



Australian Government



Australian  
**Small Business and  
Family Enterprise**  
Ombudsman

19 February 2024

Committee Secretary

Senate Select Committee on Supermarket Prices

PO Box 6100

Parliament House

CANBERRA ACT 2600

Via email: [supermarketprices.sen@aph.gov.au](mailto:supermarketprices.sen@aph.gov.au).

Dear Sir/Madam,

**Inquiry on the price setting practices and market power of major supermarkets.**

The ASBFEO welcomes the opportunity to provide a submission to the *Senate Select Committee on Supermarket Prices*.

Small and family businesses play a critical role in the supply and distribution of goods and services to the supermarkets. The Australian supermarket and grocery stores market is highly concentrated, with the top four companies generating 70% of industry revenue including Coles, Woolworths, Aldi and Metcash.<sup>1</sup> Further, the top two companies Woolworths Group and Coles Group dominate the market with a combined share of over 55% of the market.

This market concentration not only makes it difficult for small supermarkets, with limited market share and purchasing power to compete but also those small and family businesses who supply the large supermarkets face significant power imbalances when negotiating pricing and contract terms.

The ASBFEO makes the following recommendations to the committee to support competition in the Australian supermarket and grocery stores market:

**Recommendation 1: The ACCC as part of its *Supermarkets inquiry 2024-25* to investigate the effects of the Australian grocery market concentration on small and family businesses.**

- a) **Vertical integration** – As the major supermarket retailers acquire or establish companies that produce and distribute food and groceries, they become vertically integrated in their supply chains. Lack of competition arising from such integration significantly shifts bargaining power away from suppliers to the supermarkets.

Often, the major retailers are the main or sole customers of small business suppliers, and they are faced with the need to promote and maintain strong business relationships having limited power to negotiate for fair terms of trade.

- b) **Unfair trading practices** – The government should explore policy options to encourage a more competitive grocery market including developing an unfair trading practices framework.

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<sup>1</sup> [Ibisworld supermarket and Grocery stores in Australia Market size, Industry Analysis, Trends and Forecasts \(2024-2029\)](#)



Small businesses are often placed under financial pressure as the major retailers can dictate terms that go against the economic interests of the suppliers. The major retailers often monitor the suppliers input costs which results in demands being made for ‘cost downs’ that may not be reflective of actual input costs incurred by suppliers and it maybe failing to account for further key costs that have occurred.

Shrinkage is further prohibited under the Food and Grocery Code of Conduct (the code). However, the bargaining power of the large retailers could mean that they require suppliers to make payments to the retailer as compensation for shrinkage. For example, compensation demands can be made once theft or loss has occurred after a retailer has taken possession of groceries. ASFEBO understands that these issues will be addressed in the 2024 Food and Grocery Code of Conduct Review by Dr Craig Emmerson and by the ACCC Supermarket Inquiry 2024 – 25.

- c) **Unfair contract terms** – Suppliers and the major chains set up supplier agreements under the Grocery Supply Agreement (GSA), prescribed in the code. There are concerns that suppliers are not able to properly negotiate GSA terms. Because of the concentration of the grocery market, retailers often require suppliers to change their packaging, logistics and software in order to continue a supply relationship.

Unfair contract terms provisions also disproportionately effect fresh food suppliers as the perishability of the products leads to limited time to find and negotiate supply agreements with other possible retailers. It forces their hand in accepting conditions put forth by large supermarkets.

### **Recommendation 2: Improve the Food and Grocery Code of Conduct: Alternative Dispute Resolution Provisions.**

Supplier confidence in the code is vital ensure the code remains relevant, functional, and fit for purpose. We therefore make the following key recommendations and comments for the committee's consideration:

- a) **The code reviewer should be afforded additional powers to ensure capacity to perform their duties efficiently, effectively and robustly.** Empowering the reviewer to complete thorough quality control evaluations to identify deficiencies and recommend corrective actions, will help to build stakeholder confidence, reduce systemic risks, and promote continual improvement. To support effective operation of the code and alternative dispute resolution (ADR) processes, the reviewer should have adequate powers to access to stakeholder’s files.
- b) **The Australian Government should consider expanding sectoral scope to capture all fresh produce sectors, via the amendment of the code’s dispute resolution timeframes to ensure fresh produce suppliers have access to timely, cost efficient and equitable ADR options.** While acting in good faith should ensure a dispute is responded to in a timely manner, this is not always the case. The code should ensure timeframes for resolving disputes (including price negotiations) related to perishable goods more accurately acknowledge supplier’s product spoilage risk and seek to mitigate this power imbalance against small businesses.



- c) **Penalties and supplier remediation for breaching the code should be proportionate, effective, and targeted deterrents to retailers and wholesalers seeking to utilise the often-significant power imbalance to the detriment of small business.** Enforcement and penalties under the code should adequately accommodate both systemic breaches and uniquely individual matters. This could include referral to enforcement agencies who can apply monetary penalties, as well as the publication of code breaches, and self-reporting through environment, social and governance reporting requirements. Greater penalties for breaching the code would increase small business supplier confidence in their market, reward their efforts and investment, and reduce oppressive cartel behaviour.

**Recommendation 3: Introduce a Small Business and Codes List in the Federal Circuit Court and Family Court of Australia**

The power imbalance could be reduced via the creation of a Small Business and Codes List (the list) in the Federal Circuit Court and Family Court of Australia, which fall outside of the ADR options available under the code. This would provide small businesses with a timely means to directly pursue their commercial interests and receive a determinative outcome. The size of disputes appearing on the List could be capped, the parties could be required to bear their own costs and court processes including ADR could be delivered via online hearings, significantly reducing the time and cost burden on a small business.

A Small Business and Codes List in the Federal Circuit Court of Australia would complement the government's proposal to grant the Fair Work Commission new powers to deal with disputes about unfair contract terms involving independent contractors earning less than a high-income threshold. This jurisdiction would also cover matters that fall outside the Fair Work Commission's jurisdiction and provide a holistic timely and cost-effective resolution mechanism.

Thank You for the opportunity to contribute the inquiry. If you would like to discuss this matter further, please contact [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman