Australian Competition and Consumer Commission

GROCERY PRICE INQUIRY HEARING

EXCERPTS FROM CONFIDENTIAL TRANSCRIPT OF GEORGE WESTON FOODS LIMITED

CONDUCTED AT: CROWNE PLAZA, SYDNEY
DATE: 10:00 AM, TUESDAY, 1st APRIL, 2008

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MR O'DONOVAN: From a retailer's point of view, what's the purpose of the in-store bakery? Is it a cheaper way of getting bread to a consumer or does it place pressure on you?

MR KIRBY: From my personal point of view, it's a competitive play. Bread is probably one of the most accessible product categories of any of the categories in the store. There's literally thousands of outlets that you can actually buy bread from. The in-store bakeries primarily compete with outlets like hot bread shops and Bakers Delight and Brumby's and people like that. So I think it's just - at the end of the day it's another form of choice for the consumer, in that there are definitely some consumers out there that want bread that was actually baked five minutes ago.

MR O'DONOVAN: In terms of margin transparency, do you have any idea about margins in the in-store bakery?

MR KIRBY: No, I don't.

MR O'DONOVAN: But it is regarded as a competitor of you in the bread category?

MR KIRBY: Yes, in-store bakeries in major grocery stores would represent about [redacted] of the sales value. [redacted]

MR O'DONOVAN: In terms of your assessment of just the general competitiveness of retail in the categories you supply, is it your view that there is fierce competition between supermarkets in your categories, or have you observed a weakening over time, do you think, in terms of the value they are delivering in your categories?

MR KIRBY: Yes, I think it extends beyond supermarkets. There is a lot of competitive pressure in the bread market on a whole range of outlets, and it sort of goes back to the point we were just talking about, which is the amount of choice consumers have in terms of the outlets they can buy bread. It's really not like dog food, for example, which is in a certain type of outlet. You can go to a major shopping centre that will have two supermarkets, yet there's 12 or 15 outlets selling bread. I haven't noticed any lessening of the competition.

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MR O'DONOVAN: Long before you were at George Weston, Safeway got into some trouble with the ACCC for the way in which they were dealing with bread supplies, in that they were demanding that they had the best terms and, if they didn't have them, they would in some cases delist all of that manufacturer's products, which I think the court said was inappropriate or unlawful, but also just said that if they couldn't be competitive in a product, they would delist that particular product, and I think the court gave that the tick.

Have you, in terms of your negotiations with any of the major supermarkets recently, been confronted with that kind of behaviour; that they have an expectation that they will be given the cheapest price in the category and if they are not they don't want your product?

MR KIRBY: No, I haven't.

MR O'DONOVAN: You haven't had that sort of proposition put to you?

MR KIRBY: No.

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THE CHAIRMAN: Mr Kirby, in your dealings with [redacted] are there any aspects of the dealings that you would regard as harsh, oppressive, unreasonable or objectionable, as distinct from being just simply normal competitive negotiations?

MR KIRBY: No, there's not.

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Australian Competition and Consumer Commission

GROCERY PRICE INQUIRY HEARING

EXCERPTS FROM CONFIDENTIAL TRANSCRIPT OF ARNOTTS BISCUITS LIMITED

CONDUCTED AT: CROWNE PLAZA, SYDNEY
DATE: 10:00 AM, TUESDAY, 1st APRIL, 2008

...SECTION OF TRANSCRIPT REMOVED DUE TO CONFIDENTIALITY ...

MR O'DONOVAN: Looking at it from the point of view of a multinational dealing with the retail sector, do you notice that the market is significantly more concentrated in Australia than it was in the UK?

MR STEVENS: Yes, it is. If I can give you an example, the UK, the top five retailers would account for about 70 per cent of the market, whereas here Woolworths and Coles would be about [redacted] in isolation.

MR O'DONOVAN: In terms of how that impacts on how you deal with them, how you negotiate with them, the terms they expect of you, do you think that makes a difference?

MR STEVENS: No, I would say the approach is very similar. I would say the degree of rigour from a Tesco in a UK context is pretty similar to what I would experience with Woolworths, Coles and Metcash.

MR O'DONOVAN: In terms of the margins that they demand and that they allow you to operate on, do you feel that the market concentration makes a difference there?

MR STEVENS: No, I think it's fairly similar.

MR O'DONOVAN: You think that the margins that are earnable for a company of the size of Arnott's are similar, notwithstanding the greater market concentration in Australia?

MR STEVENS: Yes, I think the capabilities of the retail teams in both geographies are very similar and the approaches are very similar.

MR O'DONOVAN: Is there any difference that you have noticed - I suppose from the perspective of this inquiry we are interested in understanding how competitive the retail sector is in Australia. Is there anything that you have observed in your time here where there is a competition weakness here that you don't see in the UK, where it's less concentrated?

MR STEVENS: Nothing tangibly, no.

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Australian Competition and Consumer Commission

GROCERY PRICE INQUIRY HEARING

EXCERPTS FROM CONFIDENTIAL TRANSCRIPT OF FRANKLINS PTY LTD

CONDUCTED AT: CROWNE PLAZA, SYDNEY
DATE: 10:00 AM, TUESDAY, 1st APRIL, 2008

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MR O'DONOVAN: Just in terms of your – the trading terms that you get – I mean in terms of stores you're about one-tenth the size of a Woolworths - - -

MR ZELINSKI: Yes.

MR O'DONOVAN: Do you think that you get competitive terms from the big packaged grocer suppliers, like the – well, [redacted] .....

MR ZELINSKI: I think our terms our – I think our terms generally are good terms.

MR O'DONOVAN: Yes.

MR ZELINSKI: Are they the best terms? I would be naïve if I said they were. I think that with the dominance and the market shares that Woolworths and Coles have that they should be buying at better prices than we do.

MR O'DONOVAN: Right, now, in terms of – just from an outsider's perspective, looking at suppliers' incentives when they're dealing with a very concentrated customer market at the other end, you could – you might think that there would be advantages in trying to sponsor new entry into that market to expand the – to diminish the power that Coles and Woolworths have as their customers, do you feel that you get good treatment from those suppliers in an attempt to grow your business or do you feel that they are reluctant to offend their major customers in their dealings with you or is it and if - - -

MR ZELINSKI: I think it goes in waves. Sometime we believe that we have a good relationship and that allows us additional support from suppliers [redacted] So it's something that is not consistent.

MR O'DONOVAN: Sure. Do you ever get a sense that when you get a particularly good deal on an item that Coles and Woolies react with the supplier – that something happens with your supplier and makes them more difficult to deal with?

MR ZELINSKI: No.

MR O'DONOVAN: Do you have any direct knowledge of anything like that?

MR ZELINSKI: No, no, I don't have any direct knowledge of that.

MR O'DONOVAN: Right, so generally speaking if you had to – I know it's generalising, but in terms of the supplier relationships they are certainly workable as far as you're concerned and you don't get the sense that [redacted] interfering with them in a way to keep you out – to increase pressure on you?

MR ZELINSKI: Look, I think it is a very competitive market and again I would believe that [redacted] they watch every move of every retailer and so they are reacting to most things that we do.

MR O'DONOVAN: Sure, okay. But in – I mean I suppose in a way do you feel that they don't try and leverage their power over suppliers to punish you?

MR ZELINSKI: At our expense, no.

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MR O'DONOVAN: Right. So then in terms of your business, where there's a Franklin store, how does zoning pricing work? What's the effect on [redacted] pricing, when there's a Franklin store nearby?

MR ZELINSKI: Well, you know, if we take a store like – as an example, [redacted] prior to us opening in [redacted] we saw quite high pricing in [redacted] so the pricing in [redacted] really came down a lot more aggressively as we opened our store, prior to us being there and that's been the indication in many of the towns that we've been to, that as the first thing we do when we go into a town is check the prices [redacted] and you find that in the case they are higher and once we open our store or the week prior to our opening there's a lot more aggressive pricing [redacted] and that tends to stay for a long period of time.

MR O'DONOVAN: Sure, and is it aggressive but sustainable or do you think it could be below cost selling [redacted] - - -

MR ZELINSKI: I wouldn't say below cost, I would just say lower margin.

MR O'DONOVAN: Sure, but it's still possible for you to make a margin on the prices that you then have to sell in?

MR ZELINSKI: We just have to be more competitive, yes, so we have to meet them.

MR O'DONOVAN: Sure, but it's not unsustainably low?

MR ZELINSKI: No.

MR O'DONOVAN: It doesn't mean that the business case from the [redacted] store is .....

MR ZELINSKI: No, the advantage that they would have is that they have [redacted] so in areas where there is no competition there might be higher pricing and that's why we refer to it as zone pricing.

MR O'DONOVAN: Sure, and what sort of differences in margin are we talking about in terms of the drop when you survey the – make the decision to enter the [redacted] market and then see the new pricing when Franklins is an entrant?

MR ZELINSKI: I wouldn't put a percentage on it, but it is substantial in areas of sort of bread and the basic items.

MR O'DONOVAN: Sure.

MR ZELINSKI: You find those sort of [redacted] lines are aggressively discounted.

MR O'DONOVAN: Right, and the other [redacted] are they left untouched?

MR ZELINSKI: They're probably – you know they're probably where they are.

MR O'DONOVAN: Yes.

MR ZELINSKI: But, I mean, it's sort of the [redacted] lines.

MR O'DONOVAN: Right and this is because consumers judge a store by those [redacted] lines?

MR ZELINSKI: Sure.

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MR O'DONOVAN: So that was a case of a site that you had your eye on but [redacted] didn't allow it to go onto the market?

MR ZELINSKI: Prior to us taking it, [redacted] didn't allow it onto the market for 10 years, [redacted].

MR O'DONOVAN: Right, even though the site was suitable and attractive to a competing supermarket?

MR ZELINSKI: Well, it was a very successful [redacted]

MR O'DONOVAN: Okay, and this pattern of acquisition [redacted] is this a new [redacted] is this a new development, where they acquire a centre that has a competing store operating within it?

MR ZELINSKI: Well, the [redacted] store about - - -

MR O'DONOVAN: That was about four years ago.

MR ZELINSKI: - - - four years ago, [redacted].

MR O'DONOVAN: Right. Were you aware that the store was on the market?

MR ZELINSKI: Well, no, no.

MR O'DONOVAN: .....

MR ZELINSKI: There had been discussions with the landlord about upgrading the centre and then there was a new landlord.

MR O'DONOVAN: Right, and you were told [redacted]?

MR ZELINSKI: And we were told [redacted].

MR O'DONOVAN: Right, okay, and is – now, how long a lease have you got to go in [redacted] so you've still got - - -

MR ZELINSKI: [redacted] yes.

MR O'DONOVAN: - - - [redacted] but your expectation is that you're not going to have any prospect - - -

MR ZELINSKI: Well, it will be very difficult to replace that store [redacted] because there are no sites available.

MR O'DONOVAN: Sure.

MR ZELINSKI: Which means that you then have to try and look for sites around the neighbouring [redacted]

MR O'DONOVAN: Sure.

MR PERLOV: And [redacted] is in the neighbouring – in the neighbouring shopping centre just down the road.

MR O'DONOVAN: Right.

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MR O'DONOVAN: Yes. All right. Now, in relation to fresh food, you've switched into fresh food?

MR ZELINSKI: Yes.

MR O'DONOVAN: How do the margins in fresh fruit and veg and meat compare to the margins in packaged groceries? Is it an easier business?

MR ZELINSKI: The margins – we were purchasing our produce through a wholesaler and only in the last year have we moved into our own facilities. We've seen that the cost to do business is starting to fall now. As we expand our produce business, we've seen that prices are coming down. Are our prices more competitive today? Yes. So I think that our selling price on produce is a lot lower than it was 18 months ago.

MR O'DONOVAN: Right. In terms of making a margin, I suppose the intensity of retail competition in the fresh category as opposed to the packaged grocery category, generally speaking, is it – can you make a better margin?

MR ZELINSKI: It is a better margin. It is a better margin because a lot of that is about convenience.

MR O'DONOVAN: Yes.

MR ZELINSKI: As long as the quality is right, people will be prepared to shop with you.

MR O'DONOVAN: Right. I hope this is the last question. Actually there's two elements to this question. In terms of establishing new sites, firstly, you've indicated that the Foreign Investment Review Board process is not high on your list of difficulties for a foreign company operating here?

MR ZELINSKI: No. No.

MR O'DONOVAN: No. So there's no need for you to land bank, you don't have plans to, I suppose, store up a critical mass in an area and then open six stores simultaneously. That's not - - -

MR ZELINSKI: No.

MR O'DONOVAN: No. So that's not a major issue for you. Then the other question is, in terms of getting stuff through council, you have indicated that's a problem. Are other retailers – just briefly indicate, are other retailers' objections, do you think, slowing down the process for you and do you think that they're, I suppose, anti competitive in their motives in terms of how they deal with planning issues?

MR ZELINSKI: I think that other retailers objecting is absolutely anti customer [redacted] I think that retailers should not be, definitely in the case of liquor and, I suppose, in supermarkets. I mean, the more competition you have the better customers - the better prices for customers. So I would encourage you to take away any restrictions that inhibit us getting sites.

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COMMISSIONER KING: If I can just follow up on that one. We're all aware of the specific planning laws on liquor in New South Wales which are somewhat idiosyncratic. Putting liquor to one side for a moment though, have you found the same sort of problems have arisen with other general planning issues relating to opening grocery stores?

MR ZELINSKI: No.

COMMISSIONER KING: No. Have there been objections or - - -

MR ZELINSKI: Well, there are objections. I mean, in the case of [redacted] there are objections but it's a delay – it's a delay tactic but, you know, everybody objects. So it's just one of everybody objecting.

COMMISSIONER KING: Have the delays been significant from a business perspective in groceries as opposed to liquor?

MR ZELINSKI: I think liquor is worse than groceries.

COMMISSIONER KING: I understand that but just in groceries, are the delays of the sort that make you reluctant to open a store?

MR ZELINSKI: No.

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Australian Competition and Consumer Commission

GROCERY PRICE INQUIRY HEARING

EXCERPTS FROM CONFIDENTIAL TRANSCRIPT OF NESTLE AUSTRALIA LIMITED

CONDUCTED AT: CROWNE PLAZA, SYDNEY
DATE: 10:00 AM, TUESDAY, 1st APRIL, 2008

...SECTION OF TRANSCRIPT REMOVED DUE TO CONFIDENTIALITY ...

MR O'DONOVAN: We'll start, I guess, with the branded product and the supply of [redacted]. In terms of how you sell that product in relation to all of those top [redacted] key retail customers, does it begin with a published wholesale price list? Is that how it starts?

MR MACKANESS: It does. We have one list price that we provide to each of the customers. So not so much that it's published, but individually we give it to the customer, but it's the same list price.

MR O'DONOVAN: So that they can work out how much a case of [redacted] costs?

MR MACKANESS: Yes.

MR O'DONOVAN: And the price would be the same in relation to each retailer who rings up?

MR MACKANESS: Correct.

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MR O'DONOVAN: In terms of your dealings with - let's deal first with [redacted]. The wholesale price is given to them, and do you then set standard supply terms? In addition to the price, do you also set payment, delivery, risk, all of those things? Is there a set of standing conditions that you impose on the customer?

MR MACKANESS: It's a negotiation - the terms and conditions are fairly standard from [redacted]. There's limitation to how much flexibility from a supplier that you can put in.

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MR O'DONOVAN: From your observation in relation to [redacted] there is a high level of retail competition and a willingness on the part of [redacted] to hurt their margin in order to gain market share?

MR MACKANESS: Yes. It varies by [redacted]

MR O'DONOVAN: [redacted]

MR MACKANESS: [redacted]

MR O'DONOVAN: [redacted]

MR MACKANESS: So, for example, if it was [redacted] it would be a very, very different scenario. But [redacted] would give that you representative picture.

MR O'DONOVAN: In your assessment, at least as far as [redacted] goes, would you agree that there's a competitive retail market in the pricing of [redacted]?

MR MACKANESS: Yes.

MR O'DONOVAN: If we move further away from, for want of a better word, iconic products like [redacted] to a [redacted] product, do you see that same level of intensity in the retail competition?

MR MACKANESS: I haven't of late.

MR O'DONOVAN: You haven't?

MR MACKANESS: No. I would say not in the last two years.

MR O'DONOVAN: That's reflected in a reduced willingness on the part of retailers to cut margin to contribute to the movement of a product?

MR MACKANESS: Do you mean the dropoff in the last two years?

MR O'DONOVAN: Yes, is that what you mean by the dropoff?

MR MACKANESS: It's an element of that. It's also an element of the competition within the marketplace, and [redacted] which would be the other prime brand, [redacted] stepping up to the mark and probably playing a more aggressive role in terms of pricing.

MR O'DONOVAN: That takes the pressure off the retailer to contribute to promotion?

MR MACKANESS: He has two players then looking to battle it out.

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MR MACKANESS: It's been a bit hard to read. We've tried to pull some data on that, which is in the submission there. From the data we have got there, it does look like there has been some movement, but it doesn't look like it's significant.

MR O'DONOVAN: Would you attribute that to a weakening of competition at the retail level, or do you think there's something else operating?

MR MACKANESS: I think, because all the movement isn't necessarily an increase - there's actually been decrease as well - so I think it's more the nature of the competition in the market.

MR O'DONOVAN: Which on the current information that you have seen on margins, it looks like there are price movements consistent with reasonably vigorous competition in the marketplace on your product?

MR MACKANESS: Yes, there's price movement with competition, yes.

MR O'DONOVAN: So there hasn't been sort of just a lazy slide out with bigger and bigger margins?

MR MACKANESS: No. I mean, 12 months ago [redacted] were reflecting, I think in the data we have got here, more negative margins than positive. So it's a bit all over the place, but it certainly reflects the competition in the market at the time.

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MR O'DONOVAN: In terms of the customer, are they being delivered the product at the same price point?

MR MACKANESS: As in the retailer, or the consumer?

MR O'DONOVAN: Yes, the consumer. Is the consumer consuming a product within that category, are they getting products within that category at the same retail price and all of the pain going to the supplier, or is there some sharing of pain between the consumer and the supplier?

MR MACKANESS: No, the vast majority of pain has been suffered by the supplier.

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MR O'DONOVAN: You talked about the stretching margins sort of category, target margins that [redacted] have, and the pain is taken by the processor. Is it fair to say that there's not sufficient competitive dynamic at the retail level to force [redacted] to share the gains that it gets from pushing down on the processor with the retailer?

MR MACKANESS: I think it's fair to say, given the structure of our marketplace, that level of concentration, that the ball is certainly in the major players' hands when it comes to this.

MR O'DONOVAN: In a more competitive market, another player could effectively force some sharing with the customer, the benefit of that?

MR MACKANESS: Yes.

MR O'DONOVAN: Those improved terms that they have squeezed out of the supplier?

MR MACKANESS: I guess effectively that could happen, yes. I just think overall an increase in competition would drive a potential rebalance.

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Australian Competition and Consumer Commission

GROCERY PRICE INQUIRY HEARING

EXCERPTS FROM CONFIDENTIAL TRANSCRIPT OF KIMBERLY-CLARK AUSTRALIA PTY LTD

CONDUCTED AT: CROWNE PLAZA, SYDNEY
DATE: 12:00 PM, WEDNESDAY, 2nd APRIL, 2008

...SECTION OF TRANSCRIPT REMOVED DUE TO CONFIDENTIALITY ...

MR MARSH: [redacted] I think the most important, the key thing that has changed is the private label. The private label, the retailer is very, very committed to now. Traditionally, in Australia the private label consumer has been brought up on pretty average products, and they know that. But what has happened in the last three years is a commitment by the retailer to improve their private label quality, [redacted].

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MR O'DONOVAN: The idea behind [redacted] is that you effectively [redacted] to reduce their retail price for your product, to increase volume?

MR MARSH: That's correct.

MR O'DONOVAN: Is there a strict one-to-one correlation between these [redacted] and the retail price in practice? [redacted]

MR MARSH: That's right.

MR O'DONOVAN: Are there circumstances where you see the retailer kicking in?

MR MARSH: Absolutely, yes.

MR O'DONOVAN: How is that negotiated or discussed between you and the retailer?

MR MARSH: The retailer sets the prices. But generally it's based on volumes, because if the retailer wants to do something fairly deep in terms of pricing, obviously the first thing they have to do is make sure that they have the stock to support the promotion. Therefore, we know, based on the volumes, what their intention is, but we don't know what the price is until the week of the promotion.

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MR O'DONOVAN: Effectively they are making a loss on the product?

MR MARSH: They are making a loss on the product, absolutely.

MR O'DONOVAN: Even after [redacted]?

MR MARSH: They are pretty much making a loss.

MR O'DONOVAN: At least from your point of view, you have some visibility on the wholesale price, so you know what they're paying per unit?

MR MARSH: We know what they are paying, we know what we are giving them and we know what the price is.

MR O'DONOVAN: And can see that they are not making a cent?

MR MARSH: No. It's a loss leader, it's a key traffic driver, because to get mum in there with a family of three or four, and do the rest of her shopping and buy fresh and buy all those other categories, all those other products that are profitable, then it sort of becomes a bit of a wash in terms, I would imagine, although I don't know exactly what the financials are.

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MR O'DONOVAN: From a supplier's point of view, is it a good thing to be so prominent in a category, or does it mean that there's more pressure placed on you by the retailers?

MR MARSH: It's a combination of both. There is certainly some - it's nice to have a very, very strong brand because the retailers need the brand. But with that comes a lot of pressure for more profitability. So whilst everybody one week is clapping their hands, saying, "That was a wonderful promotion", then the next week they're saying, "Look how much we lost."

MR O'DONOVAN: Does that put pressure on you in terms of wholesale pricing - - -

MR MARSH: No.

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MR O'DONOVAN: In terms of what you do to verify that [redacted] is participating appropriately in the promotion, giving you some more prominence within the store, putting it at the price point that you are aiming for, how do you verify that?

