

Submission to the ACCC Supermarkets Inquiry Issues Paper

April 2024

©2024 Combined Pensioners & Superannuants Association of NSW Inc.

Combined Pensioners and Superannuants Association of NSW

Combined Pensioners and Superannuants Association of NSW Inc (CPSA) is a non-profit, nonparty-political membership association that promotes the rights and interests of pensioners of all ages and older people on low incomes. Founded in 1931, our aim is to improve the standard of living and well-being of CPSA's constituents.

Our services are free to all members of the public, regardless of association membership or affiliation. CPSA's core work is:

- Systemic advocacy on issues that impact our constituents, as identified through engagement and consultation.
- Providing information and referrals to the public through our information line and other communication channels.
- Publishing news, commentary and informational articles on our website that are circulated through a regular e-newsletter and monthly print publication, THE VOICE of Pensioners and Superannuants.

CPSA's local branches provide members with the opportunity to have a say in their local community, as well as shaping the policy and advocacy work of the organisation. Many of our membership branches are in regional areas and CPSA is proud to be a voice for our constituents across NSW.

CPSA receives funding support from the NSW Government Department of Communities & Justice under the Ageing Peaks program.

Contact

Billy Pringle
Senior Policy Officer
billy.pringle@cpsa.org.au

Table of Contents

Position Statement	3
Recommendations	4
Comments in response Issues Paper prompts	5
Further comment	10

Position Statement

Combined Pensioners and Superannuants Association of NSW Inc. (CPSA) welcomes the opportunity to make a submission to the Australian Competition and Consumer Commission's (ACCC) Supermarkets Inquiry. CPSA wishes to highlight the severe impact that rising food and grocery prices have had on vulnerable Australians, including our constituents.

CPSA has serious concerns about the current state of the grocery retail sector, and the impact on vulnerable people in the form of high and rising prices, 'shrinkflation' and a lack of accessible and affordable alternatives to the two major supermarket chains.

In making this submission, CPSA notes that competition has the potential to deliver strong benefits to consumers. However, we also argue that competition is not a cure-all, so we encourage the ACCC, as competition experts, to identify issue areas within the food and grocery sector that it believes cannot be wholly remedied through competition policy. This, we argue, would provide clarification for Governments, industry stakeholders and consumers to explore other options to address these issue areas.

In preparing this submission CPSA has had the opportunity to read the two submissions made by the Queensland Consumers Association. We support these submissions in full.

For convenience, this submission is structured around the numbered prompts provided in the Issues Paper, and addresses prompts 1, 7-11, and 15.

Recommendations

Recommendation 1: That the ACCC consider ways in which competition policy can be enhanced to place downward pressure on prices among existing firms with market power

Recommendation 2: That the ACCC investigate the use of customer data gathered through loyalty programs and explore the possibility of alternatives that allow customers to retain their privacy. Some options could include an ability for customers to clearly and easily have their stored data destroyed; an agreement in which supermarkets cannot resell customer data without a customer's express permission; or an agreement in which supermarkets only collect customer data for internal use.

Recommendation 3: That the ACCC explore ways to modernise competition law in the face of algorithmic pricing and implicit price agreements achieved via algorithm.

Recommendation 4: That 'phantom brands' should be clearly labelled as supermarket-owned brands.

Recommendation 5: That the ACCC investigate the use of this surveillance technology and explore ways to require transparency from supermarkets in what information is collected and stored through these systems.

Comments in response to Issues Paper prompts

1. Whether there is effective competition in the supply of groceries in Australia, and particularly between supermarkets.

and

7. Whether supermarket prices, profits and margins have increased or are in excess of those likely in a competitive market.

In July 2023, Guardian Australia’s senior business reporter Jonathan Barrett reported¹ that the operating margins for Coles and Woolworths were significantly higher than equivalent margins in the grocery divisions of major UK chains. In an interview² with ABC reporter Angus Grigg, former ACCC Chair Rod Sims described the Australian supermarket sector as “stunningly concentrated”. Anecdotally, this sentiment is shared by many of CPISA’s constituents. In a recent survey of our constituents, 0% of respondents said that they can do all of their regular grocery shopping without going to either Coles or Woolworths.

While the concentration of the food and grocery sector is well documented (with Coles and Woolworths commanding a combined 65% of the market, according to the ABC³), there is an additional question of what constitutes *effective* competition. In recently published research on the nature and causes of inflation, Isabella Weber and Evan Wasner⁴ argue that competition among existing firms with market power is often insufficient to reduce prices. In a review of academic literature on strategic price setting, Weber and Wasner state that “Firms

¹ <https://www.theguardian.com/australia-news/2023/jul/27/australian-supermarket-profits-rise-woolworths-coles>

² <https://www.abc.net.au/news/2024-02-19/super-power-the-cost-of-living-with-coles-and-woolworths/103486508>

³ <https://www.abc.net.au/news/2024-02-23/a-history-of-the-duopoly-coles-woolworths/103494070>

⁴ Weber, I. M. and Wasner, E., 2023, “Seller’s inflation, profits and conflict: why can large firms hike prices during an emergency?” in *Review of Keynesian Economics*, vol. 11, No. 2, pp. 183-213.

compete over market shares, but if they lower prices to gain territory from other firms, they must expect their competitors to respond by lowering their prices in turn”⁵. They add that “Price wars are very risky for firms that are already in the market and are therefore typically launched by new entrants”⁶. Given the risk of unreasonable price increases in this concentrated market, we are therefore particularly concerned that there is little, if any, downward pressure on prices that might see these increases reversed over time.

