



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

**SELECT COMMITTEE ON ACT SUPERMARKET
COMPETITION POLICY**

(Reference: [ACT supermarket competition policy](#))

Members:

**MS C LE COUTEUR (The Chair)
MR J HARGREAVES (The Deputy Chair)
MR Z SESELJA**

TRANSCRIPT OF EVIDENCE

CANBERRA

THURSDAY, 19 JULY 2012

**Secretary to the committee:
Mr A Snedden (Ph: 6205 0199)**

By authority of the Legislative Assembly for the Australian Capital Territory

Submissions, answers to questions on notice and other documents, including requests for clarification of the transcript of evidence, relevant to this inquiry that have been authorised for publication by the committee may be obtained from the Legislative Assembly website.

WITNESSES

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Amended 9 August 2011

The committee met at 2.03 pm.

COCKBURN, MR MILTON, Executive Director, Shopping Centre Council of Australia

THE CHAIR: I declare open this hearing of the Select Committee on ACT Supermarket Competition Policy and welcome Mr Cockburn from the Shopping Centre Council of Australia. Thank you for agreeing to appear today. I understand you have read the privileges statement on the blue card in front of you—

Mr Cockburn: I have.

THE CHAIR: and you are happy to abide by it?

Mr Cockburn: Yes.

THE CHAIR: Thank you very much. Do you have an opening statement that you would like to make?

Mr Cockburn: Just a very brief one, Madam Chair, simply to draw your attention to the summary, the first page, of our submission. I really want to make four very brief points. As you will see in our submission, we believe that there is no evidence of a market failure in supermarket policy in the ACT and we certainly do not believe that any evidence of a market failure was found by the Martin inquiry.

On our figuring, the ACT in 2009 had around 345 square metres per thousand population in supermarket policy floor space, and on our figuring that is considerably above the national average. We also calculate by taking into account those developments that have just recently opened, those that have been planned, and future population growth. We believe that by 2014 that figure of supermarket policy floor space per head of population will grow to 450 square metres.

I think the critical point to make is that this amount of floor space has almost doubled in the last 20 years; it went from 211 square metres back in 1992 to, as I said, 345 square metres in 2009, which is a doubling in almost 20 years. The point I would like to stress is that this has occurred under Canberra's well-established centres hierarchy and under the territory plan. So we believe this casts doubt upon any claim that the planning system of Canberra is constraining the growth of supermarkets.

In terms of market share, which is not something we really got into in our submission, I have noted that in the other submissions and in the evidence before this inquiry a consensus seems to have been established that if you just look at floor space Coles and Woolworths probably hold about 65 per cent of the supermarket policy floor space in Canberra and the third force—that is Aldi, IGA, Supabarn, FoodWorks—hold about 35 per cent. It has been noted by a number of people that this seems to be greater than any other capital city and I think that point was also made by the ACCC in the grocery inquiry.

Of course another way of saying that is that it probably means that Canberrans are paying a higher price for their groceries as well. Nevertheless, it does show that there

is a substantial share of market going to the third force in supermarket policy retailing. Those are just the introductory points I wanted to make.

THE CHAIR: Thank you very much. You have commented a couple of times in your paper about independent supermarket operators. On your first page you have said:

Paradoxically, the level of supermarket competition in the ACT by 2014 is likely to be so intense it is possible that some independent supermarket operators, particularly small operators, are likely to fall.

Would you like to elaborate on that? As you said, it has happened with our current planning policies, but it would seem to me that that is not a particularly good outcome.

Mr Cockburn: It is speculation entirely on our parts, but it is simply, as I said, making the point that by 2014 the amount of supermarket floor space in Canberra will be significantly higher than in any other capital city. Canberra of course is fortunate in the sense that it has a much lower level of unemployment than any other capital city. It also has higher average incomes than any other capital cities, so that will be a factor that will probably militate against that.

Nevertheless, I suppose the point I want to make is that we believe now that it is an incredibly competitive supermarket environment in Canberra. In three years time we think it will be even more competitive. Under those very severe competitive conditions it is unlikely that it will be the larger supermarkets that will fail. They tend to have the scale to trade through those sorts of difficulties. It tends to be the smaller independent ones who find it most difficult. That was simply the point I was trying to make. I certainly hope we are wrong, but I just wanted to make the point that it will be a severely competitive supermarket industry.

MR SESELJA: Thank you, Mr Cockburn, for being here. In the first page of your submission you talk about there not being any justification for government intervention and you talk particularly about the land release program in relation to being for or against particular supermarket operators. Can I get you to expand on that, particularly your views or the views of the Shopping Centre Council about the ACCC's approach to this, which has been not so much in land release but it has intervened in at least one case in relation to supermarkets. What is the Shopping Centre Council's view of those types of interventions by the ACCC?

Mr Cockburn: They are wholly welcome and we believe there should only be one authority with the responsibility for determining whether particular acquisitions are anticompetitive or not and that should be the ACCC. They have that power under the Competition and Consumer Act, particularly under section 50. As you say, they have intervened on one occasion here in Canberra. In addition to that, as we point out in our paper they have also a couple of years ago announced that they were taking a much more intensive view of acquisitions in terms of section 50. They have substantially expanded what they define as acquisitions, so it is no longer just what we would regard as being an acquisition; they are now looking at lease renewals, at assignment of leases and such like. All of these have to be notified to the ACCC and they will then make a decision as to whether they intervene or not.

I think it is fair to say, and I do not think it is a coincidence, that a change in policy occurred immediately after the ACCC grocery inquiry. As a result of the increasing public policy focus on supermarket competition policy in Australia I think it is fair to say that the ACCC are probably now more inclined to intervene in these sorts of things than they were in the past.

