for, but very simply, if we do that – let's say the
30 independent sector – let's project forward. In five years time, the independent sector has picked up three market points nationally.

We simply have always said if you're getting back to why we are asking for changes, if nothing is done about creeping acquisitions, as it is ample, what is to prevent Coles
35 or Woolworths buying 10 per cent of the independent sector back over the next five years, if that, and we end up further up than where we were. That was our point from there. Again, there are – and I don't kid myself, there are some independent retailers, just like every supplier, it doesn't matter what you're supplying, there are some customers who don't like the way it works, and there are some independent retailers
40 who wish there were three, four, five, six alternatives that they could go and buy their breakfast cereal from.

I think we just – as a group of business people, are trying to be realistic and say, will that occur? No, it won't, you know, the same retailers will probably love to see
45 Woolworths and Coles market share be reduced to 50 per cent or 45 per cent. That could be by divestiture, by a whole pile of different more chains, if that's what those

people propose. Are we proposing those? No, we're not, because they're not realistic. We're trying to be realistic.

5 MR O'DONOVAN: All right. Well, then, just moving on then, I suppose, to some of the specific – some other specific elements of your submission.

MR CUMMINGS: Yes.

10 MR O'DONOVAN: We can't – I should tell you that due to time constraints, we're not going to be able to exhaustively tease out all these, and it may be that we will need you to come back later.

MR CUMMINGS: Not a problem, sure.

15 MR O'DONOVAN: But if we can at least get some sense of your positions on various things.

MR CUMMINGS: Yes.

20 MR O'DONOVAN: Now, predatory pricing, you raise as a concern for the independent sector.

MR CUMMINGS: Yes.

25 MR O'DONOVAN: Now, in terms of this inquiry, as I am aware of, I can only think of two specific examples that have been given to the inquiry, and I think the Cootamundra example was the one that you provided.

MR CUMMINGS: Yes.

30 MR O'DONOVAN: Which I'm sure we're going to have a look at. The question is, are there more examples that you know of, and if you do, how widespread is the practice?

35 MR CUMMINGS: Okay, well, the practice of the Cootamundra, that type of thing, has been occurring for some time.

MR O'DONOVAN: Now, could you just, for the benefit of - - -

40 MR CUMMINGS: Sure. In that case, what happens is, in the way that the grocery sector works, on its promotions, and remember that it's not the retailer that promotes the product, it's actually the supplier, isn't it? Right? I mean, I don't – a supplier doesn't – a supplier doesn't offer me Greenseas tuna to sell at 99 cents to a
45 consumer, because he thinks I'm a nice bloke, he does it so he can sell as much to the consumer as he possibly can. Then he rotates that through Coles, Woolworths, the independent sector. So everybody gets a chance at selling that product at that price.

Now, we would assume that everybody was paying the same price because it's about – the supplier is about promoting it to the consumer.

5 So in the case of that Greenseas tuna, we would assume that Coles, Woolworths, Farmer Jacks, Foodworks, IGA – ALDI, they don't do it, Franklins, would all be offered that product at 99 cents buy, to sell on promotion for 99 cents. Then a company like Woolworths goes out, promotes that, takes out TV advertising state wide to say they're going to sell it next week at 99 cents, they take out mainstream press, all the metro newspapers, all the country newspapers, to say that they're going to sell that product at 99 cents, they do 500,000 catalogues, and of those 500,000 catalogues, 475,000 of them say that they're going to do Heinz tuna at 99 cents, and then because, in the case of Cootamundra, they've opened a new store, and the independent sector – sorry – has kicked back, and they're not doing what they do, they drop the price to 79 cents. Now, in a situation like - - -

15 MR O'DONOVAN: Sorry, can I just stop you there. So your view is that what's happening in that particular market is that Woolworths or Coles is funding that additional price reduction?

20 MR CUMMINGS: Well, they would have to be.

MR O'DONOVAN: Sure. Then I guess I return to the original question. How common is this practice?

25 MR CUMMINGS: It's been happening for years. I mean, I first brought it to the attention – I personally first brought it to the attention of the ACCC when the joint parliamentary inquiry into the Market Dongas went on. I personally was told to take it to the ACCC in Perth, which I did, and the advice was that I should start my action against Woolworths.

30 MR O'DONOVAN: Sure. Putting that aside - - -

MR CUMMINGS: So that's a fair – but that's a fair length of time, isn't it?

35 MR O'DONOVAN: Sorry?

MR CUMMINGS: That's a fair length of time, isn't it?

40 MR O'DONOVAN: Yes, but the question that I'm asking is directed at – can you provide us with specific recent examples that we can investigate in the context of this inquiry, just to assess how widespread it is.

MR CUMMINGS: Well, Cootamundra is the most recent one, right?

45 MR O'DONOVAN: Sure. Are there many examples like Cootamundra, or is it an isolated case?

MR CUMMINGS: It comes up from time to time, you know, the - - -

MR HENRICK: I think there were two other locations where the same prices were being offered in recent months.

5

MR O'DONOVAN: All right.

MR HENRICK: I've forgotten where they are, but I could find that out.

10 MR O'DONOVAN: Sure. Well, I guess, I just invite NARGA to provide us with the specifics of those issues, because we are interested in how widespread the practice of it is.

15 MR CUMMINGS: Sure. But to the – can I just make a point there? To the bloke who owns the Cootamundra store, he couldn't care how widespread it was. Could he?

MR O'DONOVAN: I'm sure that's right, but in the context of the general inquiry - - -

20

MR CUMMINGS: But that's what we're talking about, yes, but again, if you're going to talk about predatory pricing, it's about what occurs to a bloke's individual business, you know, because I tend to, as a business person, look at it on a national basis – but there would be a heap of people in Western Australia like me who own
25 businesses like I do who couldn't care what happened in Cootamundra either. You know, it's only really – it's one person. Like, he's the bloke – he's the guy who's getting the predatory pricing against him, he's the guy who's got the problem, he's the guy who's looking for the solutions.

30 MR O'DONOVAN: All right. Now, the next statement that I just wanted to get some clarification on was you indicate that, in your submission, that effectively the major supermarkets can raise prices at will. Now, that's your assessment of how the retail market works, that majors are not subject to any competitive constraint?

35 MR CUMMINGS: It's some – I think you're making the point that in some areas they don't actually compete, they market share, taken in its entirety, and I would still stand by the old adage that, if you want to have a truly competitive market, you have as many suppliers as you possibly can. In the case where Woolworths or Coles are by themselves or we consider that they might market share a situation, they don't
40 directly compete against each other, they seem to be able to rise – to put their prices to what they wish to.

MR O'DONOVAN: All right. Now, presumably, independent stores – I mean, there are more – just in terms of physical numbers, there are more independent stores
45 then there are Coles and Woolworths?

MR CUMMINGS: Yes.

MR O'DONOVAN: You've indicated that at least your wholesaler can get terms from suppliers at equivalent prices to Coles and Woolworths?

5 MR CUMMINGS: Well, look, we'd like to think that, I don't know the proof of that, because – just like I don't know how much Coles or Woolworths are paying for a product, you know, I've never – I've never seen – personally, I've never seen an invoice from Coca Cola to either Coles, Woolworths or Metcash.

10 MR O'DONOVAN: Sure, okay, but you say you like to think - - -

MR CUMMINGS: Nor would any – nor is NARGA, NARGA has never seen that.

MR O'DONOVAN: Sure. But it seems to be the - - -

15 MR CUMMINGS: We'd like to think that, we'd like to think that.

MR O'DONOVAN: The buying power of collecting - - -

20 MR CUMMINGS: We'd like to think that.

MR O'DONOVAN: - - - all the independent sector into one, has delivered terms from suppliers that are comparable.

25 MR CUMMINGS: Yes, we'd like to think that.

30 MR O'DONOVAN: Sure. So if there are these players in this market which are raising prices at will, presumably either you are – you are benefiting from it either because you can follow them up, or you can improve your market share. That's right, isn't it?

MR CUMMINGS: That's so.

35 MR O'DONOVAN: So in terms of your competitive reaction, is the independent sector simply following the prices set up by the major supermarkets?

40 MR CUMMINGS: Well, you see, you started off your question there about the number of independent stores, okay, now, you know, are we going to talk – let's go the other way, let's talk about Coles and Woolworths. Are we going to throw – but are we going to throw in – so I can answer it - - -

MR O'DONOVAN: The important thing is you answer some of the questions.

45 MR CUMMINGS: Yes, okay, sure, but I'm trying to get to – right. To answer it, do we throw in Coles and Woolworths Express stores, as an example? Because in those numbers that you mentioned, there are a number of outlets that do not compete against Coles or Woolworths, they compete more against 7-11 stores, right. There

are a number of supermarkets, there are a number of IGA supermarkets that compete directly with Coles and Woolworths.

5 MR O'DONOVAN: Yes, and the question is, if as you say, the major supermarkets are increasing their prices at will.

MR CUMMINGS: Yes.

10 MR O'DONOVAN: Is the reaction of the independent supermarkets to increase their prices and follow up the price leaders. Is that conduct in which independent supermarkets have engaged?

15 MR CUMMINGS: The way that the pricing system works in the supermarket industry, is that we rightly or wrongly and I would assume – well the independent sector, we will talk about the independent sector. It takes out of the 16 to 18,000 SKUs that the majority of independent sector would stock. It takes 500, 750, maybe 1000 lines that they call as customer critical price sensitive lines and those lines we tend to mark online with what the major competitors – with what our competitors are doing. Now, that becomes the individual store's decision as to what that is.

20 They get given the tool, the tool that's provided is, "Here is a competitive price list of what everybody is selling it for", and then you decide what you wish to do with it. In some instances there are some Super IGA stores that I am aware of and I don't intend to name them, but they actually get a listing that has Coles prices, Woolworths prices, IGA prices and a best of both and they will take a best of both so you might have a situation where that we decide this jug is the one. In Coles that's \$1, in Woolworths it's \$1.10, in IGA it's \$1.05. The next line is the best of so it will always take the lower between Coles and Woolworths and some stores will go lower than that. Right. That's their choice. That's the individual owner's choice so he
30 decides to do that.

MR O'DONOVAN: Sure.

35 MR CUMMINGS: Now, that's in the first line. There is then a second line which is the not so customer critical line takes it to the next level and you get the same sort of things and you price accordingly to that and then you get general merchandise which has a different gross margin, then you get fruit and vegetables, meat, deli lines, directs, etcetera, etcetera, that you price yourself and you price those accordingly to how you see it.

40

MR O'DONOVAN: Sure.

MR CUMMINGS: So that's how it works.

45 MR O'DONOVAN: So the discretion is at the individual shop owner to make?

MR CUMMINGS: The discretion is for the individual.

MR O'DONOVAN: Would it be true to say though that the independent sector has not been vigorous in its price competition against Coles and Woolworths, if as you say, they're increasing their prices at will?

5 MR CUMMINGS: I think that's indicative in the areas where they haven't got independent competition.

MR O'DONOVAN: So are you saying, that where there is independent competition we would expect to find it?

10

MR CUMMINGS: Coles and Woolworths again and I'm not an expert on their pricing but I am led to believe they have some 10 or in excess of 10 pricing zones, right and they price in those 10 pricing zones according to what their competition is. Now, very simply in my business, I don't have 10 pricing zones because it doesn't
15 make sense. So, I make a decision and my decision is that I'm going to be price competitive with Coles and Woolworths and I price in those customer critical lines according to that.

MR O'DONOVAN: Sure.

20

MR CUMMINGS: There are other stores in Western Australia that take that and they go below it and I understand that, I choose not to. In regard to fruit and veg and meat lines, we watch them all of the time personally and we will tend to go below them in some instances.

25

MR O'DONOVAN: Sure.

MR CUMMINGS: That doesn't happen all of the time but in a lot of instances it does. Now, that becomes every individuals point to do that.

30

MR O'DONOVAN: Sure.

MR CUMMINGS: I mean - - -

35 MR O'DONOVAN: Sorry, if I can just – so, if margins are increasing for the major supermarkets in packaged groceries, everyone who chooses to be price competitive is also getting the benefit of improved margins?

MR CUMMINGS: Yes. Yes, sure.

40

MR O'DONOVAN: Would it be fair to say that there is a pretty low incentive on the independent sector to engage in a price war with the nearby Coles or Woolworths?

45 MR CUMMINGS: No. No, I just gave you – it's - you know, there are many examples where IGA supermarkets, where – and Foodwork supermarkets as well, no doubt, where they actually choose to take that best of and they go below it.

MR O'DONOVAN: Sure. Do you collect data on the pricing practices of - - -

MR CUMMINGS: Do I personally? No.

5 MR O'DONOVAN: Does NARDA?

MR CUMMINGS: Does NARDA, no, no.

10 MR O'DONOVAN: No, okay. All right. Now, in terms of market share, it is obviously, to some extent, built by consumers choosing to shop at the major supermarkets. Would you agree with that?

MR CUMMINGS: Yes. Well, obviously some of it is, yes.

15 MR O'DONOVAN: All right. Given the number of independent stores that there are, customers could choose to – presumably most customers have access to an independent store and choose not to go there?

20 MR CUMMINGS: No, I don't think that's the case at all. No, I don't think that's the case at all.

MR HENRICK: No, that's not true.

25 MR CUMMINGS: My - - -

MR O'DONOVAN: If we start with store numbers, there's less than 800 Woolworths.

30 MR CUMMINGS: Well, okay, okay, if you – my elderly mother who lived in Balgowlah in Sydney, there's no independent around. I mean, she could go to Coles or Woolworths, nothing else. If you live in Mosman, where I happened to grow up, there is a very, very small IGA supermarket, in Cremorne there's another one, otherwise you're swamped by Coles and Woolworths. You know, there's not every instance where there is. An example of that is in the Sydney metro area, right, there
35 are eight Supa IGAs in the entire Sydney metro area. In some country towns throughout Australia there are two Supa IGAs, plus Coles, plus Woolworths. Now, that's an historical thing where we would contend that when there is not competition around there is – whether they do it consciously or it just occurs that way, but you would tend to market share.

40

MR O'DONOVAN: Sure. But in terms of how this situation has grown up where Coles and Woolworths come in - - -

45 MR CUMMINGS: Yes.

MR HENRICK: You've got to understand that many of the Coles and Woolworths stores are in major regional suburban shopping centres, they've got very high

volumes of foot traffic, they've got access to customers who are working in that town centre or whatever it is. So it's not a matter of every store's got an equal chance to attract customers because most of the customers are where those stores are located. The independents tend to be in – certainly not in those big town centre – like
5 Parramatta, for example.

MR O'DONOVAN: Now, why do you think that is, why is it that independent stores
10 haven't - - -

MR HENRICK: Historically?

MR O'DONOVAN: - - - moved in to shopping malls and gone up aggressively
15 against major supermarkets?

MR HENRICK: They have not been able to get the leases from the shopping centre proprietors.

MR O'DONOVAN: Well, I mean, you'd be aware that ALDI has entered the
20 Australian market in recent times and have run a relatively small format store?

MR HENRICK: Yes, yes.

MR O'DONOVAN: Have been able to enter and are in shopping malls competing
25 head-to-head - - -

MR HENRICK: Because – no, they're not. ALDI has a range of 700 product lines. They are not direct competitors with Woolworths and Coles.

MR O'DONOVAN: But certainly on those 700 product lines they're competing.
30

MR HENRICK: Those 700 product lines, they're also basically – most of it any way, I'm not sure what the percentage, but a great percentage of his own brand stuff as well – so they are there selling a mix of general merchandise and a limited range
35 of grocery products which are own brand. They are not necessarily brands which customers would identify with them and want to buy. They may go there though because it is an alternative to Woolworths and Coles in some of those places.

MR O'DONOVAN: Sure.
40

MR RIJSWIJK: But just to clarify that, the grocery inquiry in the United States has – sorry, in the United Kingdom that's close to completing has classified the ALDI-type store as a LADS - a low - - -
45

MR HENRICK: A limited assortment - - -

MR RIJSWIJK: - - - a limited assortment discount store and they have judged that they do not compete with the majors because they don't offer the full service grocery type of experience or opportunity that the majors do. You'll see in some shopping centres where there is a Coles or a Woolworths, there is little objection from those
5 for the centre to lease space to ALDI because they don't see ALDI as a serious competitor in that sense.

MR O'DONOVAN: Well, can I just stop you there. Do you have any specific
10 information about that?

MR RIJSWIJK: Well, ALDI themselves have also, in their submissions, said that they have trouble getting sites, getting good sites.

MR HENRICK: But the - - -
15

MR RIJSWIJK: So this site problem is a common one and it's not just restricted to the independents.

MR O'DONOVAN: Sure.
20

MR HENRICK: But the point being that with ALDI - - -

MR O'DONOVAN: Can we go back to the original question?

MR HENRICK: Sure.
25

MR RIJSWIJK: Yes.

MR O'DONOVAN: Which was why is it that ALDI, in a relatively short period of
30 time, has been able to get access to shopping malls, with a grocery offering - - -

MR HENRICK: Because - - -

MR O'DONOVAN: - - - perhaps not identical to Woolworths - - -
35

MR HENRICK: It's because they are not - - -

MR O'DONOVAN: - - - that independent supermarkets have not been able to?

MR HENRICK: Because they are not direct competitors and because the average
40 family cannot do their entire weekly shopping at ALDI.

MR RIJSWIJK: No, no, it's getting sites.

MR O'DONOVAN: So do you believe there is a conscious decision somewhere
45 that someone is preventing independent supermarkets from getting sites?

MR CUMMINGS: There's two issues to it, right? To go into a Westfield site and I have – I'm just about to sign a new lease which will be a 20-year lease for one of my businesses and that's a 6 million dollar commitment at the age of 55. If I go into a Westfield shopping centre with 5000 square metres, if they were to take my
5 guarantee, which they wouldn't, to start off with, right, I'd be looking at a \$30 million commitment, you know, and that's – I don't know about you but I haven't got it to commit to start off with - that's the first barrier to it – and that's not uncommon. Most independent supermarkets trade so they sell for somewhere around the two to three and a half, \$4 million as a total investment. You would be
10 looking at twice or three times that with the commitment of a lease to get into some of these shopping centres that Coles and Woolworths are. It is not a big ask for ALDI because I think they turn over worldwide more than what the whole market does in Australia. I mean, it's not – it's an independent business but, you know, that's sort of like saying that perhaps it's just a bloke who makes a few boxes in his
15 backyard, isn't it.

MR O'DONOVAN: So in terms of having the capital guarantees - - -

MR CUMMINGS: There's a huge amount of - - -
20

MR O'DONOVAN: - - - that landlords expect - - -

MR CUMMINGS: Yes.

25 MR O'DONOVAN: - - - that an independent retailer just can't supply those.

MR RIJSWIJK: Yes, and also they are looking for much smaller spaces. A typical ALDI store would be 800,000 square metres. If you want to be up against Coles and Woolworths, you would need a store three or four times that size as an independent
30 and that's quite a challenge.

MR O'DONOVAN: All right, I think this is probably the last issue we will have time for. It is in relation to price discrimination. As I understand your submission, you were expressing some interest in reintroducing the price discrimination
35 provisions which would effectively prevent deals like the generic deals that the supermarkets get. Did I understand that part of the submission correctly?

MR CUMMINGS: No.

40 MR O'DONOVAN: Perhaps just explain.

MR CUMMINGS: Very simply, our understanding of price discrimination practices, is that if you are to buy the same quantity from a supplier with exactly the same specifications in the same quantities, there shouldn't be discrimination between
45 those.

MR O'DONOVAN: Sure, and milk is not an example of - - -

MR CUMMINGS: Well, milk – surely if the independent sector wanted to buy a house brand milk at the same specifications, with the same packaging costs, why would we expect to pay 10 per cent more than either Coles or Woolworths would?

5 MR O'DONOVAN: Sure, are you saying that the current milk pricing is – or, firstly, do you believe there is a problem with milk pricing? My understanding from your submission was that you did.

10 MR CUMMINGS: Yes, indeed, and I would contend that I cannot buy milk at the same price that Coles and Woolworths do.

MR O'DONOVAN: Yes, and so what you would see - - -

15 MR CUMMINGS: And in a market where we have got the same amount of market share.

MR O'DONOVAN: Yes.

20 MR CUMMINGS: In a market where it's delivered in exactly the same way.

MR O'DONOVAN: All right, so are we getting to point where you are saying that if price discrimination was prohibited, in your assessment on what you know about the supply prices of milk and the volumes of milk, the current arrangements for generic supply of milk to Coles and Woolworths would not be permissible from the
25 processors.

MR CUMMINGS: No, it would be permissible.

30 MR O'DONOVAN: So what's your complaint about the current supply arrangements of generic milk?

MR CUMMINGS: The complaint about the current supply arrangement of generic milk is that it has skewed the milk market away from what was sustainable to farmers. It's the pressure of that price goes down and, you know, when I talk to
35 farmers and they say to me - in Western Australia, when I say, "How come you get such a little amount at the farm gate?" They go, "Well, the processors tell us because they have to supply the chains house brand milk but we have to get it at a lower price." That's what they say. Now, if that's true or not, I don't know because again I don't see what they get paid and I don't see what the invoices are from there.
40 That's what they are saying the problem is.

Now, what we do is we then go and buy milk from the same supplier, from the processor who sells the house brand milk and if I'm right, if people are right in what they say, they think that contract price for two litres of milk in Western Australia
45 might be \$1.70, \$1.75, somewhere around that level, but again I have never seen an invoice so I don't know. I can show you one of my invoices that show from the same supplier I buy two litres of milk for \$2.55.

MR O'DONOVAN: Sure, you gave a speech at the press club recently.

MR CUMMINGS: Yes.

5 MR O'DONOVAN: That was you. You did give a breakdown of milk supply prices.

MR CUMMINGS: Yes.

10 MR O'DONOVAN: So - - -

MR CUMMINGS: Well, do you want those again?

15 MR O'DONOVAN: No, I have got them here. I suppose the first question is: where did you get them from if you say now that you don't know what the supply prices are?

MR CUMMINGS: I spoke to an ex-chief executive of one of the larger dairies in Western Australia, used his knowledge of it, took the retail price what was there
20 from the shelf price. So I walked into a Coles and Woolworths supermarket and looked at their milk and saw what retail price it was selling for. In the instance of HiLo which was \$2.99, then going back to their price being and the estimate of the contract price was \$1.75, it could be \$1.80, it could be lower. Nobody believed it would be \$2.00. Nobody believed it would be \$1.90. So if we took that as the figure
25 there, we took that down and that gave the available dollars of profit for there. That meant the processor – in that case I won't name the company – would have been selling it for \$1.75.

30 He is paying for two litres of milk, 75 cents because that's what the farm gate price is depending on what their contract rate is. That gives him a dollar. On estimates, talking to the packaging people and all the rest of it, the processor would be making about 20 per cent GP on there. So you take that 20 cents, you take their four cents, you take that one dollar 25, you get a calculator out and you end up with 82 per cent, 16 per cent force.

35

MR O'DONOVAN: Sure, and on those figures it was clear that whether you buy branded milk or you buy generic milk, the price that the farmer gets is the price the farmer gets?

40 MR CUMMINGS: Yes.

MR O'DONOVAN: And that's unlikely to change whether or not the generic process was in place.

45 MR CUMMINGS: Well, I'm not 100 per cent sure. I think it's part of the problem. I think everybody has had agreement with that. Every Agricultural Department meeting that I have been to in Western Australia, every time I have spoken to the

relevant minister and all the rest of it, every time I speak to participants in there, farmers, it doesn't matter who, they all say that that's part of the problem, if not one of the major parts of the problem. Now, you know, we have made the point and I continue to make the point that if as Australians we want to see a sustainable dairy industry, it's about time we gave the farmer something that would make worth their while.

If that means that somebody had to put transparency into that total process, so be it. You know, how the transparency gets there, I don't know. John Cummings and NARGA can't do it. Maybe it's a government job to do.

MR O'DONOVAN: But if we look at the figures and in terms of who are the, I suppose, losers out of the generic milk structure, it seems pretty clear that the big loser is the milk processor which is normally a multi-national company. Is that right?

MR CUMMINGS: Well, do you want them to exit the market as well. I mean, you know, you have got a situation where there is an independent dairy in Western Australia and it was his call that he said it would not be worth his while to tender for that house brand milk. So have you just locked him out of ever selling milk to the chains? Is that just disadvantaging a big company? I thought they were family owned actually.

MR O'DONOVAN: Sorry, I just want to be clear. You started off with the proposition that the reason why you were against generic milk was because it hurt the farmer. On your own figures it seems that the farmer is no better off under either buying system.

MR CUMMINGS: Sure.

MR O'DONOVAN: Really we are dealing with – the only question is: if we wanted to do something about generic milk and perhaps reintroduce section 49, what I am trying to work out is who would actually be affected - - -

MR CUMMINGS: Reintroducing section 49 isn't going to fix - - -

MR O'DONOVAN: Just let me finish? The question I want to get to is: is a change to price discrimination just going to reorganise margins between processor and retailer or do you have some basis for suggesting that it actually will result in a benefit to the farmer?

MR CUMMINGS: In regard to milking we don't believe that price discrimination laws would solve the outcome of the farmer, no.

MR O'DONOVAN: All right, well, that's all I have - - -

THE CHAIRMAN: Thank you. Mr Cummings, I have got several items I want to address, if we can, and I will try and be as brief as possible. Site acquisitions: I understand the issues on new sites you have referred to, the planning issues, the issues of landlords. In terms of existing sites, there was established a voluntary code of conduct between Metcash and Coles and Woolworths and, I believe Franklins but
5 I could be wrong, about three years ago. How's it operating?

MR CUMMINGS: In obtaining new sites?

10 THE CHAIRMAN: No, in relation to existing sites. It only relates to existing sites.

MR CUMMINGS: In the sale of business through it?

15 THE CHAIRMAN: Yes.

MR CUMMINGS: Look, I have no experience in that and NARGA doesn't get involved in that. I can only – like to point out that in some instances when we have brought to the ACCCs attention that there is one of the majors looking to buy or making approaches to an independent that the ACCC was not aware of.

20 THE CHAIRMAN: Yes, but the code of conduct, if I recall correctly, didn't require the ACCC to be notified. What it required was that the vendor of an existing site was not to be bound to Coles or Woolworths or Metcash not to disclose to others. In other words, the vendor was to be left free to negotiate with whomsoever he or she chose. Is there any evidence of that practice not being followed?
25

MR HENRICK: I'm not aware of any.

30 MR CUMMINGS: I'm not aware of any.

THE CHAIRMAN: Okay. I want to go to the issue of market shares and the whole pricing structure. What do you estimate to be the market share of Coles and Woolworths respectively and together in relation to the grocery trade?

35 MR CUMMINGS: In relation to the grocery industry?

THE CHAIRMAN: Yes.

40 MR CUMMINGS: We would go by Nielsen data which similar data is used worldwide and they have 80 per cent and 79 per cent of the market in 2006.

THE CHAIRMAN: Right. Have you got any update on that?

45 MR HENDRICK: No, that's the latest figures we have.

THE CHAIRMAN: Right.

MR HENDRICK: I'm happy to table that, which is from the ACNielsen 2006 Grocery Report. They are using ABS data. It covers the entire food industry sectors. That's the grocery sector which says that in 2006 the grocery and supermarkets had 62 per cent of the total food industry. If you do the 80 per cent calculation, it's
5 50 per cent, which is what Woolworths and Coles claim to have. So in the grocery sector they have 80 per cent.

THE CHAIRMAN: Then what's the 50 per cent.

10 MR HENDRICK: Well, they claim that they've got - - -

MR RIJSWIJK: Because, if you translate the numbers into - - -

MR HENDRICK: The total.
15

MR RIJSWIJK: - - - the total food sector. If you take that 62 per cent that supermarkets make up of the food sector and say Coles and Woolworths have 80 per cent, you multiply the two together you get Coles and Woolworths have 50 per cent of the total food sector, that's including restaurants and take-aways and
20 all that.

THE CHAIRMAN: Okay. Yes. Yes.

MR RIJSWIJK: That's the difference - - -
25

THE CHAIRMAN: Of the grocery retail sector, you say they have 80 per cent.

MR RIJSWIJK: Yes. That's where the difference exists between - - -

30 MR RIJSWIJK: Yes.

MR RIJSWIJK: - - - how Woolworths portrayed in their submission because they take a broader view, they've got the ABS figures of the whole food market, right? They say, "Oh, we're only 50 per cent of that." This is a groceries inquiry, if you're
35 talking about the grocery industry, they're 80 per cent of that.

THE CHAIRMAN: Fresh food, separating that out from packaged groceries?

MR CUMMINGS: Well, I mean, I don't think that's been done anywhere. I've
40 never seen anything to it. I mean, it's like we don't kid ourselves that they're got 80 per cent of the milk market, right, because there's a lot of drinking milk that's sold to restaurants, cafes, food service etcetera etcetera. Now, in the fruit and veg, if you look at any fruit and veg data that's given, I would assume it would be collected from what was direct supply contract to the chains or retailers, that could be
45 independents as well. It would be then what went through the market system. Now, through the market system, a lot of that product that goes through the market system

ends up in restaurants, in hotels, in lunch bars and whatever. What percentage of that is it?

5 THE CHAIRMAN: Okay. So we've got 80 per cent of the grocery retail market is held by Coles and Woolies. Metcash, by their own public admission, have got 19.5 per cent. What's that leave for ALDI?

MR CUMMINGS: Two per cent, three per cent.

10 THE CHAIRMAN: Yes, I think they claim something closer to eight per cent, don't they?

MR RIJSWIJK: No, only - - -

15 MR CUMMINGS: No.

MR RIJSWIJK: They're only in a couple of states. They have less than two per cent in total.

20 THE CHAIRMAN: Okay. Franklins?

MR CUMMINGS: Probably less than one.

MR RIJSWIJK: About one.

25 THE CHAIRMAN: Okay. Now, can we just have a bit of a look at the pricing structures because I'm just trying to understand – I go back almost to the first question that Mr O'Donovan put to you which is the relationship of NARGA to Metcash and the Metcash position as a monopoly wholesale supplier to the independent stores throughout Australia. I'm just trying to understand the pricing structures and where the competitive ability of independent retailers really lies. Have you got any – can you give me – I assume NARGA has done this work – can you give me any idea as to the relative EBIT margins of Metcash, Coles and Woolies?

35 MR RIJSWIJK: We don't have - - -

THE CHAIRMAN: It will be published. It would be in the annual accounts.

40 MR HENDRICK: Yes. We haven't pulled them together but we could do that.

THE CHAIRMAN: Right. Okay. Now, have you got any general sense of the EBIT margins of the independent retail groceries?

45 MR CUMMINGS: Certainly. It would range between 19 to 24.

THE CHAIRMAN: That would be a great EBIT margin. I bet you Coles - - -

MR CUMMINGS: No, EBIT, sorry. Gross margin. EBIT would be around the three.

5 THE CHAIRMAN: About three. So three per cent would be around about the retail EBIT margins for the independent grocery stores. Then we've got to look at Metcash's position which would come from its published accounts, that we could compare that with Coles and Woolies and their published accounts etcetera.

10 MR HENDRICK: They're - - -

MR RIJSWIJK: They're not added to them, I mean, because part of that EBIT result is how efficiently operated.

15 THE CHAIRMAN: Of course, I understand that.

MR RIJSWIJK: Yes. The local – if the local IGA store is an efficient operator, they will get an EBIT even if the margin that they're operating on is less than that of Coles and Woolworths.

20 THE CHAIRMAN: No, I understand that. I understand that. I'm just trying to understand though the competitive dynamic that Mr O'Donovan was trying to focus on before. Now, if you've got – and let's just take a figure out of the air, for example, roughly. I think if I looked at the – although I've seen your accounts in Metcash, there is a margin for running at around four to four and a half per cent.

25 MR CUMMINGS: I've got no idea. I'm not even a shareholder.

30 THE CHAIRMAN: Okay. Let's hypothetically put that in place. I don't want to sort of be bound by that number but I think that's probably about the sort of numbers that we're talking about. So that combined, Metcash as a wholesaler and the independents would have around about combined – I'm just putting this proposition to you but let's use it as an example – around about a seven per cent EBIT margin?

35 MR CUMMINGS: Well, surely the mistake made in that is that we're not buying 100 per cent of what we sell from Metcash.

THE CHAIRMAN: Yes, so?

40 MR CUMMINGS: So how can you combine the two?

THE CHAIRMAN: Well, yes, but I'm trying to look at - - -

45 MR CUMMINGS: If I only buy half of what I sell from Metcash, right, I might be making no margin out of what I buy from Metcash and twice the margin out of that other 50 per cent, mightn't I?

THE CHAIRMAN: Yes. Now, that's - - -

MR CUMMINGS: In effect, in effect, if I was to show you and I would show you privately, if that's what you wanted, I will show you my Metcash invoices for one week and I lose money on what I sell out of their warehouse.

5 THE CHAIRMAN: That's a very important point, Mr Cummings. Thank you for bringing that to my attention because that's what I was trying to get to. So therefore your ability to compete with the major supermarket chains as an independent retailer depends not only on your own efficiency but the cost of supply to you by Metcash of the products at which you're competing other than those that you're buying direct?

10 MR CUMMINGS: No, because Coles and Woolworths do exactly the same. Coles and Woolworths, if we're line ball, if we're lion park and we go back to that premise that we're buying at the same rate, right? Vegemite, 525 gram Vegemite, we'd make 4.1 per cent gross margin. All right? If I sold nothing but Vegemite, guess what?

15 THE CHAIRMAN: What you've just indicated, sorry - - -

MR CUMMINGS: So it's a mix, it's the product mix.

20 THE CHAIRMAN: Of course it is, yes.

MR CUMMINGS: Coles and Woolworths work on the same product mix.

25 THE CHAIRMAN: Yes. No, I fully appreciate that but I think what you've just indicated to us is that you could show me privately, in fact you said publicly, an invoice, series of invoices and demonstrate that in respect of products supplied to you by Metcash, not all but respective products supplied to you by Metcash - - -

30 MR CUMMINGS: In dry goods – dry goods groceries, I think it would be fair to say that in- - -

THE CHAIRMAN: - - - you'd make a loss.

35 MR CUMMINGS: In dry goods groceries nobody, and that is why Franklins no longer exist because they found they could not make money out of just selling dry goods groceries.

THE CHAIRMAN: Franklins exists, though, doesn't it, in New South Wales.

40 MR HENDRICK: The old Franklins.

MR CUMMINGS: The old Franklins.

45 THE CHAIRMAN: Yes. Yes.

MR CUMMINGS: I'm going back to – the reasons Franklins No Frills exited the market, the reason there's no longer a Flemings around, is because it's basically impossible to make money out of selling just dry goods groceries.

5 THE CHAIRMAN: Now, Franklins used to be supplied by Metcash.

MR CUMMINGS: I'm going back to when they were owned by - - -

10 THE CHAIRMAN: No, I understand that. I'm moving forward a bit to the more contemporary environment.

MR CUMMINGS: Yes, sure. Okay. Yes.

15 THE CHAIRMAN: Franklins used to be supplied by Metcash?

MR CUMMINGS: Yes.

THE CHAIRMAN: They're no longer supplied by Metcash?

20 MR CUMMINGS: To my understanding. We don't have them in Western Australia but to my understanding.

THE CHAIRMAN: Yes, but NARGA is not only West Australian is it?

25 MR CUMMINGS: Yes, no, no, no, no. I'm just talking from personal experience.

THE CHAIRMAN: Well, perhaps Mr Henrick or Mr - - -

30 MR HENDRICK: Yes. That was the evidence they gave to this inquiry - - -
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MR CUMMINGS: That is – that is true, yes.

MR HENDRICK: - - - in Sydney the other day.

35 THE CHAIRMAN: Yes, that's right. They – well, we won't go into some of the evidence they gave in private but what you're indicating to me, I just want to go back to this - - -

40 MR CUMMINGS: Yes.

45 THE CHAIRMAN: - - - is that in terms of package groceries, you would say that in a large segment of what you're providing, or maybe I'm misstating it, but in the segment of what you're providing you actually lose money in regard to your costs of supply but Metcash and what you can sell it at. Have you ever said to Metcash, "Hey, your supply costs are too high"?

MR CUMMINGS: Well, no, because that includes promotional product where we're selling at cost, in situations. So the product mix, I mean, the GP. Again, I don't find this too difficult. If you sell just cigarettes in a supermarket at supermarket prices you'll go broke because if you get that mix incorrect. The reason
5 there is a difference in independent supermarkets between a 19 per cent gross margin and 24 per cent gross margin is the product mix of what you sell. Right? Now, the skill of what we have to do as individual business people is make sure that our location is right; make sure that our offer to consumers is right; make sure that we're full service supermarkets and make sure we can manage our profit mix to make sure
10 that we make an acceptable return. Now, that is why some people will buy all over the range as to where they buy from an individual warehouse.

THE CHAIRMAN: So on that basis, what you're putting to me is that the package goods segment of your business is the loss-making side but the - - -
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MR CUMMINGS: The package – I would describe the packaged grocery market in Australia as being the engine room of the retail. So it hopefully recoups your overheads, all the rest of it. You add the fresh food, you add all of those other areas to it and that gives you your profitability and that's how you manage it and make a
20 profit.....

THE CHAIRMAN: So on your fresh foods you're making a margin which gives you across the board an EBIT margin of three per cent, but in terms of your packaged goods, you're either losing money or breaking even.
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MR CUMMINGS: If you just sold cigarettes and packaged goods, I do not believe you would have a sustainable business.

THE CHAIRMAN: Yes.
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MR RIJSWIJK: And that was the Franklins business model that – that went broke.

THE CHAIRMAN: When you say to Metcash, "Look, in terms of the products you're supplying us, we're either breaking even or losing money," what's the
35 response?

MR CUMMINGS: I've never actually said that to them.

THE CHAIRMAN: Well, it'd be a pretty sensible thing to say, would it not, or perhaps I'm unused to running a business?
40

MR CUMMINGS: Sure. Well, in that regard, again, you know, it's 40 per cent of it, you know. If you look at some of these, it's got promotional things in there. You've also got to take into account – and it's – another example might be
45 Cadbury's blocks, as an example, right. If we were to sell Cadbury's blocks and buy them when they weren't on promotion, we could not make money out of selling the product. We tend to buy them, and that's one of the other skills of doing it, is to buy

them on promotion as often as you can to make sure that, through the 12 months, you average out what your gross margins are, that's what running a business - - -

5 THE CHAIRMAN: Why wouldn't NARGA, as the collective representative of the total customers of Metcash not be putting a strong case forward to Metcash that the supply cost is causing its members, NARGA's members, to actually lose money on products supplied by Metcash? Or is that influenced by the funding source for NARGA?

10 MR CUMMINGS: No, of course not. No, of course not. I mean, I just – like, the fact that I sell 525gram Vegemite at 4.1 per cent gross margin has got nothing to do with Metcash. I mean, I was doing the same when I bought off Foodland. I don't understand what the - - -

15 THE CHAIRMAN: I'm trying to understand the business – well, let me go back. What percentage of your business would be supplied by Metcash?

MR CUMMINGS: In my personal instance?

20 THE CHAIRMAN: Yes, that would give an example.

MR CUMMINGS: 40 per cent.

25 THE CHAIRMAN: 40 per cent. Well, what you're saying is, that 40 per cent of your business is either break even or losing money because of the supply cost to you from Metcash of the supplier.

30 MR CUMMINGS: I think that's the way all business works. No, I think that's the way all business works. I mean, no business that I'm aware of makes the same GP out of everything it sells. I mean, you know, department stores make a far greater GP out of women's cosmetics than they do out of travel goods. But that doesn't mean that they don't sell travel goods.

35 THE CHAIRMAN: Okay, I don't want to push this too much further, because it's more a debate than anything else, but I'm just trying to understand. NARGA represents, as you described, virtually all the customers of Metcash.

MR CUMMINGS: Yes.

40 THE CHAIRMAN: If all the other – sorry?

MR HENRICK: That's not quite true, because Metcash has food service customers and - - -

45 THE CHAIRMAN: Sure, but in terms of retail grocers, it represents all the retail grocer customers of Metcash, and if Mr Cummings' example is an example of what's happening throughout all its members, or NARGA's members – I'm trying to

understand why NARGA doesn't, as a collective bargaining representative, say to Metcash, in terms of the products that you are supplying us, we are either breaking even or losing money, and we cannot sustain a competitive business against Coles and Woolworths on that model. So can you readdress the model.

5

MR CUMMINGS: Sure. Well, we haven't – to start off with, we have not received complaint that we have not got a competitive – we haven't got a sustainable business, right? That's the first thing. I described my business as sustainable, I described the independent sector as sustainable.

10

MR RIJSWIJK: I think there's two – first of all, NARGA is not, on the commercial side of the business, it's not how we're structured, it's now how - - -

THE CHAIRMAN: Not the collective bargaining representatives?

15

MR CUMMINGS: No.

MR RIJSWIJK: The thing is that what Mr Cummings is saying about the way his business works in the grocery sense, is exactly the same way Coles and Woolworths would work. They have lower margins on a range of their products as well as their fruit and vegetables and their meat – it's the way the whole industry works, it's no different.

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THE CHAIRMAN: But Mr Van Rijswijk, Mr Cummings' evidence is that basically he's got no margin on goods supplied by Metcash.

25

MR RIJSWIJK: No, or

THE CHAIRMAN: He's losing money at this point.

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MR RIJSWIJK: If he sold only his groceries - - -

THE CHAIRMAN: He would lose money.

MR RIJSWIJK: He wouldn't have a viable - - -

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THE CHAIRMAN: So for 40 per cent of his business - - -

MR RIJSWIJK: Franklins' proved that, Franklins proved that, that it was not a viable business model just to sell dry groceries.

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MR HENRICK: If Woolworths and Coles sold only dry groceries, they would go broke too.

MR RIJSWIJK: They would both go broke.

45

THE CHAIRMAN: The existing Franklins, what I call the contemporary Franklins, decided that the business model presented by – being supplied by Metcash didn't work, and therefore moved to their own separate business model where they were subject to their own direct relationship with the clients.

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MR RIJSWIJK: Franklins has not made money in the time that it's been – it's continually propped up by the South African parents.

THE CHAIRMAN: Well, again, we won't disclose that confidential material.

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MR RIJSWIJK: No, that's not confidential, that was given in open session. It's – they've changed their business model too, they now also supply the fresh fruit and vegetables and the other add ons which have the higher margin. You have to have that mix in the business to have your low margin products that provide a volume, if you like, and help cover overheads, and then a higher margin component gives you the margin to survive.

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THE CHAIRMAN: Okay. If it's not NARGA's role to collectively bargain or to assist its members in their negotiations with Metcash, what is NARGA's role in relation to the members it represents?

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MR CUMMINGS: To represent the interests of the sector at Government level.

THE CHAIRMAN: But what you're putting to us – that's why I'm trying to find a sort of reconciliation of a couple of different propositions. You're saying to us that you have a sustainable model – I'm saying you, I'm talking about NARGA. NARGA has a sustainable model.

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MR CUMMINGS: The independent sector in Australia has a sustainable model.

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THE CHAIRMAN: Right, is it a competitive model?

MR CUMMINGS: Yes.

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THE CHAIRMAN: So it's a competitive model, yet, you're putting to us in your submission that there needs to be different form of Trade Practices Act and different forms of administration of the Trade Practices Act to make the sector more competitive. Now, I'm just trying to understand, because you're putting forward some very serious propositions about changes to the law for a matter that you're then saying is not that relevant.

40

MR CUMMINGS: Yes, we're putting forward the point that in a market where there is a competitor, and the competitor is independent, that it – from the evidence that we have been able to gather, sees a lowering of prices of grocery lines. Examples of that are in the simple things that we put forward in regard to pricing in metropolitan Perth, of again, those customer critical lines, and we pick – Kraft Vegemite was one, Heinz Baked Beans was another, there is another product that

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both Coles – or that Coles, Woolworths, Franklins and independents would make less than 10 per cent gross profit out of, and in those cases, what I found, and I could not give the answer to, was in my stores, in Western Australia, in Coles supermarkets in Western Australia, in Woolworths supermarkets in Western Australia, in the case of the Heinz Baked Beans, the retail price was \$1.40. In Sydney, in the Ringer Mall, the same can of Heinz Baked Beans retail price was \$1.59. Now, the only thing that I could come up with, being the difference, was that there wasn't any independent around those two other stores.

10 THE CHAIRMAN: Okay, can I perhaps try and summarise what I think your position might be, NARGA's position might be, and that is, that the package groceries element of your business is either running at a break even or at a loss as a result of the cost of supply to you by the monopoly wholesaler which is Metcash, that you do not believe – well, it has to do with the cost of supply relative to the retail price – that it has to do – that you don't see it as NARGA's role to tackle that particular pricing issue with Metcash, but you do see it as NARGA's role to have the competitive provisions of the Trade Practices Act amended to enable the independent grocery sector to better compete against Coles and Woolworths. Can I put a much more direct question to you.

20 MR CUMMINGS: Sure.

THE CHAIRMAN: Are those amendments designed to enhance the position of the independent grocery sector, that is the retailers, or does it lessen the competitive pressure on Metcash?

MR CUMMINGS: They are just there for the betterment of the grocery sector. You know, again - - -

30 THE CHAIRMAN: I broke it up into the retailers and the wholesaler in this case.

MR CUMMINGS: Okay, okay - - -

35 MR RIJSWIJK: Your premise that the pricing pressure from Metcash is the reason that some of these products don't have a higher margin is not correct. What we're saying is, at this hour, the industry as a whole works, they make money on some lines and not others. Coles and Woolworths are in exactly the same position.

40 THE CHAIRMAN: But forgive me, I - - -

MR RIJSWIJK: The reason we are saying that there is – things need to change, is because if the objective of the exercise is to bring down grocery prices and make the market more competitive, then there needs to be a change in the framework in which the market operates to make it more competitive.

45

THE CHAIRMAN: But you don't see that change being NARGA on behalf of the retail customers of Metcash addressing the pricing structure of Metcash and their supply to you.

5 MR CUMMINGS: If we're – to answer that, if I thought that a supplier, no matter who that supplier was, was having a lend of me, I would take it up directly with the supplier.

THE CHAIRMAN: Even if they're you're most significant funders?

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MR CUMMINGS: Hey, do you reckon I haven't had arguments with Coca Cola over the years? I mean - - -

THE CHAIRMAN: I'm talking about NARGA.

15

MR CUMMINGS: Well, from NARGA's point of view, hey, I've already said, I do this voluntarily. I don't answer to anybody. The directors of NARGA actually answer to me. I don't report to anybody. I do not have anybody I work for. I don't get paid by anybody. What are you trying to imply?

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THE CHAIRMAN: I'm not implying anything, I just asked a question which related to the source of – the source of funding of NARGA.

25 MR CUMMINGS: I don't report to anybody. Okay, well, that comes to NARGA with no strings attached. Right? There ain't a payback.

THE CHAIRMAN: What percentage of NARGAs funding comes from Metcash?

30 MR CUMMINGS: Top of my head, 80.

THE CHAIRMAN: If that funding were removed, what would happen to NARGA?

35 MR CUMMINGS: I'd probably enjoy sitting in my balcony in Sorrento and go down the - - -

THE CHAIRMAN: I wasn't asking about your position, I was just asking what would happen to NARGA?

40 MR CUMMINGS: Why would I care?

THE CHAIRMAN: Well, again, could you answer the question. What would happen to NARGA?

45 MR RIJSWIJK: Well, the other way of looking at that is NARGA exists and is funded through IGA distribution, because the members wanted - - -

THE CHAIRMAN: Which is Metcash, that's right.

MR RIJSWIJK: Yes, but, I mean, the alternative would be for NARGA to send four and a half thousand stores an invoice and to run an invoicing – an accountancy operation, it doesn't make any sense. All that's happening is that the funding arrangement – is that – that is – the funding arrangement instead of us invoicing four
5 and a half thousand stores, that the funding arrangement goes through the collector's moneys that are collected through IGA distribution for a whole range of reasons, as Mr Cummings explained, advertising and everything else and part of that comes to us as the collective contribution from all those stores. Now, - - -

10 THE CHAIRMAN: And all I've been trying to get, Mr Van Rijswijk and I think we've actually got this material out of the discussions, the questions and answers we've been getting in the 15 to 20 minutes, all I've been trying to get to is the point that says this. That Metcash funds NARGA, 80 per cent or thereabouts, without Metcash's funding NARGA wouldn't exist.

15 MR RIJSWIJK: Well, it's actually – it's actually the members funding through their shares.

20 THE CHAIRMAN: That's right, but that NARGA sees as its role to deal with government and to lobby government to deal with competition laws, NARGA doesn't see as its role to negotiate with Metcash for better terms and conditions of supply to Metcash's customers, which are the NARGA members.

25 MR RIJSWIJK: Well, say for example, we did that, right and it's not our role, it's not in our constitution, but say we did that, where would Metcash get the additional fund from, they'd have to get it from their suppliers. We – I mean, the way the industry works is that industry has to work on the basis that the deals that Metcash can do with the supplier – within suppliers, are the best deals that can be done on
30 behalf of the industry and that those – the benefits of those deals are passed on to the individual stores. If it didn't work that way the individual stores would go broke and Metcash would go broke. It's as simple as that.

THE CHAIRMAN: Can the members of NARGA voluntarily refuse to contribute to the – let me put it another way. The arrangement you've described which is that
35 NARGA levies members and then uses that to fund NARGA, I'll say it again, Metcash levies members and then uses that to fund NARGA. Is that a voluntary levy or it's a compulsory one?

40 MR CUMMINGS: Compulsory.

THE CHAIRMAN: Thank you. Anything more you want to ask?

45 COMMISSIONER KING: Just very briefly, because I'm aware of the time. You understand one of the rationales behind this inquiry is the increase in the retail prices of a wide range of grocery products, now I understand from your evidence here today that if we just focused on dry groceries, dry groceries as a group across the industry, would be unprofitable. Is that correct?

MR CUMMINGS: It would be hard to build a sustainable model just selling dry goods, groceries and cigarettes.

5 COMMISSIONER KING: So given that I assume that to a degree there is an issue at the retail end, it is not excessive pricing or excessive profiteering on dry groceries, I mean, otherwise you'd make profit out of it.

10 MR CUMMINGS: Sure, there is not – I can't recall a grocery line at the moment that I would make in excess of 20 per cent GP.

15 COMMISSIONER KING: Right, so if there's a problem at the retail level that is behind the sort of price rises that led to this inquiry, it must therefore be in the other parts of the grocery sector, ie, in the fresh sector. I mean, it's got to follow presumably.

MR CUMMINGS: Well, no.

20 COMMISSIONER KING: If the price rises aren't coming at the retail sector in dry groceries - - -

MR CUMMINGS: No the price rises - - -

25 COMMISSIONER KING: - - - they must be coming elsewhere.

MR CUMMINGS: No the price rises are coming in dry goods groceries.

30 COMMISSIONER KING: But that's not due to a retail problem. It may be due to a manufacturing problem, it may be due to a problem somewhere else.

MR CUMMINGS: Well, yes, I mean - - -

COMMISSIONER KING: And not due to a retail problem.

35 MR CUMMINGS: Yes, and exactly the same thing happens in tomatoes. You know, I mean, we put the price up of tomatoes when we get charged more for them. You put the price of tomatoes down and we get charged less for them.

40 COMMISSIONER KING: Sorry, but what I'm trying to get at is - - -

MR CUMMINGS: I don't know what you're trying to get at.

45 COMMISSIONER KING: - - - prices have gone up, that has led – that's one of the factors to this inquiry.

MR CUMMINGS: Yes.

COMMISSIONER KING: I'm trying to work out is there then a problem at the retail level, that has led to prices going up, or is there a problem somewhere else that has led to the prices going up? Now, before you interrupt please, your evidence here today is that on dry groceries – I'm not denying that prices may have gone up, they
5 may have gone up in an outrageous fashion, but if they have gone up in an outrageous fashion the problem is not at the retail level, it must be somewhere else. Is that your evidence to us?

10 MR CUMMINGS: Yes.

COMMISSIONER KING: Okay, contrast on the fresh area, if there's a problem at the retail level that has led to excessive price increases and I'm not saying there aren't other problems, but if there is a retail problem it must only be in the fresh area, because it's not in the dry grocery area.

15 MR CUMMINGS: If there is, I don't think we're saying that there is necessarily a problem.

COMMISSIONER KING: No, but I understand that, but I just want it confirmed.
20 So if we're looking at Coles and Woolworths excessive pricing as has been claimed in the media, there is no excessive pricing on dry groceries, at the retail level?

MR CUMMINGS: Sure, if their price – if their wholesale cost is the same is ours, yes, I'd agree with that.
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COMMISSIONER KING: Well, you have given evidence here today that they can't make money on it, so are you now saying they might be making money on it or they're not making money?

30 MR CUMMINGS: No.

MR RIJSWIJK: Our evidence was that – our evidence was that the way the grocery industry operates is they make a lower margin on some parts of the business and a higher margin on other parts of the business, in general the margin they make on the
35 dry groceries is less than on the other items. Now, we don't know that the buy price of Coles and Woolworths are, we don't know what conditions they have in their contract. For example, we understand Coles and Woolworths had staff in their head offices which are actually the staff of their suppliers, they were funded by their suppliers, which is a benefit that they have that even an independent supermarket
40 doesn't have.

COMMISSIONER KING: Sorry - - -

MR RIJSWIJK: It means that there are a whole lot of things that go into the price
45 side of things.

COMMISSIONER KING: Sure.

MR RIJSWIJK: We don't know what the price side of things is, but in general across the industry you have a higher margin on the non-packaged side of the business and a lower margin on the packaged side of the business.

5 COMMISSIONER KING: So is your evidence then that Coles and Woolworths might be making excessive profits on the dry grocery area, because if that is your evidence please clarify it, because that seems to be the opposite of what you said about 15 minutes ago.

10 MR CUMMINGS: Okay, we do not know because what Mr Van Rijswijk is putting forward - - -

COMMISSIONER KING: Right, you don't – no, that's fine, if you don't know, you don't know, no that's fine.

15 MR CUMMINGS: Yes, we don't know.

COMMISSIONER KING: What's the average size in floor area of an IGA store as opposed to a super IGA store?

20 MR CUMMINGS: I don't know the actual figures, but I would think an IGA store would be around the 800 square metres and a super IGA would be around the 1500 square metres average, 12 to 1500.

25 COMMISSIONER KING: All right, so – and how many super IGA stores are there in Australia?

MR CUMMINGS: I'm sorry, I don't know the break up off the top of my head.

30 COMMISSIONER KING: Okay, it would be substantially more IGA stores than there are super IGA stores?

MR CUMMINGS: I think the total is something like 1700 of which 600 or so are super IGAs.

35 COMMISSIONER KING: Okay, now Mr Van Rijswijk said that – I hope I've got the pronunciation correct.

MR RIJSWIJK: Yes.

40 COMMISSIONER KING: Thank you, that to compete against Coles and Woolworths you have to be three to 4000 square metres in area, so on the basis of that IGA stores do not compete against Coles and Woolworths at the retail level?

45 MR CUMMINGS: No, we do.

COMMISSIONER KING: Well, you are then disagreeing with Mr Rijswijk.

MR CUMMINGS: Well, I think what Gerard was talking about, he was talking about the big centres, right, to have the - - -

5 COMMISSIONER KING: Well, no within the context of Ald being around 800 to 1000 square metres and he - - -

MR CUMMINGS: Yes, he - - -

10 COMMISSIONER KING: Excuse me and he said that Ald did not compete against Coles and Woolworths because they were too small an area. Now, you are now saying that – I’m sorry, that was the only reason you gave – you’re now saying that IGA are also a similar area, I’m then trying to infer from the evidence, the only conclusion I can make is that IGA do not compete with Coles and Woolworths. If that’s correct, can you please correct the evidence.

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MR RIJSWIJK: I can correct the evidence.

COMMISSIONER KING: Thank you.

20 MR RIJSWIJK: I also said that the UK competition authorities called Ald and White Stores lads. We should limit the assortment of discount stores, they don’t provide the full range of service.

25 COMMISSIONER KING: They have 700 lines compared with 1600.

MR RIJSWIJK: They have 700 lines as opposed to 15, 16, 17,000 lines. Now, the way a smaller IGA would compete with a Coles or Woolworths in general is to provide that wider range of lines and to provide better service and do other things. What I was talking about in the shopping centre context that the shopping centre owner would want a large supermarket format similar to a Coles or Woolworths, a 3000 square metre, 4000 square metre format, which would be difficult for an individual owner, IGA type of store owner, to take on in competition with a Coles and Woolworths and that’s what I said.

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35 COMMISSIONER KING: I’m just trying to make sure that I understand your evidence.

MR RIJSWIJK: But then size is certainly a factor and if you look at the UK competition inquiry into – they’ve broken the supermarket sector into size

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COMMISSIONER KING: Sorry, can I just stop you there then, size is certainly a factor, are you saying then - - -

MR RIJSWIJK: But also the range and service.

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COMMISSIONER KING: Excuse me, Mr Rijswijk, just one second. If you’re saying size is a factor are you then saying that IGA stores are ineffective or less

effective competitors with Coles and Woolworths, because of the limitation on their size?

MR RIJSWIJK: This is not a standard IGA store.

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COMMISSIONER KING: Okay.

MR RIJSWIJK: You've got thousands of stores out there all of different size, all competing in different situations

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COMMISSIONER KING: Yes, yes, all right, if we have - - -

MR HENRICK: It was made in the context of shopping centres operations, it wasn't made in terms of the general range of sized stores in the industry, it was specifically that.

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COMMISSIONER KING: Thank you.

MR HENRICK: Again, it's an indication of the complexity of the industry.

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COMMISSIONER KING: Okay, that's fine.

COMMISSIONER MARTIN: Given the time, I just have the one question. Back on the overall supply situation from Metcash, do all the Metcash members get the same terms off Metcash, more than AGA?

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MR CUMMINGS: No there are different deals that people would strike. Some people at some stores don't allow the IGA distribution people to collect advertising dollars on their behalf as an example. They believe that they do a better job by negotiating it directly. So they will just get a case goods price and then they will collect Co-Op dollars and other terms, aside from that, right? Other people will want to strip down as much, other people will want them to do a lot more work to it.

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COMMISSIONER MARTIN: It's on the standard grocery items, is there a standard?

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MR CUMMINGS: On a standard grocery item they work in different ways, in that regard as well. My understanding is that in the Eastern States, New South Wales and Victoria, they work on a base price and then add service fees to it. In Western Australia and perhaps in South Australia, they actually have a wholesale margin that they work to and then people will buy at that price.

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COMMISSIONER MARTIN: Thanks.

THE CHAIRMAN: Just one final question, I just want to go back to the funding of NARGA again, you said 80 per cent of the funding comes from Metcash.

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MR CUMMINGS: Yes.

THE CHAIRMAN: Where does the remaining 20 per cent come from?

5 MR CUMMINGS: The individual memberships put in and we have had - - -

THE CHAIRMAN: State organisations, but they must be putting in twice - that
means that means that the ultimate members of NARGA are putting in twice, they're
putting in through the levy imposed by Metcash and their member subscription to
10 their state bodies which inputs in.

MR CUMMINGS: The state bodies is part of the shareholding, yes.

THE CHAIRMAN: Yes, okay. All right, thank you very much.
15

MR CUMMINGS: Thank you.

20 **ADJOURNED**

[2.01pm]

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RESUMED

[3.00pm]

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MR SAMUEL: I'll let you take the witness through the introductions and –

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MR O'DONOVAN: Sure, all right. Could you just state for the record your name?

MR MURACA: My name's Nick Muraca, I'm a table grape grower in Robinvale and I'm the chair of the Table Grape Association.

15

MR O'DONOVAN: All right. Now you weren't summonsed here today, were you?

MR MURACA: I was.

MR O'DONOVAN: You were summonsed?

20

MR MURACA: That's right.

MR O'DONOVAN: You understand that under the Commonwealth Criminal Code you're required to answer questions truthfully?

25

MR MURACA: I do.

MR O'DONOVAN: Could you just tell us a little bit about the Table Grape Association.

30

MR MURACA: Okay, the ATGA, as I refer to, is the peak industry body for the table grape industry in Australia. It's made up of representation from growing regions or from growers in each State made up of one delegate per 8% of production, so we represent people from the highest producing areas to the lowest producing areas. Basically it's there to handle R & D and promotion spending. It's done through Horticulture Australia Ltd. A grower pays a cent a kilo, and 50% is spent on promotion and 50% is spent on research.

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40

MR SAMUEL: That just reminds me, are you aware, Mr O'Donovan, that this witness was present in Cairns and actually you gave evidence in respect of Horticulture Australia Ltd.

MR MURACA: I was there in support of HACS, Horticulture Australia Council then in support of their submission.

45

MR SAMUEL: Right, so just make it a bit easier, so discussion in respect of the Horticulture Code will just be more repeating the sort of information you've given the other day.

MR O'DONOVAN: That's fine, yep. All right, well I'll stay away from the code itself.

In terms of the funding, so the funding's all done through the levy?

5

MR MURACA: That's right.

MR O'DONOVAN: And can you just tell us a bit about grape production in Australia; firstly, where is it grown?

10

MR MURACA: Okay, grapes are grown from as far north as Mareeba or Townsville, very small amount, all the way down to Robinvale or Swan Hill in the Murray Valley, 125,000 tonnes on a normal season of table grapes produced.

15 MR O'DONOVAN: Are there any produced in Australia or Western Australia?

MR MURACA: They're produced in every State in Australia.

20 MR O'DONOVAN: Sure, okay. And has South Australians and West Australian's members as well?

MR MURACA: They are.

25 MR O'DONOVAN: All right. And then are there particular seasonal features of grape growing?

30 MR MURACA: Certainly varieties come into it. There are some areas because of the climatic conditions that varieties are better suited to. Just to give you a bit of an idea on that question, the bulk of our season is in the Murray Valley which by the way produces about 70% of the total volume in Australia.

MR O'DONOVAN: And over what months is their peak production?

35 MR MURACA: The key production is, again, in the Murray Valley starting late January through to about end of May, stored fruit, even running into June/July, so the three or four months late January through to end of April/May is the bulk of it.

40 MR O'DONOVAN: And is there any periods in Australia where there's simply no grape production?

MR MURACA: There are, and then there is grapes imported from California.

45 MR ANSELL: Right, okay. In terms of the storage of grapes, the shelf life of grapes, is there a maximum in terms of after it's picked that it's got to be eaten?

MR MURACA: At the retail end or from a grower?

MR ANSELL: When it's picked by the grower, how long has it got to be got to the consumer?

5 MR MURACA: The reason I ask the question, there is a difference. A grower can hold fruit for ten weeks in a controlled atmosphere using sulphur dioxide, et cetera. However, once it's sent to a market or to a supermarket and that box is opened, the sulphur dioxide has gone and then you've got, you know, two or three days to sell or consume that fruit.

10 MR O'DONOVAN: Right, and at what point can it be sold to a retailer and stored by the retailer in an unopened box?

MR MURACA: It can, exactly, yeah, exactly.

15 MR O'DONOVAN: Now in terms of getting those products to market, what's the most common route of getting grapes off the vine and to a consumer?

20 MR MURACA: Okay, generally harvested, placed in cool storage, the manufacturer has picked the fruit, placed it in cool storage as quickly as you can because the less amount of time that you leave that at field temperature, the longer its shelf life; in other words, if you left it at field temperature for 24 hours, it would totally reduce at the other end how long the shelf life would be. If you're able to get it in within an hour, you could totally extend the shelf life of it. It's absolutely critical. So growers place a huge emphasis on that, getting it into the cool rooms as quick as possible and
25 generally refrigerated road transport into the wholesale markets or it may be in the case of going to supermarkets into their warehouses.