MR MARSH: Predominantly the [redacted] and the margin that the retailer wants to make on promotion, we're aware of that. So what you get is that you know that if you're looking [redacted] you just know the [redacted] that you need to fund, knowing that their margin will then ensure that you get pretty close to that.

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MR MARSH: I suppose it's common practice for a retailer - this is over my years of experience - if it sits within a two- or three-week window, they see that as a clash.

MR O'DONOVAN: As in it clashes with their promotion?

MR MARSH: Well, how are they going to go out the week after, or when their promotion is slotted, and they may have not planned to go out at [redacted] but somebody else has done it. So the issue you face then as a manufacturer is the last thing [redacted] want to do is to promote two weeks after [redacted] and show the consumer how expensive they are. So a couple of things can happen. Either it won't make the catalogue, so it won't be advertised, that might just run off-shelf. So that's generally how it goes.

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MR MARSH: Absolutely, yes. Because we find that when they do a promotion like that, [redacted] they have their day in the sun, and then for you to promote two weeks after with another retailer at that price, pretty much mum has already put [redacted] in her pantry, so she doesn't go out two weeks later and buy up.

MR O'DONOVAN: Do they ever call you and ask about the deal that you have given the other retailer, that would put them in that position?

MR MARSH: Yes, you know, it's typically, "How do they do that? You must be giving them more money." Of course, we say, "No." And they say, "We don't believe you." And you go through that probably for 10 or 15 minutes.

The thing that's changed [redacted] is that I used to have those discussions regularly. But what's changed [redacted] is that I know how they [redacted] in

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their supermarkets, so we don't have those discussions any more. It's like, "Guys, we'll supply the stock, we'll give you our standard [redacted] you do what you like."

MR O'DONOVAN: So, at least in terms of a traffic driver [redacted] people understand where they sit in the market on that?

MR MARSH: Yes. [redacted]

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MR O'DONOVAN: Will you get a call from a competitor, if there's been a particularly keen pricing on [redacted] will a competitor ring up and say, "How did they do that?"

MR MARSH: Yes.

MR O'DONOVAN: Do they have an expectation that you'll tell them how, or is it really a - - -?

MR MARSH: No, we don't disclose any of our negotiations with any other retailer.

MR O'DONOVAN: But they still do it as a form of commercial pressure. Is that why these calls are made?

MR MARSH: Yes, I think it's part of the - yes, I think you could call it commercial pressure.

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MR MARSH: I think bathroom tissue is probably the best example, because, as I say, before they were getting the [redacted] product coming in, their private labels were probably around about the [redacted] per cent.

MR O'DONOVAN: So the thinking from their point of view is we're not going to give shelf space to a product that's not - - -?

MR MARSH: Their main thinking is, in any supermarket, really what they want is to have loyal consumers. So the fact is you can't buy [redacted] anywhere else. So it's all about - and because in bathroom tissue it's such a commodity category, in many

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instances it has become - it's a margin game completely. To get products in, it's a margin game to see how they can reduce their loss on promotion.

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MR MARSH: Generally [redacted] they let you know that the product is in the firing line, if you like. You get an opportunity to sharpen the pencil, if you like, and to provide [redacted] to try to keep it in. Then they obviously look at their shelf footage, they look at the amount of skews they have, they look at the new products, they know the ones that aren't performing, and they make a [redacted] decision.

MR O'DONOVAN: Do they come back to you - do they ever say, as bluntly as this, "Unless the [redacted] that product is gone"?

MR MARSH: Yes, they do say that. And they could say, "Unless that product improves, we have other products to replace it with." Yes.

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MR MARSH: [redacted] when it deletes, you are not going to be able to pick up those volumes. You just can't do it. If I haven't got a good promotional program with Coles and Woolworths, [redacted] Because there are only two retailers really that are going to do it for you.

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MR O'DONOVAN: Is the difference in magnitude sufficient that you feel you have to be more sure that Woolworths doesn't delist a product? Do you try harder to stop Woolworths delisting a product than in relation to Coles?

MR MARSH: No, they are both important.

MR O'DONOVAN: They are both big enough to be - - -?

MR MARSH: Yes, treat them the same.

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MR O'DONOVAN: In terms of launching a product, it was still possible to launch that product without it going into Woolworths?

MR MARSH: It made it very difficult. If you are going to put investment behind your product development, then you need to get at least [redacted] per cent distribution to make it work.

MR O'DONOVAN: And without Woolworths you can't even go close?

MR MARSH: No, we can't [redacted].

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MR O'DONOVAN: In terms of increases in wholesale prices, where the actual list price changes, presumably that happens when your input costs rise?

MR MARSH: Pretty much, yes.

MR O'DONOVAN: Firstly, does someone within Kimberly-Clark tell you, "Look, the cost of labour has gone up and the cost of paper has gone up, we're going to have to up our wholesale price across the board"?

MR MARSH: Yes, [redacted] So then we would basically issue a new price list to the retailer.

MR O'DONOVAN: Do you give them prewarning?

MR MARSH: Yes, we generally give them a minimum of [redacted] notice, which is stated in our price list, which they get.

MR O'DONOVAN: [redacted] relatively relaxed about any increase in wholesale price or will they be - - -?

MR MARSH: No, generally speaking, in this environment, getting price increases through is very difficult.

MR O'DONOVAN: [redacted] just care about the relativities, so long as they are still cheaper [redacted] they don't mind; they do care about the actual wholesale price, because there is some restriction on their ability to pass it through to consumers?

MR MARSH: No, there's no restriction. It's just that a price increase, no retailer wants to be the first one to go out in the marketplace and up their price.

