



28 October 2024

Australian Competition and Consumer Commission  
23 Marcus Clarke Street  
CANBERRA ACT 2601  
via email: [supermarkets@acc.gov.au](mailto:supermarkets@acc.gov.au)

Dear Sir/Madam

### **Supermarkets Inquiry August 2024 interim report**

The Australian Small Business and Family Enterprise Ombudsman welcomes the opportunity to comment on the ACCC's interim report. Our April 2024 submission to the Supermarkets Inquiry recommended that the ACCC should closely investigate the nature and effects of bargaining power imbalances affecting small businesses in the grocery supply chain and consider suitable solutions to achieve efficient and equitable outcomes.

We are encouraged that the interim report acknowledges the importance of this issue and indicates that the final report will examine whether market power is being exercised to the detriment of others in grocery supply chains and the implications of such power.

Robust competition settings are critical to ensuring that all businesses – including small and family businesses – can readily form, grow, enter a new market, or improve their position in an existing market. Business creation and entrepreneurship are essential to driving economic growth, generating jobs, increasing economic efficiency and boosting innovation.

The ACCC's interim findings accord with intelligence received via the ASBFEO's Assistance function and engagement with small-business stakeholders. The ASBFEO similarly observes that power imbalances between large supermarket customers and small business suppliers can be manifested as:

- a heavy dependence by suppliers on supermarkets as a distribution channel
- suppliers having to accept prices below efficient levels, including below costs of production
- uncertainty about investment decisions, especially where long lead-times are involved.

This situation can place smaller suppliers in the bind of either walking away from what they have built, or accepting supply arrangements that will 'cannibalise' their business over time.

Concerning practices can include an insistence on sole supply arrangements, verbal or vague agreements, supplier cost and margin disclosure obligations, risk transfer onto suppliers, 'brand-hushing' or vanilla labelling, requirements to use specific service providers, participation in costly 'specials' and promotional campaigns, price freezes, rebates and extended payment times.

### **Recommendation 1: The ACCC should closely investigate the impact of major supermarket entry on suppliers to independent retailers**

The ACCC should use its inquiry powers to examine and report on the effects of dominant players expanding into markets where there are established independent retailers. The inquiry should



assess how the presence of these major players affects consumer choice and the sustainability of smaller, specialised suppliers who provide distinctive regional and cultural offerings.

As highlighted in the interim report, the variety of consumer choices available through independent grocery stores serves as a key differentiator from major supermarkets. Independent retailers often offer a diverse selection of products that feature local suppliers and producers, including specialised and artisan goods like cheese, small goods, condiments, and unique general merchandise. This assortment caters to the cultural tastes and preferences of the local community, including seasonal offerings.

While Metcash submits that approximately 74% of all IGA purchases are made through Metcash (either through direct purchases from the Metcash warehouse, or charge-through), the remaining 26% of the supplies are sourced from alternative sources such as fresh markets or other suppliers.

Representations have been made to ASBFEO that this 26% is predominantly made up of sole traders and small businesses, who would likely be significantly and adversely affected if the independent grocery sector faces additional pressure and loses market share. These small and family businesses supply unique, artisan products that are unlikely to be stocked by the major supermarkets. The ASBFEO considers that this relatively overlooked contributor to Australia's small business landscape is worthy of further investigation.

Further, the ASBFEO encourages the ACCC to consider our other recommendations included in our response to the Supermarket Inquiry as it shapes its final report:

- Recommendation 2: If the ACCC uncovers entrenched practices of significant concern, it should consider whether continued scrutiny and monitoring of the sector is appropriate.
- Recommendation 3: The ACCC should engage with other relevant inquiries and reviews to ensure that adequate safeguards are introduced to protect consumers and small businesses from harmful conduct and market outcomes in the supermarket sector.

### **Further comments: Dispute resolution and code enforcement through the court system**

Alternative dispute resolution, including under the Code, can provide a cost efficient and timely avenue of dispute resolution. However, where disputes cannot be resolved through alternative dispute resolution, small businesses can face significant financial and time costs to seek redress through litigation, as well as the risk of adverse cost orders. Accordingly, harmed businesses tend to rely upon regulator-led remedies, yet often find that their circumstances do not trigger the policy parameters for enforcement action.

The ASBFEO therefore advocates for the introduction of a Small Business and Codes List in the Federal Circuit Court and Family Court of Australia. This would provide small businesses with a timely means to directly pursue their commercial interests and receive a determinative outcome. The knowledge that an accessible means of formal dispute resolution exists can also incentivise parties to resolve disputes early, thereby enhancing the effectiveness of the Code.



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 alternative dispute resolution could be delivered via online hearings, significantly reducing the time and cost burden on a small business.

If you would like to discuss this matter further or require any further information, please contact the ASBFEO Policy and Advocacy team via email at [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman