

9 August 2012

## Executive Summary - Snapshot “Let’s Have Fair Competition”

### Purpose of the report

The report is intended to draw the attention of the regulatory bodies, namely the Australian Government and the ACCC, to the ever increasing dominance of the duopoly, Coles and Woolworths, one that is without equal in the entire world. The report clearly demonstrates that the duopoly has used its market power to restrict competition and eliminate opposition to its expansion and growth.

The report demonstrates that the dominance of the chains has reached unprecedented levels, to the point where the consequences for shoppers, suppliers, local communities, the market and the national economy are too serious and harmful to be ignored. It points out that if the unabated growth of the chains continues, there will be no competition, no choice and no retail diversity. It is therefore incumbent on those who are able to rectify the problem, to do so now.

The report shows that MGA/LRA is a strong supporter of fair competition. The small independent retailers have never baulked at the challenge of competing with the chains. However, we want the governments, at all levels, to establish a level playing field, where the independent retailers are able to compete, without the constant threat of being systematically squeezed out of the marketplace, simply because the current laws allow the bigger players to take advantage of their smaller counterparts.

### Main Concerns

#### **Competition**

Market dominance . the duopoly, Woolworths and Coles, has a market share of about 80%.

The report refers to a number of anti-competitive policies and practices by Coles and Woolworths that depend on the exercise of their enormous market power, including:

- *anti-competitive price discrimination*
- *shopper docket schemes,*
- *'store saturation' strategies and*
- *over-sized “cross subsidised” store strategies*

### **Land Use**

The report also reveals that there have been local government approvals of over-sized store developments with insufficient regard for their impact on the viability of existing businesses, community amenities or commercial property values.

There has been inconsistent local government application of land use principles and regulations to disallow the relentless expansion and oversupply of supermarket floor space resulting in;

- *progressively crowding out all competition*
- *reducing the choices in shopping format, product brands, locally derived products and service levels that the shopper can choose.*
- *denying an outlet to local suppliers and manufacturers - products replaced by overseas sourced - retailed as store brands*
- *developing over-sized stores*

Such anti-competitive strategies are possible only for the major chains because they require cross-subsidies over an extended period to sustain the over-sized store.

## **Recommendations**

MGA recommends the following specific actions with respect to **anti-competitive practices** in existing stores:

### **The Australian Government should:**

- i. reintroduce a prohibition on anti-competitive price discrimination similar to laws in other OECD countries
- ii. repeal the provision in the Competition and Consumer Act that allows cross-subsidisation between related entities
- iii. ensure the ACCC has the legislative power to require prior notification by the major chains of any proposed acquisition of a site, lease or existing business.

### **The ACCC should:**

- iv. revoke the authorisations issued in relation to anti-competitive shopper docket schemes between related entities,
- v. use its powers under s155 of the Competition and Consumer Act to determine whether the major chains are cross-subsidising a substantial number of loss-making supermarkets for the purpose of keeping new competitors out of local markets, eliminating existing smaller competitors and resulting in a substantial lessening of competition; further, that the ACCC determine whether such conduct by the chains is misuse of market power.

With respect to **local planning policies and provisions for land use**, MGA recommends that the **Australian Government** should:

- vi. recommend to the Council of Australian Governments (COAG) that a Retail Sustainability Assessment be developed to assist local government authorities to determine whether major retail development proposals are of a size commensurate with community need;
- vii. recommend to COAG changes to planning legislation for improved planning of activity centres and new estates by:
  - defining the desired activity centre hierarchy and giving greater emphasis to such hierarchies in planning permit and rezoning determinations;
  - strongly recommending that local government authorities develop communities in line with principles of 'walkability' and 'healthy communities' by creating a corresponding range of activity centres;
  - amending land use tables to ensure major retail developments, including major supermarket developments, are subject to planning assessment, including retail sustainability assessment;
  - introducing stricter controls to prevent out-of-centre developments, and
  - preparing of assessment criteria which ensure that developments are consistent with a centre's position in the retail hierarchy - the level of new space is commensurate with the level of demand, the impacts on existing centre are justified and within acceptable levels and where appropriate, the impact of the market dominance of any entrant is taken into account.