MR O'DONOVAN: When you send out - you inform everyone that there'll be an increase in the wholesale price?

MR MARSH: Everybody gets informed at the same time.

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MR MARSH: [redacted] though in most of our categories these days we're unable to, because it's pretty competitive out there. But we've had an instance recently where we went in to take a price decrease on one of our [redacted] products in the last quarter of last year.

MR O'DONOVAN: How do you mean "take a price decrease"?

MR MARSH: We wanted actually to take a decrease, because we weren't competitive.

MR O'DONOVAN: You wanted to lower your wholesale price?

MR MARSH: We wanted to lower our wholesale price.

MR O'DONOVAN: Across the board to all customers?

MR MARSH: To all customers.

MR O'DONOVAN: Your view about it not being competitive, that was relative to - - -?

MR MARSH: Relative to, again, some of the private label products, particularly the private label products. So what we found that we needed to do was to reduce our list price, to make that product more competitive.

MR O'DONOVAN: Which product was it?

MR MARSH: [redacted]

MR O'DONOVAN: In terms of announcing that price decrease - - -?

MR MARSH: [redacted] didn't accept it, so we weren't able to put the decrease in to the marketplace.

MR O'DONOVAN: Can you explain why a retailer wouldn't want a cheaper wholesale price?

MR MARSH: Because generally what retailers like you to do is to work with them over a longer period of time, so 12 months ideally, if you are able, and to obviously - they have their [redacted] products, so because we're a market leader in [redacted] roughly [redacted] per cent, for us to come in and to do a price decrease, obviously screws up the relativities between the products. So you could have [redacted] where they are getting better [redacted], consumers are starting now to trade over to [redacted] so the net sum of that game is they lose money.

MR O'DONOVAN: The alternative is for them to push down their [redacted] on [redacted] product to keep the relativities the same?

MR MARSH: Yes, that's right.

MR O'DONOVAN: But, again, they are losing money?

MR MARSH: Yes. What they are trying to do generally, they do want to grow [redacted], they tell you, in terms of the prices are going up, then obviously [redacted] is growing, so as long as their [redacted] are increasing and prices are going up and they are keeping the relativities the same, then obviously that's probably a good thing for them. But in the current environment that's not the case.

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MR MARSH: Yes, that's right. We took the - basically, again, they set retail pricing. But what we did was we would think that if we brought our price down, that they would reflect that. In fact we did. The end game was we didn't implement the price increase - - -

MR O'DONOVAN: The price decrease?

MR MARSH: - - - the price decrease. But they put the price up. Basically, what that did, again it increased the relativities between our product and theirs, which made the situation even worse for us in terms of sales.

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MR O'DONOVAN: But there is clearly an incentive for them to keep the generics below, by enough to attract consumers to the generics, and they want to attract them because of the high margin?

MR MARSH: That's right.

MR O'DONOVAN: So if you tried to interfere with that dynamic in terms of the relativities by lower wholesale pricing, they don't - - -?

MR MARSH: That's going to hurt their bottom line.

MR O'DONOVAN: It's going to hurt them, even though it would benefit consumers?

MR MARSH: Yes.

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COMMISSIONER MARTIN: Just a couple of others, for my benefit. In terms of the overall market for your products, we have focused on the grocery channel, but it seems to me that some of the products are quite widely distributed right through pharmacies?

MR MARSH: That's right.

COMMISSIONER MARTIN: Are they a very small proportion?

MR MARSH: They are. It's a good question, because when I started with the company back in 1980, pharmacy represented 70 per cent of nappies. Basically, it was a word of mouth thing, mums all let each other know, go to pharmacies, because basically that's where you will get the better pricing. Generally in those days the pharmacy would, in themselves, have a loss leading product, so that consumers would come in and buy the more profitable script business.

But then the retailer, the supermarket channels, started to realise just how important nappies were in getting mum into the stores, so pharmacy now represents about 5 per cent of nappies.

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COMMISSIONER MARTIN: And a final thing, because we have been here a long time, Kimberly-Clark overseas, your experience in other markets in terms of the dynamic of how you deal with supermarkets, is it distinctly different here, or are you not in a position to say?

MR MARSH: It is different here, simply because of the size. You have two retailers that represent [redacted] per cent of your business, so it doesn't provide a lot of choice. [redacted]

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Australian Competition and Consumer Commission

GROCERY PRICE INQUIRY HEARING

EXCERPTS FROM CONFIDENTIAL TRANSCRIPT OF STOCKLAND CORPORATION LIMITED

CONDUCTED AT: CROWNE PLAZA, SYDNEY
DATE: 12:00 PM, WEDNESDAY, 2nd APRIL, 2008

...SECTION OF TRANSCRIPT REMOVED DUE TO CONFIDENTIALITY ...

MR O'DONOVAN: In terms of a site, do you have sites that will only sustain a single supermarket?

MR SCHRODER: Rare, but they do exist. [redacted] Planning constraint.

MR O'DONOVAN: Planning constraint?

MR SCHRODER: Not demand, planning constraint.

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MR O'DONOVAN: Presumably some councils are easier to deal with than others?

MR SCHRODER: [redacted]

MR O'DONOVAN: Does that generally depend on the age and density of the suburb? For instance, where there's lots of land and lots of alternative uses available?

MR SCHRODER: Good question. Age, density, obsolescence. You know [redacted] when we went to see [redacted] and said, "Here is our vision and dream for [redacted] they went, "Bring it on", because the facility there is obsolete. It was built in [redacted] it's out of date. So when we showed them the grand vision for the new one we're building, we got the sort of round of applause, "Bring it on."