Recommendation 1: That the ACCC consider ways in which competition policy can be enhanced to place downward pressure on prices among existing firms with market power.

8. *The role of supermarket loyalty and rewards programs and how they affect competition.*

and

9. *The role of data and data analytics in how supermarkets compete.*

A 2021 survey⁷ from CHOICE found that 9 out of 10 Australians were part of a loyalty program, with both Coles and Woolworths ranking in the top 5 most popular programs⁸. For many consumers, these programs represent the only option for marginally reducing the cost of their regular grocery shopping. In exchange for these marginal savings, consumers are providing valuable data to the major supermarket companies, often with little awareness of how this data will be used, how long it will be kept, or its actual value. For many of our

⁵ Weber and Wasner, p. 189

⁶ Weber and Wasner, p. 189

⁷ <https://www.choice.com.au/consumers-and-data/data-collection-and-use/who-has-your-data/articles/loyalty-program-data-collection>

⁸ <https://www.finder.com.au/credit-cards/loyalty-program-statistics>

constituents, the opaqueness around their data is a major concern, and often prevents them from signing up to these programs. This effectively forces some consumers to pay higher prices or forego benefits in order to protect their privacy.

Because of the lack of transparency around the supermarkets' use of member data, it is difficult to make any alternative proposals for how these programs could function. Nonetheless, there should ideally be an option for customers to sign up for a loyalty program without having to hand over their data.

CPSA also has concerns that the uptake of algorithmic pricing allows the major supermarkets to match each other's prices without entering into an explicit price setting agreement that would otherwise be illegal. We argue that the ACCC needs to explore ways to modernise competition law in the face of greater algorithmic pricing and implicit price agreements achieved via algorithm.

Recommendation 2: That the ACCC investigates the use of customer data gathered through loyalty programs and explores the possibility of alternatives that allow customers to retain their privacy. Some options could include an ability for customers to clearly and easily have their stored data destroyed; an agreement in which supermarkets cannot resell customer data without a customer's express permission; or an agreement in which supermarkets only collect customer data for internal use.

Recommendation 3: That the ACCC explores ways to modernise competition law in the face of algorithmic pricing and implicit price agreements achieved via algorithm.

10. How online retailing has impacted competition between supermarkets.

As is noted in the Issues Paper, there has been a recent increase in the use of online retailing by the major supermarkets. While online shopping offers convenience for customers,

it also represents another front on which the major supermarkets can compete: one in which smaller and independent retailers are unlikely to be able to afford the cost of doing business. This makes these small retailers more vulnerable to the risk of future pandemic lockdowns, extreme weather events or other circumstances that would see more people turning to online shopping over in-person shopping. While this is likely an unavoidable consequence of the difference in scale between smaller and larger retailers, it highlights the importance of ensuring that other measures are taken to protect the opportunity for smaller retailers to operate. These include providing affordable and accessible premises for rent or purchase, encouraging mixed use planning, and limiting the ability of the two major supermarkets to purchase and consolidate multiple smaller lots.

While CPSA recognises that these issues are likely beyond the scope of the ACCC, we nonetheless recommend that the ACCC take a whole of system approach in examining the competitive landscape in the supermarket sector and providing advice to the Australian Government.

11. The role of home brands in how supermarkets compete.

CPSA has heard from our constituents regarding home brand products with many of them saying that they often try to avoid buying home brand products, but are sometimes unable to distinguish between non-home brand products and so-called ‘phantom brands’: home brand products which are deliberately designed to resemble non-home brands. CPSA recommends that the ACCC regulate the use of these ‘phantom brands’ and require all home brand products to be clearly indicated as such.

Recommendation 4: That ‘phantom brands’ should be clearly labelled as supermarket-owned brands.

15. The experiences of consumers in their dealings with supermarkets.

CPSA has heard from our constituents regarding numerous issues around their experiences with the two major supermarkets. A recurring issue for many of our constituents is the use of misleading pricing practices to disguise price increase or to mischaracterise the size of discounts. Some of our constituents have complained about instances in which both major supermarkets use 'price down' or 'price dropped' stickers on items that recently had lower prices than those listed on the stickers. In one instance described by a constituent, the price of Coles long life milk had been listed at \$1.30, before being raised substantially for a brief period, then 'reduced' to \$1.60 and accompanied by a 'price down and locked' sticker.

Others have complained that the use of these stickers are themselves misleading because they are designed to resemble 'specials' stickers. This encourages shoppers to purchase an item, or purchase in bulk 'while it's on special', despite the fact that these are not time-limited promotions in the way that regular specials are.

Many of our constituents also struggle to clearly read and discern unit pricing labels which can often be too small to easily read for someone with any level of impaired vision, or for someone who cannot easily stoop or stretch to see smaller labels on higher and lower shelves.

Alongside these pricing practices, we have heard from our constituents regarding their concerns over the use of self-service checkouts. As these checkouts have become more common, they have also been combined with additional anti-theft measures such as weight scales, and numerous cameras. Not only can this be confusing and frustrating for some of our constituents (especially older people), but some have also expressed concern that this

surveillance could be misused to, for example, collect sensitive information from bank cards used in view of the cameras.

CPSA therefore recommends that the ACCC investigate the use of this surveillance technology and explore ways to require transparency from supermarkets in what information is collected and stored through these systems.

Recommendation 5: That the ACCC investigate the use of this surveillance technology and explore ways to require transparency from supermarkets in what information is collected and stored through these systems.

[Further comment](#)

CPSA thanks the ACCC for the opportunity to make comment on these important issues. CPSA is available to engage further on any topic discussed here.