30 MR O'DONOVAN: So then in terms of deciding whether to ship immediately given that you've now got a ten-week window once it's stored, in deciding whether to shift it immediately into the market or delay, what decisions does the grower have to make at that point in time?

35 MR MURACA: It's generally supply and demand. Generally growers, and I'll refer to growers as, perhaps, being the biggest section of our industry in terms of numbers, and then if you like I'll refer to service providers who I refer to as perhaps the four or five biggest players who supply the supermarket chains if we're going to go down that track.

40 MR O'DONOVAN: Yep.

MR MURACA: So just to differentiate, but growers generally have a relationship with wholesalers, whether it be at the wholesale markets or whether it be with the service providers who then on-sells to the market chains. So it was just supply and demand basically.

45 MR O'DONOVAN: So how is price negotiated?

MR MURACA: The only negotiation of price that I'm aware of is from the – with the service provider and the supermarket. Generally growers do not negotiate price. We forward our product on to wholesalers and you've pretty much taken what they think it's worth. Of course it's up to you the next day whether you will keep dealing
5 with them or not, but we'll take as a price, there is no prior set price to the product going down because what my description of a product is may be differently interpreted by the person who sees it at the other end.

MR O'DONOVAN: So as it leaves the farm gate, at that point you don't have any
10 idea?

MR MURACA: No. That is your first consignment. Although you have a relationship with the person that's selling it, you have no idea. You can describe to him what it's like, depending on your credibility he'll give you a bit of an idea of
15 what he thinks it may bring, but you might be totally surprised as well.

MR O'DONOVAN: All right, so at what point in the process is price determined?

MR MURACA: It would depend on the following morning whether he sells it all or
20 not, he could give you a phone call at 7 or 8 in the morning and say "Well, you know, I've sold half of the consignment" or he might say "I've placed it with retailers who are going to give me some feedback tomorrow morning". That's generally for the initial consignments. After that price may differentiate and fluctuate, but it's all to do with supply, demand and quality.

MR O'DONOVAN: Okay. So assuming it hasn't been placed on consignment with
25 a retailer, that's one of the options, place it on consignment.

MR MURACA: Yeah.
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MR O'DONOVAN: The other option it's been sold through the wholesale market, will you have at least negotiated –

MR MURACA: No, sorry, sorry, we do not sell to retailers. It's always wholesale.
35

MR O'DONOVAN: It's always wholesale?

MR MURACA: Yes.

MR O'DONOVAN: All right, so if you run by your – is he called your agent?
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MR MURACA: Yep. They're referred to as agents, but they're not acting as an agent; they're acting as a merchant. We're going into the cave now.

MR O'DONOVAN: It's never far away.
45

MR MURACA: No.

MR O'DONOVAN: So he'll ring you and tell you the price at which he sold it and from that you can calculate the price you're going to get?

5 MR MURACA: Well, he'll tell you what he's going to pay you for it.

MR O'DONOVAN: But he won't have a pre-agreed formula?

MR MURACA: No.

10 MR O'DONOVAN: So that's one way, but there was another option where he says he's put it with someone and they'll get back to you in a couple of days?

MR MURACA: Often that is the case, if he has a relationship with you and you have trust in him, he might say "Well, look, Nick, you know it's the first
15 consignment. I've given it to some retailers who are going to see what the shelf life is and how well it's accepted and we're going to work on a price tomorrow morning. I mean he would do that with someone that he has a relationship with. If it was someone that he has no relationship with, it would be very difficult, but then he probably wouldn't be dealing with the person anyway.

20 MR O'DONOVAN: I'm sure, and the idea being that he's going to put it somewhere with someone he trusts to hopefully get a good price.

MR MURACA: That is generally the –
25

MR O'DONOVAN: Right. So you're fully exposed to effectively the retail market.

MR MURACA: Absolutely.

30 MR O'DONOVAN: You keep saying with the first consignment. Do you mean when this is the first time you're dealing with that person?

MR MURACA: It may be the first consignment for the season or the first
35 consignment for that variety.

MR O'DONOVAN: All right, but then later on, is there a market price established as time goes by?

MR MURACA: Well, because you're talking to him every day from there on, or
40 every second day, you can see how the market is going, and he will talk to you every day, you know what to expect. You know, he may tell you on Friday "Look, I can see that the market has cleaned up and it is less plentiful so we're going to work on pushing the price up next week", so you can engage more where it's going as you've been dealing with the person and during the season.

45 MR O'DONOVAN: Right, okay, so at that point you've got a bit of information about the market?

MR MURACA: Exactly.

MR O'DONOVAN: That tells you how well your guy's doing?

5 MR MURACA: Well, you're better informed to be able to make some comment and judgment.

10 MR O'DONOVAN: Right, and if you're unhappy with how he's disposing of your grapes, you can – you might have someone else who you've got a relationship with who you may have –

MR MURACA: You may have, although that is very difficult.

15 MR O'DONOVAN: Right, so it's normally pretty much an exclusive relationship a grower has?

MR MURACA: Exactly.

20 MR O'DONOVAN: Okay, and in terms of how many growers there are in the grape industry, roughly?

25 MR MURACA: A thousand, approximately a thousand, and the reason I say that is that we have a newsletter and it's posted out to about 970 recipients, so we're talking about a thousand. That's Australia-wide.

MR O'DONOVAN: And then in terms of the wholesale level, how many operators are there at the wholesale level?

30 MR MURACA: Look, I could not answer that, but it could potentially be that many because any merchant in any three or four of the major markets can handle your product, so potentially you could have a thousand points of sale wholesale. I'm not saying that that is the case, but potentially you could have.

35 MR O'DONOVAN: And given the arrangement you've described is there any scope for a contractual dispute with a person?

40 MR MURACA: The only time there is a scope for a dispute is after they've given you a price and faxed you a written price, then there's a dispute over that, or you've got something to look at, but prior to it, no, there's not.

MR O'DONOVAN: Okay, so the price you get is the price you get?

MR MURACA: Yes, that's right. That's right.

45 MR O'DONOVAN: Is there no direct buying of major supermarkets and grapes?

MR MURACA: No, that's where I said that I would refer to the other group of three or four major players in the industry are service providers. There are only four or five, or a very small amount of people that deal directly with the supermarket chains, but they then in turn source a product from the smaller growers.

5

MR O'DONOVAN: Right, okay, and when you say service providers, what service they are engaged by the major supermarkets?

MR MURACA: They provide product to them.

10

MR O'DONOVAN: They provide product to them, and do you have any visibility on what their relationship with –

MR MURACA: Absolutely not.

15

MR O'DONOVAN: But they establish relationships direct with growers? As in they don't deal through a wholesale markets, they go and talk to the grower direct?

MR MURACA: They go and talk to the growers, that's exactly right.

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MR O'DONOVAN: And do they secure guaranteed supply from those growers or does that grower still have an option of selling through the wholesale market?

MR MURACA: He still has an option. These three or four supply to the supermarket chains are large producers in their own right, so they will generally source what they can't supply themselves, and that will vary according to seasons and conditions and times of the year.

25

MR O'DONOVAN: Right, but because they're large growers themselves, presumably they're making up supply shortfalls by dealing with these smaller growers?

30

MR MURACA: That's right.

MR O'DONOVAN: Okay. What can you tell us about these suppliers' relationships with major supermarkets?

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MR MURACA: That is kept very much between themselves and it's nothing that they discuss with growers.

40

MR O'DONOVAN: Right.

MR MURACA: There's no transparency between what they do and down the chain to the grower. Basically the supermarket chains will buy that product for as cheap as he possibly can.

45

MR O'DONOVAN: Sure.

MR MURACA: Like anyone else would.

MR O'DONOVAN: Yep. Do you have any sense of the proportion of the market, of the grown grapes that go through this chain?

5

MR MURACA: Only by what figures were given by ABER et cetera, and we're told it's about 40% of the total volume.

MR O'DONOVAN: Right, so does that suggest 40% of the grapes sold in Australia are sold through Coles, Woolworths?

10

MR MURACA: That's right. That's what the figures that are presented to us by ABER and this is the claims that the supermarket chains make so we don't dispute that one.

15

MR O'DONOVAN: And in terms of how the rest of the market operates, taking out that 40%, has that had a – I'll go back a step. Is this a relatively new development this direct dealings?

MR MURACA: No, it's not, it's something that's been in place for a number of years. As these service providers, basically what happened there was a market there with not enough volume from the three or four service providers, so what they did in order to secure themselves a market, they go out and buy produce off the smaller growers but, of course, continuously they're planting enough of their own to be able to supply.

20
25

MR O'DONOVAN: Right. So effectively it operates completely separately really from the wholesale market?

MR MURACA: Yes, it does.

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MR O'DONOVAN: Okay.

MR MURACA: I think it is – it has got links, though, and probably at this stage is where I think we might, if possible, go private.

35

MR O'DONOVAN: You can tell us more?

MR MURACA: Yes.

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MR SAMUEL: For those that just came in, I'm sorry, you have to go out. You missed about ten or 15 minutes.

I don't think that the next witness either is going to be in public, and so that will be it for the day. So we've finished with the public hearings for today.

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ADJOURNED

[3.13pm]

CONTINUED IN TRANSCRIPT-IN-CONFIDENCE