I'm oversimplifying it, because you then go through the development approval process, which is difficult, long-winded, cumbersome. All you need is patience, because at the end of the day if the councillors and the community back you, you'll get it. Yes, you've got to go through all the appropriate channels of getting it approved and dealing with traffic and dealing with [redacted] and dealing with everything else, but if the vision is right and the community back you and the council back you, it generally doesn't end up at [redacted]

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MR O'DONOVAN: When you're at the stage where you've got a site, it's in a densely populated area, it can sustain two supermarkets, but a single supermarket could make huge profits, like the [redacted] have any supermarket operators ever come to you and said, "Look, you could mix this up a few different ways. We'll give you [redacted] of turnover if you give us - if you just put in one major supermarket"?

MR SCHRODER: You mean exclusivity?

MR O'DONOVAN: Yes.

MR SCHRODER: Not to my knowledge.

MR O'DONOVAN: They have never even asked for it?

MR SCHRODER: Not to my knowledge. I have seen a couple of instances in Australia of where they've got a second one in the same mall. That's happened. But I'm not aware of - Steve, you would have knowledge of this - but I am not aware of my time at [redacted] and then [redacted] in Australia, and coming back to Stockland from North America, I am not aware of any suggestion of benefiting the landlord as a result of exclusivity. I'm not aware of that. We do not grant exclusivity to anyone. That's a no-no.

MR O'DONOVAN: That's just a Stockland policy?

MR SCHRODER: I think you'll find - well, it's our policy. You ought to ask our peers, but I'm - - -

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MR O'DONOVAN: In terms of the negotiation there, do you ever get, again, a major supermarket coming to you, saying, "Well, it looks like a dog, but we'll pay you X rent if you deliver us some other outcome somewhere else that we have in mind"?

MR SCHRODER: You mean package deals?

MR O'DONOVAN: Yes.

MR SCHRODER: [redacted] It's not - Steve, again you need to help me with this, because I've only got 18 months of knowledge - [redacted]

DR PALLAVICINI: [redacted]

MR SCHRODER: [redacted]

DR PALLAVICINI: [redacted]

MR O'DONOVAN: Again, exclusivity in another centre is not what's tied up in those kinds of negotiations?

MR SCHRODER: No.

DR PALLAVICINI: I'm not aware of exclusivity, no.

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MR O'DONOVAN: I suppose, just to be clear, when I'm talking about exclusivity, I'm talking about in an area that can sustain more than one supermarket, where there's a site that's suitable for development as two, and you agree to only establish one supermarket there.

MR SCHRODER: I'm not aware of any of that.

MR O'DONOVAN: No deal like that?

MR SCHRODER: And - please chime in - I'm not aware of any of that. If we can put two in, we put two in.

MR O'DONOVAN: You put two in?

MR KIRBY: Yes, critical mass.

MR O'DONOVAN: Sure. Just to understand the economics of that, is that because if there's a lot of foot traffic driven, which two supermarkets presumably drive more foot traffic than one - - -

MR SCHRODER: Yes.

MR O'DONOVAN: - - - does that enhance your returns from every other tenant in the place?

MR SCHRODER: Yes. The specialty fresh food retailers, specifically in New South Wales and Victoria, and to a lesser extent South-East Queensland, where most of the specialty fresh food retailers are - [redacted] the list goes on - they will tell you, time immemorial, "If you've got [redacted] near each other, put us all in between," because it drives more traffic - it's just critical mass. It just drives more traffic and more people, which sort of becomes a - I haven't quite been able to work it out, but it sort of becomes a machine in and of itself, you know.

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MR O'DONOVAN: In terms of lease terms, do you offer different lengths of leases for different kinds of supermarket tenants? So [redacted] are they offered different periods?

MR SCHRODER: No, very consistent. [redacted]

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Australian Competition and Consumer Commission

GROCERY PRICE INQUIRY HEARING

EXCERPTS FROM CONFIDENTIAL TRANSCRIPT OF INGHAM ENTERPRISES PTY LTD

CONDUCTED AT: CROWNE PLAZA, SYDNEY
DATE: 10:00 AM, TUESDAY, 1st APRIL, 2008

...SECTION OF TRANSCRIPT REMOVED DUE TO CONFIDENTIALITY ...

MR O'DONOVAN: Let's start with the feed costs. Have there been dramatic shifts in the costs of feed?

MR RADICH: Yes.

MR O'DONOVAN: When did they start, roughly, do you think and what order of magnitude are we talking about?

MR RADICH: The recent feed cost increases you would see starting – if I go back to '05 through to '07, I would say during '05 our average feed cost was within the vicinity of [redacted] a tonne, somewhere around there, if we hit now [redacted]. So, effectively, it has doubled since '05. Prior to that we did have – and the magnitude of that increase I am not quite sure because the last drought and from recollection was about '02. That was one of the very few times when as an industry we have been given the okay to import grain. We actually imported grain from England and there was a movement then but the magnitude of that in movement I am not quite sure. Certainly, this movement now has been catastrophic.

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MR O'DONOVAN: Yes, the one stamped confidential. Now, I think – commissioners, have you got that in your brief? All right, so when you are talking about that dramatic rise in grain prices, that is around about 2005. Between 2005 and 2007 we have seen that steep increase?

MR RADICH: Yes.

MR O'DONOVAN: But we have seen a relatively small increase in the wholesale price. Just looking at your figures from 2005, 2006 it is [redacted]

MR RADICH: Yes, but I think the 2007 finishes in June.

MR O'DONOVAN: Yes, will we have seen a dramatic rise in .....

