

ACCC Final Report: Full list of recommendations

Recommendation 1 – Governments should consider support for community-owned stores in limited choice areas (particularly remote areas) with appropriate governance measures. We recommend governments of all levels should consider ways to support community-owned and community-run stores in limited choice areas (particularly very remote areas), to benefit consumers in places where competition is limited due to geographic factors. Beneficiaries of government support should, at minimum, be appropriately structured in line with relevant State and Territory legislation, and with appropriate governance.

Recommendation 2 – Supermarkets should be required to publish pricing information. We recommend the Australian Government require: 1. all supermarkets (including small rural stores and remote community stores) to publish prices on all products in-store 2. large (i.e. ALDI) and very large supermarket chains (i.e. Coles and Woolworths) (by turnover) to publish prices in-store and online via their websites 3. very large supermarket chains (by turnover) to make application programming interfaces available which provide dynamic price information for third parties. We also recommend governments provide support and funding to state and territory fair trading bodies to monitor compliance with the first requirement listed above. We consider monitoring is particularly important for this requirement as consumers may be reluctant to complain where they have no other choice of grocery store.

Recommendation 3 – Governments should adopt measures to address planning and zoning issues. We recommend all levels of government adopt measures to simplify, streamline and harmonise planning and zoning laws across jurisdictions, to the extent possible. Doing so would reduce barriers to entry and expansion for all competitors.

Recommendation 4 – Supermarkets should be subject to minimum information requirements for discount price promotions, supported by record keeping obligations. These minimum information requirements would apply specifically to supermarkets and require them to provide certain information in close proximity to the product (such as the pricing or promotional ticket) both in-store and online. This could include information such as the percentage or total discount being applied, the price on which the discount was calculated and the date range over which that previous price applied. Supermarkets should also be required to maintain certain pricing, promotional ticketing and sales information which would be made available to the ACCC upon request. This measure would ensure that the ACCC has access to complete and reliable information, including the ability to

assess the genuineness of a discount, when performing its investigative and enforcement role in relation to supermarket pricing and promotional practices.

Recommendation 5 – We support the Australian Government’s proposal to consult in relation to proposed changes to the Unit Pricing Code. This is particularly in relation to reforms designed to improve readability and address inconsistent units of measure, both within stores and between competing retailers. In the event the government’s consultation does not proceed as planned, we recommend that the next review of the Unit Pricing Code be brought forward.

Recommendation 6 – Supermarkets should be required to publish notifications when package size changes occur in a manner adverse to consumers. This information would, at a minimum, be required to be published in proximity to the product ticket on shelves, and on website product pages. It would also need to be published for a sufficient period to enable consumers to become aware of the unit price change.

Recommendation 7 – Coles and Woolworths should be required to provide members with periodic loyalty program information disclosure summaries. These summaries should outline: 1. the monetary value of points and other benefits earned by the member over the period 2. the monetary value of points and other benefits redeemed by the member over the period 3. the amount the consumer has spent over the period. A simple, plain-English explanation of how the monetary value of points and other benefits was calculated should also be provided.

Recommendation 8 – Coles and Woolworths’ loyalty program practices should be reviewed in 3 years. This dedicated review should: 1. consider the impacts of the loyalty programs from a competition and consumer perspective 2. assess whether further measures are needed, including in relation to the use of consumer data.

Recommendation 9 – We recommend measures to strengthen complaints handling mechanisms in remote locations. We support the following recommendations which have been put forward to the National Indigenous Australian Agency as part of the process of developing the National Strategy for Food Security in Remote First Nations Communities and which relate to issues considered as part of our Inquiry: 1. the government mandates signage at the front of every remote store that clearly conveys where consumers can complain if they have any issues 2. the government provides support and funding to the ACCC and state and territory fair trading bodies to handle complaints from consumers in remote locations.

Recommendation 10 – Supermarkets should not be able to negotiate out of key minimum protections in the Food and Grocery Code. We recommend that the Food and Grocery Code should be amended to prohibit grocery retailers from being able to negotiate out of the core protections of the Code. The Code should be amended to remove all current exemptions. No exemptions should be allowed from the core protections in the Code.

Recommendation 11 – Harmonisation of accreditation and auditing requirements. ALDI, Coles, Metcash and Woolworths should consider ways to harmonise minimum supplier accreditation and auditing requirements.

Recommendation 12 – ALDI, Coles and Woolworths should be required to provide fresh produce suppliers with detailed information about their supply forecasts. This information should include: 1. the basis on which forecasts that inform suppliers production decisions are arrived at 2. reports at the end of each season about how volumes forecasts compare to actual volumes purchased by the supermarket, including reasons for any substantial variation between the 2. Further consultation should be undertaken by the ACCC about the specific details of these requirements, including the most appropriate nature and form of the information to be provided. This should include consultation about whether ALDI, Coles and Woolworths should be required to provide minimum price and volume commitments each season to suppliers with whom they have direct supply arrangements.

Recommendation 13 – ALDI, Coles and Woolworths should be required to provide fresh produce suppliers with greater transparency about the weekly tendering processes they use to negotiate price and volumes with suppliers. Where ALDI, Coles and Woolworths make representations to fresh produce suppliers about competing bids or market prices in the course of weekly negotiations, they must establish systems which also provide those suppliers with sufficient contextual information about those bids or prices. Further consideration and consultation with relevant stakeholders should be undertaken by the ACCC about the scope and form of this information and how these requirements will be implemented. This should include consideration and consultation about what details of prices and volumes offered by other suppliers should be provided to suppliers to allow the supplier to understand how their initial offer compares to the range of initial offers made by other suppliers participating in the same weekly tender process.

Recommendation 14 – Greater transparency about supermarkets wholesale fresh produce prices. ALDI, Coles and Woolworths should be required to provide to an independent central body each week data about the prices they have paid fresh produce suppliers for each grade of each type of produce they acquire in each region through each weekly tender process they operate. The central

body should then be required to publish a single weighted average price paid for each grade of each type of produce acquired in each region through each weekly tender process operated separately for each of ALDI, Coles and Woolworths. Making this information available will support broader transparency about wholesale fresh produce prices. It will also provide suppliers who supply ALDI, Coles and Woolworths directly with a similar level of understanding about wholesale prices in the trading environment in which they operate as suppliers who sell through wholesale markets currently have. The Australian Government should determine the appropriate central body to receive, process and publish this data.

Recommendation 15 – ALDI, Coles and Woolworths should not be able to unilaterally reduce wholesale fresh produce prices or volumes agreed with suppliers. ALDI, Coles and Woolworths should not be permitted to unilaterally reduce the price or volume agreed in purchase orders confirmed through their weekly tendering processes other than in the case of a force majeure event.

Recommendation 16 – Greater transparency for growers who sell fresh produce through intermediaries. The Horticulture Code should be amended to: 1. Require traders to provide substantially more detailed and timely information to growers about the sale of produce sold on their behalf, including details of who produce is sold to, the price, the date of sale, and to disclose any relationship between the trader and the buyer. 2. Prohibit merchants from setting the price they pay for the purchase of the grower’s horticulture produce as an amount calculated by a method or formula.

Recommendation 17 – Suppliers of supermarket branded fresh produce to supermarkets should have earlier certainty about orders placed with them. If ALDI, Coles, Metcash or Woolworths requires a supplier of fresh produce to supply produce in packaging stipulated by the supermarket then, if requested by the supplier, they must provide written confirmation of the amount of produce they will purchase, and the price at which they will purchase the produce, at least 14 days before the date on which the produce is required to be delivered by the supplier. Once written confirmation is provided by ALDI, Coles, Metcash or Woolworths (as relevant), they cannot reduce the amount of produce they are purchasing from the supplier, or the price at which they will purchase the produce, without the supplier’s consent other than in the case of a force majeure event.

Recommendation 18 – Suppliers should be allowed to apply their own branding to fresh produce. Suppliers should not be prohibited from applying their own branding to the loose unprocessed fruit and vegetables sold to Coles and Woolworths. Further consideration and consultation with relevant

stakeholders should be undertaken about the form of branding that suppliers should be permitted to apply (i.e. that they should not be prohibited from applying).

Recommendation 19 – There should be greater transparency about the rebates suppliers pay to supermarkets. If requested by the supplier to do so, large supermarkets and wholesalers should provide suppliers with an itemised account of all payments and deductions off invoices at the end of each financial year. This should also include a description of the payment or deduction including the reason or the purpose for each, and how the amount is calculated.

Recommendation 20 – Coles and Woolworths should be more transparent about how supplier funding contributions to their inhouse retail media services are used. Specifically, Coles and Woolworths must provide each supplier that has provided funding to Coles 360 or Woolworths Cartology with an itemised account of how the money contributed was used if the supplier requests this information. If supplier funding was used for any purpose other than promoting a specific brand or brands of the supplier (for example, to promote a homogenous fresh produce product category), the amount of funding contributed by other suppliers to each promotion must be provided (in aggregate as a single figure).