Supermarket Pricing Inquiry

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A SUBMISSION TO THE QLD LEGISLATIVE ASSEMBLY SUPERMARKET PRICING SELECT COMMITTEE

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Introduction

On 7 March 2024, the Qld Legislative Assembly agreed to establish the Supermarket Pricing Select Committee to:

- examine the causes and effects of increased supermarket prices, and
- identify opportunities to increase transparency in the supermarket sector for consumers and producers.

In undertaking the inquiry, the committee has been tasked with considering:

a. rising grocery prices in Queensland and discrepancies between retail and wholesale and farmgate prices, including different-sized businesses;

b. the variability in supermarket offerings and pricing across the state, particularly in regional Queensland and in remote Aboriginal and Torres Strait Islander communities;

c. the long-term trends in profits accruing along the supply chain for perishable produce, with particular regard to impediments to the profitability of primary producers;

d. the conduct of retailers in negotiations with Queensland producers, and the prevalence and effects of information asymmetry between these parties;

e. improvements to Queensland's policy environment to increase transparency for producers, including what data will reduce information asymmetry, and/or reduce prices for consumers; and

f. any other reviews or inquiries occurring in Australia regarding this matter, with a view to complement these analyses by focusing on potential Queensland Government responses.

This submission responds to these Terms of Reference. However, it is unlikely that free and frank submissions will be received from primary producers given the overwhelming power of the supermarket chains.

It is also doubtful that this inquiry, like the previous inquiries lead by successive Federal and State Governments, will do anything to reign in this power.

Even if frank submissions are provided, almost all attempts by farming organisations to level the playing field have been met with contempt. Farmers are forced to compete against each other with the most compliant to the whims of the supermarket giants being the victor. Anyone who would dare to speak out or use the avenues of complaint regarding unfair practices is severely penalised by being banned from future purchasing agreements.

Despite the challenges, significant supermarket reform is necessary to ensure the future of Australian farmers and allow ALL Australian consumers to have continued access to essential food and associated items.

It is contended that such significant reform to alter the market share, power imbalance and behaviors of the major supermarkets requires recommendations and actions beyond the scope of this inquiry.

Such reform must include a breaking up of the supermarket giants and the power they wield. Providing a fair go for Farmers and consumers.

This submission is provided in similar terms to the submission made by Hon. Bob Katter earlier this year to the Federal Inquiry into Supermarket pricing.

Substantial and real reform must be immediately taken to totally change the power of the Australian supermarket duopoly.

It is recommended that the Queensland Government demand from the Commonwealth:

- **mandatory and staged divestiture**
- **maximum mark-up of 100% on produce**
- **Investigation, enforcement with severe penalties**
- **higher tariffs on imported goods**

These actions will place in jeopardy the huge supermarket profits of over $1 billion/yr. As such, they will be ridiculed and fought against tenaciously by those with a vested interest in the existing duopoly.

Reform is not for the faint hearted, but it is absolutely essential if cost-of-living pressures are to be addressed and Australian primary producers are to continue to feed Australia.

This submission supports the comments by Allan Fels, who led the Australian Competition and Consumer Commission from 1995 to 2003, that government should "beef up" mechanisms to investigate price gouging and introduce new powers to break up companies that abuse their market powers.

> "THE POWER THE SUPERMARKETS HAVE OVER AUSTRALIAN CONSUMERS AND PRODUCERS IS UNPARALLELED."

Recommendations

Summary of recommendations that the Queensland Government should demand from the Commonwealth

DIVESTITURE POWERS

- Give divestiture powers to the Australian Government to force businesses that hold a near-monopoly or duopoly control over a market to sell down assets, as a means of ensuring concentrated markets remain competitive

- Give similar divestiture powers to the Australian courts to order divestiture to not only penalise, but also prevent, abuse of market power.

- Restrict market share to 23% for corporations in the grocery sector.

- Prohibit colluding activity between divested assets.

- Prohibit unfair or biased purchasing arrangements or other practices that allow dominant market share behaviour.

- Prohibit the expansion of supermarket branded products that are available exclusively at a particular supermarket.

- Prohibit anti competitive-behaviour including creeping acquisitions, greenfield acquisitions and restrictive covenants.

MAXIMUM 100% MARKUP

- Define and cap the charges that a supermarket can put on producers / suppliers

- Require supermarkets to publicly state on a weekly basis:
    - the price paid to suppliers for produce;
    - all the costs that are included in this price, including the costs of ripening, transportation, storage;
    - the price charged to consumers.

- Introduce a maximum markup of 100% that supermarkets can charge all produce.

- Scrap the Food and Grocery Code of Conduct, calling it out for what it really is – a measure that has been long abused by the supermarkets to control and restrain suppliers and producers. It does nothing to address the power imbalance rather it enforces and permits supermarkets to capitalise on that imbalance.