MR RADICH: Yes, in terms of where we went to the marketplace and what we actually secured, I think in about February '06 we achieved probably the equivalent of around about [redacted] a kilo on the whole bird. In November '07 - because that won't be in those figures - generally probably [redacted] a kilo which was below. If you put those both together, you don't get to the [redacted] or you don't get to the – so we, no, we have not fully recovered from the impact of the feed cost.

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MR O'DONOVAN: Yes. Okay. All right. Now, I want to ask you a few questions about retail pricing and I sent you a table. I think it's headed Table 2. Have you got that there?

MR RADICH: Which is that one?

MR O'DONOVAN: That's the ABS.

MR RADICH: Oh, the ABS. Yes, I do have that.

MR O'DONOVAN: Okay. Have the commissioners got that?

THE CHAIRMAN: Yes.

MR O'DONOVAN: Yes. All right. Just for the sake of the transcript, can we call that exhibit A, just so that we can cross-reference the transcript?

EXHIBIT #A ABS TABLE HEADED TABLE 2

MR O'DONOVAN: Now, the table that I'm showing you is extracted from the ABS CPI figures on poultry and you will see from – and essentially what it shows is the percentage increase on a cumulative basis. So if you take that first figure in the five years, if you divide 8 by 5 you will get the CPI increase for a single year and I guess what it shows is that chicken has declined in price in real terms at the retail level and it also indicates between 2002 and 2007 there was no change at all in the price, the retail price of poultry. Is that consistent with your knowledge and understanding of the retail market?

MR RADICH: Certainly let me say I do not think that 2002-2007 is right because certainly there were some price movements during that period. As I mentioned and I can't quite remember when in 2002 it was when we actually had the importation from England.

MR O'DONOVAN: The feeding?

MR RADICH: Yes, the grain, the wheat. There certainly was an increase then and as I said, in terms of February '06 there was an increase. You know, if you had to ask me to put a figure on that and where it would be, that figure should probably be around about the 7 to 8 per cent. You know, that's where I would think it would be but I'm really not quite sure, Damien, what this is looking at in terms of, you know, the basket of products or whatever.

MR O'DONOVAN: Sure.

MR RADICH: If you ask me to comment in terms of, you know – sorry.

MR O'DONOVAN: So your comments are directed at your costs and your changes to wholesale pricing?

MR RADICH: Yes. What I think has gone in our pricing.

MR O'DONOVAN: Sure. Now, do you monitor retail pricing as a business?

MR RADICH: No. No. Not as such. I mean, if we know – we know what retail pricing is doing sort of now and in the immediate future because in terms of all the trade product that's out there, we actually have to price it for them so the retailer has to tell us what price to put on it.

MR O'DONOVAN: Right.

MR RADICH: We would certainly have that but we certainly don't keep that information and no, we haven't as a matter of course tracked and monitored retail pricing.

MR O'DONOVAN: Right. Okay. So it's possible that in this, take this five-year period between 2002 and 2007, that your prices were going up but supermarket competition as such that it drove the margin down or kept retail prices - - -

MR RADICH: I wouldn't have thought, over that five-year period.

MR O'DONOVAN: No?

MR RADICH: No. I think not to get down to zero. That doesn't ring with me.

MR O'DONOVAN: Sure. Okay. So what is your impression of retail pricing for chicken. Firstly, do you think it's a product that is particularly competitive?

MR RADICH: Yes.

MR O'DONOVAN: Right.

MR RADICH: Very. I would say that and if I have to just comment too, also, in terms of, you know, yes, this is showing a trend, I don't think the zero and the 11 is necessarily right, but the price of chicken I don't believe over that period would have kept pace with CPI.

MR O'DONOVAN: Right. So it is declining in real terms?

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MR O'DONOVAN: Yes. So, then looking at the retail level, just from your observation has some of the benefit of those efficiencies that you've obtained passed through to the consumers in terms of static chicken prices?

MR RADICH: Yes. Yes. Well, in terms of – if you ask me has there been any creep in terms of the retailers margins that I could observe, I would say no. I think that's passed onto the consumer.

MR O'DONOVAN: Right. Okay. Just to confirm that, so you haven't observed any creep from lack of competition [redacted]?

MR RADICH: No.

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MR O'DONOVAN: Yes, okay. Sorry, the only other question that just occurred to me was now supermarkets sell chicken through the deli?

MR RADICH: Yes.

MR O'DONOVAN: And chicken in the trays?

MR RADICH: Yes.

MR O'DONOVAN: Okay.

MR RADICH: Yes, and ..... sorry.

MR O'DONOVAN: Yes, and do you supply both?

MR RADICH: Yes.

MR O'DONOVAN: Okay, and is it the same chicken?

MR RADICH: Yes.

MR O'DONOVAN: Right and how is – I suppose, firstly how is pricing determined between those two commodities?

MR RADICH: Just simply in terms of – you've got chicken coming off that goes into a bulk 12-kilo carton, which then goes to the deli and they put all the labour in behind that to actually put it out on the shelf and serve it to the customer and weigh and whatever. We actually have to take the other product. We have to then place it [redacted] in a tray and, [redacted] then we actually have to price it.

MR O'DONOVAN: Yes.

MR RADICH: And then we have to put that tray into a box and we don't get 12 kilo a breast of trays sort of thing, so that all adds to the price.

MR O'DONOVAN: Right, so he can charge more for the tray.

MR RADICH: Then they just – yes, yes, so then they just have to then take it when they receive it at their butchery department and roll it out and put it on the shelf – it's shelf ready.

MR O'DONOVAN: Sure, yes, okay.

MR RADICH: So that obviously costs us more.

MR O'DONOVAN: Yes and in terms of their pricing there seems to be a – or there has been in the past sort of rotating of specials between the deli and the display.

MR RADICH: Yes.

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