



The voice of Australia's leading retailers

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Review of the A.C.T. Supermarket Competition Policy



**Australian National
Retailers Association**

The voice of Australia's leading retailers

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About ANRA

The Australian National Retailers' Association ("ANRA") was established in 2006 to represent the interests of Australia's leading national retailers.

Members of ANRA are:

Best & Less

Harvey Norman

Bunnings

Just Group

Portmans | Peter Alexander | Dotti | Smiggle | Just Jeans | Jay Jays

Coles Group

Coles | Coles Express | BI-LO

Luxottica

OPSM | Laubman & Pank | Budget Eyewear | Bright Eyes | Sunglass Hut

Costco

Oroton

David Jones

Reece Plumbing

Dymocks

Super Retail Group

Supercheap Auto | Rays Outdoors | Boating Camping Fishing | Goldcross Cycles

Forty Winks

Woolworths

Supermarkets | Big W | Dick Smith | Masters

The turnover of these major Australian companies exceeds \$100 billion of the \$245 billion turnover across the retail industry, representing around 7.7% of Gross Domestic Product.

The members of ANRA employ over 450,000 Australians – almost 40% of the retail workforce and over 4% of the Australian workforce. Approximately 100,000 of these employees are located in regional and rural Australia. Over 750,000 Australians hold shares in members of ANRA.

Members lead the Australian retail industry across all types of retail, goods and services. The spectrum of their businesses, their scale and their contribution to all Australian communities means that the development of robust policies to strengthen this sector and protect the interests of retail businesses and consumers is critical.

A key objective for ANRA is to ensure that governments and the community understand the vast contribution the retail industry makes to the national economy. ANRA develops and endorses public policies which will enhance the capacity of the sector to meet consumer needs.

ANRA recognises that retailers rely on all Australians, and must competitively deliver to consumer needs. The industry and members of ANRA in particular, are leading employers, contribute to the community and regional development, and strongly interrelate with other Australian industries, not the least of which is the agricultural industry. ANRA's food and grocery retailers overwhelmingly supply Australian produce.

The Australian National Retailers Association (ANRA) appreciates the opportunity to make a submission to this review of the ACT's Supermarket Competition Policy.

1. Executive Summary

- 1.1. ANRA welcomes this review of the ACT Supermarket Competition Policy and is hopeful it will result in better outcomes for consumers and all supermarket operators in the ACT.
- 1.2. ANRA understands the intent of the policy is to encourage new supermarket entrants into the ACT market. These new entrants are welcomed by existing supermarket operators, but not at the expense of consumer outcomes. The current discriminatory practices driven by the ACT's Supermarket Competition Policy have detrimental impacts on not just the owners and staff of the major supermarkets, but importantly on ACT consumers.
- 1.3. This policy appears to have been motivated by the perception of a lack of competition within the ACT's supermarket sector. ANRA believes the premise that there is little or no competition between supermarkets is not supported by the findings of the Martin Review or the ACCC's 2008 Inquiry. The ACCC in particular concluded that Australia's supermarket sector is 'workably competitive'.¹
- 1.4. The ACT's major supermarket retailers, including ANRA members Coles and Woolworths, currently operate under a policy regime that limits their ability to extend their services to more consumers, especially in group centres across the ACT.
- 1.5. Continuing to enforce restrictive policies means that the ACT Government is ignoring one of the key recommendations of the 2009 Martin Review, that:

*"Any form of cap on the market share of participants should be rejected."*²
- 1.6. Indeed, the decision to limit the number of operators who can buy or lease new supermarket sites is, in effect, a cap on supermarket ownership in the ACT.
- 1.7. Consumers, especially those that shop in group centres, are likely to face higher prices and less choice than they otherwise would if there was unrestricted competition for supermarket sites.
- 1.8. Many of the problems with the current policy arise because the ACT Government is trying to solve a perceived competition problem with a planning policy. Both the Council of Australian Governments (COAG) and the Productivity Commission have criticised the practice of incorporating competition constraints into planning policy in recent years.
- 1.9. **ANRA recommends that the ACT Government ceases to operate a specific Supermarket Competition Policy.**
- 1.10. **An alternative approach to encourage additional operators to enter the supermarket sector would be to offer more sites for development. This would lower barriers to entry for smaller operators and would not restrict the major chains from offering ACT consumers access to a wider range of goods at lower prices in the group centres.**

¹ ACCC (2008) *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*.