Recommendations

Summary of recommendations that the Queensland Government should demand from the Commonwealth

INVESTIGATION & ENFORCEMENT WITH SEVERE PENALTIES

- Strong government enforcement body with extensive investigation powers and severe penalties (over $100 million (or 1/10th annual profit) for corporations and over $10 million for individuals – rather than the current corporate penalty of $64,000 under the Food and Grocery Code)

- Mechanisms that allow consumers to express concerns about pricing without having to demonstrate a technical breach of the law

- Mechanisms that allow farmers and agents to confidentially express concerns about pricing without fear of repercussions or having to demonstrate a technical breach of the law

- Measures that compel Supermarket Directors and Executives to provide robust and frank information to oversight bodies

TARIFFS ON IMPORTS

- Recognise the economic, social and environmental impacts of imported products

- Provide a blanket customs tariff of 5% on all imports unless:
  - A higher import tariff already applies;
  - Overwhelming justification is provided for a reduce tariff and only when it is demonstrated that:
    - The goods to be imported is not currently produced in Australia;
    - Investment is being undertaken to produce such goods in Australia; and
    - Australian manufacturers, consumers and producers benefit significantly from the importation of the goods at a reduced tariff.

Critical detail

DIVESTITURE POWERS

Divestiture powers can be used to force the break-up of dominant businesses. These powers already exist in competition policies of a number of overseas nations, including the USA. In practice these powers are generally used to force the sale of certain assets in merger proposals (ie. US Bell Telephone breakup). However, they might also be used to force the sale of certain assets when a business has become too dominant.

In Australia, the top two supermarkets account for more than 70% of the nation's grocery market. This concentration of power creates an imbalance that appears to have led to vast profits at the expense of consumers and producers.

Historically attempts by the Australian Government to open the grocery sectors have failed. The major supermarkets have bargained their way around various restrictions favouring smaller players such as reducing trading hours and floor sizes. They have successfully lobbied government for the removal of such restrictions and entered into anti-competition lease agreements so they can gain more market share, crushing those smaller groups that were established or trying to emerge in the grocery sector.

Divestiture appears to be one of the few options remaining to force the break-up of the 2 major dominant supermarkets in Australia. Divestiture could limit their combined market share to a rate more comparable to those overseas ie. 43% combined market share of Britain's top two supermarkets and 34% combined market share of the US's top four supermarkets.

Australian divestiture legislation would need to:

- Give divestiture powers to the Australian Government to force businesses that hold a near-monopoly or duopoly control over a market to sell down assets, as a means of ensuring concentrated markets remain competitive
- Give similar divestiture powers to the Australian courts to order divestiture to not only penalise, but also prevent, abuse of market power.
- Establish a Commissioner with functions that include the oversight of divestiture and options of significant penalities.
- Restrict market share to 20% for corporations in the grocery sector.
- Prohibit colluding activity between divested assets.

Critical detail

MAXIMUM 100% MARK UP

Separately to this Inquiry is a Federal review of the Food and Grocery Code of Conduct. A cynic could argue that the Food and Grocery Code of Conduct has in recent years been used by the supermarket duopoly to impose restrictions and gain maximum control over the producer/supplier.

One only needs to consider the price given to the farmer (often referred to as the "farm-gate price") and the price paid by the consumer.

However, before we can make this point it should be clarified that calling the price given to the farmer the "farm gate price" is somewhat misleading as not only does the farmer have to pay for the production costs, wages, fertilisers, land, irrigation, machinery but the farmers also has to pay the costs for transport to the markets, ripening and inspection of the produce, and if rejected, dumping fees.

Supermarkets on the other hand, have arguably much smaller costs, relating to retailing the product given to them in final form.

Despite this significant disparity in costs often the supermarket double or even quadruple the price they pay the farmer when they charge the consumer.

As detailed on the graphics in the next page, bananas purchased for $1.50kg are often on sold to the consumer at $4/5 kg.

You don't have to be great at maths to work out where the $1 billon in annual profit is coming from.

If government is serious about tackling the cost of living, supporting Australian farmers and consumers and ensuring access to fresh fruit and vegetable it should immediately

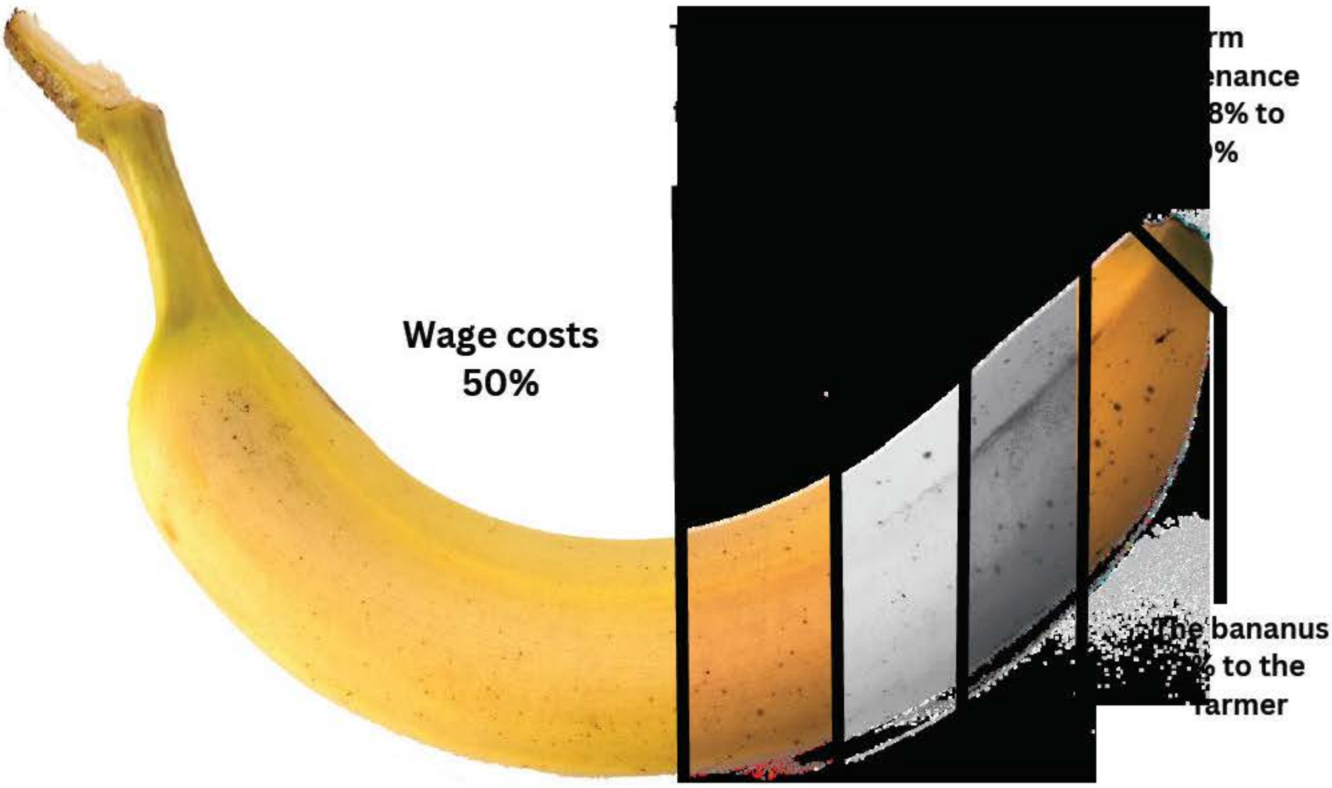
- Define and cap the charges that a supermarket can put on producers / suppliers;
- Require supermarkets to publicly state on a weekly basis:
  - the price paid to suppliers for produce;
  - all the costs that are included in this price, including the costs of ripening, transportation and storage; and
  - the price charged to consumers;
- Introduce a maximum markup of 100% that supermarkets can charge only all produce.
- Scrap the Food and Grocery Code of Conduct, calling it out for what it really is – a measure that has been long abused by the supermarkets to control and restrain suppliers/producers. It does nothing to address the power imbalance rather it enforces and capitalises on that power imbalance.

Farming costs

The following graphic highlights the costs involved in producing fresh food and getting that food to market.

For example, if the farmer is receiving $1.50 for a kilo, he actually takes home less than 2c once costs are covered. The Supermarket on the other hand retails the same product at $4-5/kg.

Out of that $1.50, farmers pay



Costs that farmers have to bear

Critical detail

INVESTIGATION & ENFORCEMENT WITH SEVERE PENALTIES

Predatory practices and behaviours should be thoroughly investigated and, if proven, met with severe penalties. Often it is difficult to call out such behaviours and even more difficult to prove they have occurred in the "eyes of the law". Retribution from those that are accused can be swift and severe.

The power imbalance that the supermarkets giants have is clear. Evidence is also readily available that such practices and behaviours have been used to stamp out competition, manipulate suppliers and consumers and further instill the power imbalance and increase profits.

Actions such as price gouging, creeping acquisitions, greenfield acquisitions, restrictive covenants can weed out competition limiting options for suppliers and consumers and ensure continuing expansion of market power.

Such actions in the fresh food sector has been the subject to a series of inquiries and reports over the last 20 years. However, little has been done to reign in these practice.s Laws in this area need to be urgently and significantly strengthened.

If real supermarket reform is to occur then urgent and significant laws must be implemented to ensure appropriate investigation and enforcement, including severe penalties.

Recommendations

- Strong, proven government enforcement body with extensive investigation powers and severe penalties (over $100 million (or 1/10th annual profit) for corporations and over $10 million for individuals – rather than the current corporate penalty of $64,000 under the Food and Grocery Code);
- Mechanisms that allow consumers to express concerns about pricing without having to demonstrate a technical breach of the law;
- Mechanisms that allow farmers and agents to confidentially express concerns about pricing without fear of repercussions or having to demonstrate a technical breach of the law;
- Measures that compel Supermarket Directors and Executives to provide robust and frank information to oversight bodies.

Critical detail

TARIFFS ON IMPORTS

Applying a customs tariff on goods coming into Australia is an important mechanism that can be used by government to cover the costs associated with imported goods.

Cost impacts caused by imported goods are many and varied, but over the past decades successive governments have taken a restrictive rather than board view. An almost unfettered approach to imports has been taken and governments have agreed to free trade agreements that fail to consider the economic, social and environmental impacts of these agreements on Australian manufacturing and farms.

Recently government recognised the power that tariffs provide in supporting countries like the Ukraine, in temporarily removing tariffs on Ukraine manufactured goods and produce, whilst adding a tariff of 35% on manufactured goods and produce from Russia and Belarus.

For many years various manufacturers and agricultural organisations have called for the Australian government to impose tariffs on imports. However, we are finding that retailers are using ever-increasing cheap imports from subsidised overseas locations to gain market share. Australian clothing and vehicle manufacturers have succumbed to cheap imports. The supermarket duopoly has aggressively used its' home brand products to edge out Australian processed foods.

Late last year the former Coca-Cola Amatil Chief Executive Terry Davis was reported to have spoken about the huge challenges associated with trying to keep Australian processed foods on the shelves of Australia's two major retailers, in the presence of their own home brand products made from cheap imports. (Coca-Cola Amatil also owns SPC Ardmona, one of Australia's few remaining fruit and vegetable processors).

Supermarket reform must consider the serious issue of imported goods and the impact that this unfettered importation has on Australian manufactures, producers and, ultimately, consumers.

Australian custom legislation should be amended to:

- Recognise the economic, social and environmental impacts of imported products

- Provide a blanket customs tariff of 5% on all imports unless:
  - A higher import tariff already applies;
  - Overwhelming justification is provided for a reduce tariff and only when it is demonstrated that:
    - The goods to be imported is not currently produced in Australia;
    - Investment is being undertaken to produce such goods in Australia; and
    - Australian manufacturers, consumers and producers benefit significantly from the importation of the goods at a reduced tariff.

Conclusion

The Australian supermarket duopoly boast annual profits of over $1 billion for each entity. Manufacturers are seeing increased competition from import home brand products, farmers are seeing lower returns and increasing costs applied to these returns and consumers are paying more for groceries.

Record profits can only be achieved at the detriment of both suppliers and consumers. Serious and fundamental reform as proposed in this submission needs to be immediately actioned if we are serious about tackling the negative impacts of market concentration and over exercise of corporate power.

This submission recommends:

1. Divestiture powers: The submission advocates for granting the Australian Government and courts the authority to enforce divestiture, particularly targeting businesses with near-monopoly or duopoly control in markets. It suggests restricting market share to 23% for corporations in the grocery sector, prohibiting colluding activity between divested assets, and limiting the expansion of supermarket-branded products available exclusively at specific stores.

2.Maximum 100% markup: To regulate charges imposed by supermarkets on producers/suppliers, the submission suggests defining and capping these charges. It also proposes requiring supermarkets to publicly disclose weekly: the price paid to suppliers for produce, associated costs, and consumer prices, while introducing a maximum markup limit of 100% on all produce.

3. Investigation and enforcement with severe penalties: This includes establishing a robust government enforcement body with extensive powers to investigate and impose severe penalties, along with mechanisms for consumers and farmers to express pricing concerns confidentially without needing to prove legal breaches. Additionally, it suggests compelling supermarket directors and executives to provide transparent information to oversight bodies.

4. Tariffs on imports: Recognising the impacts of imported products, the submission proposes implementing a blanket customs tariff of 5% on all imports, except in cases where overwhelming justification is provided for reduced tariffs, with a focus on benefiting Australian manufacturers, consumers, and producers.

The submission also calls for the scrapping of the Food and Grocery Code of Conduct, arguing it does little to address power imbalances and has been abused by supermarkets to control suppliers and producers.

ACKNOWLEDGEMENTS

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It is greatly appreciated.