² Martin (2009) *Review of ACT Supermarket Competition Policy* p.18

2. Competition in the supermarket sector

- 2.1. The ACT's Supermarket Competition Policy appears to be based on the premise that without Government intervention there will not be sufficient competition within the supermarket sector. ANRA does not agree with this assumption. Our position is supported by the findings of the Martin Review, the ACCC's Inquiry into the competitiveness of retail prices for standard groceries, and more recently Justice Emmett's decision in *Metcash Trading Ltd v ACCC*.
- 2.2. For example, the Martin Review found that the extent of pricing competition between major supermarkets within the ACT is comparable to that outside of the ACT:
- "ACT grocery prices are on a par with most surrounding NSW and Sydney metropolitan regions for the two major chains and ALDI."*³
- 2.3. Moreover, the ACCC's 2008 inquiry found that the grocery sector was "workably competitive"⁴ and that most Australian consumers therefore have access to a diverse, competitive offering, particularly for fresh produce:
- "Specialty retailers provide consumers with a significant alternative to supermarkets in purchasing fresh products. The vast number of specialty retailers and the low barriers to setting up specialty grocery outlets mean specialty retailers provide a strong competitive force in retailing fresh products."*⁵
- 2.4. The ACCC also noted the positive impacts that new competitors, such as ALDI, had on the marketplace:
- "ALDI has been a vigorous price competitor since its entry into Australia and has the incentive and ability to engage in sustained price competition."*⁶
- 2.5. More recently, in the *Metcash Trading Ltd v ACCC* case of 2011, one of the reasons Justice Emmett gave for his approval of Metcash's purchase of Franklins was the additional competition this transaction would bring to the supermarket sector. Like ALDI, the emergence of Metcash as a major supermarket operator highlights the increasingly competitive nature of the supermarket sector.
- 2.6. This judgement, along with the findings of the Martin Review and ACCC Inquiry support ANRA's view that there is considerable scope for workable competition between major supermarket operators in the ACT without Government intervention. Continued adherence to the ACT Supermarket Competition policy is therefore not required to ensure an appropriate degree of competition between ACT supermarkets.
- 2.7. In contrast, ANRA believes the current policy is actually reducing competition and is resulting in ACT consumers facing higher prices than they otherwise would if the bids of all supermarket operators were considered for all available supermarket sites.

³ Ibid p.11

⁴ ACCC (2008) *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*. p xiv

⁵ Ibid p. 165

⁶ Ibid p xiv

3. Supermarket policy is not encouraging competition

- 3.1. Even if the ACT Government remains concerned about competition, there is evidence that the current policy is actually driving up prices for consumers. Consumers want supermarkets that provide a wide range of goods, at low prices and in convenient locations near their workplaces or homes. However, the Supermarket Competition policy is actively obstructing from occurring.
- 3.2. The two ANRA members most impacted by the Supermarket Competition Policy are Coles and Woolworths supermarkets. Both of these retailers have been denied access to potential supermarket sites since the introduction of this policy.
- 3.3. By restricting the number of operators who can purchase or lease supermarket sites to small supermarket operators, ACT consumers face higher prices than they would if large operators, such as Coles and Woolworths, were allowed to bid or purchase supermarket sites that become available.
- 3.4. In 2010/11 the Productivity Commission conducted a benchmarking review of the planning policies of State and Territory Governments across Australia.⁷ This review was critical of planning policies that were aimed at solving competition concerns and found that these policies often actually reduced overall competition.

“Planning restrictions on the types of commercial developments allowed in particular locations are generally aimed at improving amenity for the community. However, they also limit the number, size, operating model and product mix of businesses and thus restrict competition.”⁸

“Where planning and zoning systems are inflexible, business entry or expansion may require complex DA processes or land rezoning. Planning systems in these areas tend to impose business-specific modifications which create uncertainty, and are inefficient and anti-competitive.”⁹

‘Changes to planning and zoning systems which could improve competition include:

- *reductions in the prescriptiveness of zones and allowable uses therein*
- *facilitation of more ‘as-of-right’ development processes*
- *elimination of impacts on the viability of existing businesses as a consideration for DA and rezoning approval*
- *consideration of impacts on the viability of centres only during the metropolitan and strategic planning stages¹⁰*

⁷Productivity Commission (2011) *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessment*

⁸ Ibid p.277

⁹ Ibid p.277

¹⁰Ibid p. 277

- 3.5. The Review also had specific criticism for the ACT's Supermarket Competition Policy, arguing that:

*"The ACT policy is an example of a government using a regulatory constraint to competition (that is, the barrier to local market entry) in an attempt to boost another aspect of competition (increased variety of businesses in the market place). There may be instances when the benefits of such regulatory action exceed the opportunity costs of the restriction to the community. However, given the explicit competitive advantage afforded to particular operators and the higher grocery prices that are expected to result in the local ACT markets involved, it is not clear that this particular policy will result in a net increase in competition in the ACT grocery market."*¹¹

- 3.6. These findings are also supported by the Institute of Public Affairs (IPA)¹² 2010 review of the ACT Supermarket Competition policy. The IPA found that it was not meeting one of the key stated aims of the policy – to deliver lower prices to consumers.

- 3.7. The IPA study found:¹³

The key consequences of the government's implementation of its supermarkets policy at Kingston, Dickson, Casey and Amaroo will be to:

- *Require the price of groceries at these news supermarket sites to be between \$6.52 and \$13.45 more expensive than the cheapest ACT supermarket site.*
- *Increase the price of the mean ACT basket of groceries to \$8.02 compared to the cheapest basket available in the ACT amounting to a mean price nearly ten per cent higher than necessary.*
- *Increase the price of the mean basket of groceries in the ACT by \$1.05 or 1.18 per cent, adding an additional third increase on top of inflation.*

- 3.8. The ACCC has also found that supermarket prices tend to be lower when a major supermarket is operating in the area.

'The presence of the MSCs and ALDI has a positive influence on the competitiveness of pricing in individual regions...

- *consumers shopping at a Woolworths store with an Aldi or Coles within 1 km paid prices that were on average around 0.7 per cent lower than the prices paid by consumers at a Woolworths store without an Aldi or Coles within 5 km*
- *consumers shopping at a Coles store with an Aldi (or Woolworths) within 1 km paid prices that were on average around 0.8 (or 1.4) per cent lower than the prices paid by consumers at a Coles store without an Aldi (or Woolworths) within 5 km.'*¹⁴

¹¹ Ibid p.306

¹² Watson (2010) *Forcing prices up: The impact of the ACT government's supermarkets policy and implementation*

¹³ Ibid p. 2

¹⁴ ACCC (2008) *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries.*

- 3.9. These findings of the Productivity Commission, the IPA and the ACCC support ANRA's view that the ACT Supermarket Competition Policy is not lifting competition or lowering prices in the ACT. This ineffectiveness suggests that the policy should be removed immediately to remove restrictions to greater competition between the ACT's supermarkets.

4. Other Issues

- 4.1. The policy is also delaying the re-development of old supermarket sites and shopping centres (especially in the group centres) and thus reducing the opportunity for consumers to access modern supermarket shopping opportunities near their homes – especially near new or renewed group centres. These sites, especially those that require substantial redevelopment, require significant capital injection. This hurdle can be significant for smaller supermarket operators or developers and means the completion of these projects is placed at risk if businesses with the resources to invest (such as major supermarket chains) are prevented from operating at these sites.
- 4.2. Finally, by limiting the number of effective bidders on each supermarket site for sale or lease, the ACT Government is likely to receive lower revenue per site than it would if all bids were considered for each proposed site. This reduces the return to all ACT taxpayers.

5. An alternative approach

- 5.1. The ACT Government would be able to more effectively reduce the barriers to entry for new supermarket operators by offering more sites for development across the ACT. These sites should be offered to all supermarket operators.
- 5.2. This approach will ensure:
- Barriers to entry are reduced, as numerous site opportunities are being offered.
 - Consumers located near group centres will no longer be excluded from accessing the lower prices and greater range offered by major supermarkets.
 - The different offerings of each supermarket retailer will be better matched to the consumer preferences of households in that group centre, as supermarket retailers focus on bidding for sites that best match their business strengths/capabilities, rather than any of the scarce sites that might be available under the current system.
 - Sites that need substantial redevelopment would be able to attract the level of investment needed more readily if all supermarket operators had the ability to bid for all sites.
 - ACT taxpayers will likely achieve greater returns on each site as multiple bidders compete against each other for the sites on offer.