MR SESELJA: For the sake of argument—and I do not claim to have been a massive supporter of government supermarket policy; I think it is flawed—what is the difference in the Shopping Centre Council’s view between an ACT government intervening through land release policy, particularly in a scenario where they did stick closer to the way the ACCC has looked at things? For instance, let us look at the case in Kingston. In Kingston the government chose to particularly favour one supermarket over others, but it is arguable that under the ACCC’s view of the world Coles would not necessarily have been allowed to open a supermarket in Kingston, that close to Manuka. If they had stuck with the ACCC’s approach, what is the problem in your opinion with the ACT government taking that kind of approach?

Mr Cockburn: Simply that I do not think the ACT government necessarily has the expertise to be able to do it. The competition regulator after all is the body that has that expertise. It has had years of experience of examining markets. For anyone who has been involved in this situation and understands how they go about that situation it is an incredibly intellectually rigorous process. They not only look at the facts of the situation; they also determine what they regard as being the counterfactual; in other words what would occur if in fact the decision went the other way. And of course they have the law behind them. It is after all the law of the land that they are interpreting, so I believe the intervention by the ACCC—and of course we are speaking hypothetically here when we were talking about Kingston—is far more rigorous and far more transparent than would be the case in relation to an intervention by the ACT government.

THE CHAIR: What interventions has the ACCC actually done after 2008? You have said there has been an increased level of scrutiny, but, apart from the Queanbeyan case, which is the only one I am aware of, have there been other cases?

Mr Cockburn: The only other one I am aware of was in South Australia but it was discontinued because whoever was going to acquire the site—I think it was Woolworths again in that situation—withdraw their purchase or ceased their intended purchase after the intervention of the ACCC.

I must confess that since we prepared our submission I have not looked at the ACCC website, so I do not know whether there have been any other interventions since then.

THE CHAIR: I do not think there can have been much. The reason I say this is that I would be fairly confident it would be reasonably well reported because, as you said, it is a matter of public policy interest.

Mr Cockburn: Yes. The point I am making, though, is that they are now required to notify the ACCC of those acquisitions. Whether they then lead to an inquiry, as Queanbeyan did and as South Australia has started to do, the reality is that the

notification is made to the ACCC and they have the ability to decide whether they will intervene. I think everyone would say that is a far more rigorous approach than they had previously taken.

THE CHAIR: Certainly, appreciably. Talking about rigorous approaches—I think there are some virtues in the ACCC; clearly they have much more relevant constitutional powers, I would have thought—I think you could probably argue that the ACT government, given its superior knowledge of conditions in the ACT, probably within its own sphere could do as good an analysis of competition as the ACCC trying to work on a national scale.

Mr Cockburn: Do not forget that the ACCC after all is headquartered here. I think the office of the ACCC probably know this market better than any other capital city market. But I suppose we will just have to disagree on that. In my view the real expertise lies with the competition regulator; after all, that is basically all they do, whereas the ACT government is like any other government: its resources are spread across a wide range of areas. I do not believe that it has the expertise or the experience that the ACCC has in terms of the assessment of what the competitive impacts will be on a market.

THE CHAIR: I would have thought that the more major issue was that the ACCC can look at ownership and competition issues whereas basically the ACT government does not really look at those issues; it just looks at the planning issues, which are related but substantially different.

Mr Cockburn: I am not sure they are looking at planning issues. I think they are bringing an ideological bent to bear in relation to it. They are basically saying, “We believe the market share of Coles and Woolworths in the ACT is too high and we therefore want to control it in some way.” I am not sure it is a planning issue. The problem, as we said in our paper, is that once you adopt a supermarket policy which is essentially a policy to discriminate against the two major supermarket chains it raises all sorts of issues about direct sales and whether the residents of the ACT are getting adequate revenue from the sale of that land. It raises issues about prices—whether Canberrans are going to end up paying higher prices for their groceries. These are the sorts of problems that I think come from that sort of supermarket competition policy.

MR SESELJA: Is that your conclusion—that as a result of this policy Canberrans will pay more?

Mr Cockburn: Yes.

MR SESELJA: You spoke before about the fact that on your numbers the majors have roughly 65 per cent of the floor space and it is lower than in other parts of the country. You said that we might as a result of that pay higher prices. Is that your analysis as well—that at the moment in the ACT we do pay more in grocery prices than other places do?

Mr Cockburn: They are not my figures. I am just relying on the two surveys that were quoted in the Martin report, the ACT Treasury survey and—I cannot recall what the other survey was. But in both of those cases they made the not surprising finding

that prices are lower at Coles and Woolworths.

MR SESELJA: That is a different question, though, isn't it? It clearly did find that Coles and Woolworths had lower prices. The question is: are Canberrans, with the current market share, paying more or less than people in other parts of the country?

Mr Cockburn: Sorry; that is not a conclusion I can draw. I suppose what I was saying was that under the evolution of that supermarket policy Canberrans will be paying higher prices than they necessarily would have been in the absence of that policy. So I am not making comparisons with other cities; I do not have that data.

MR SESELJA: You have pointed out in a couple of your answers that this is a sort of ideological thing in terms of restricting Woolworths and Coles and their market share. There has been a lot of commentary about and comparison with, say, the US in terms of the market concentration of some of their majors being much less than what it is for Woolies and Coles. Do you or the Shopping Council have a view on whether or not that is a good thing or a bad thing?

Mr Cockburn: Fundamentally I think it is just a matter that we have to accept. In a country of 23 million people we are never going to get the diversity in grocery chains that, say, the UK has with more than double the population, or certainly that the US has with their population of around 300 million for an area roughly the same as ours. So I think we are probably doing pretty well in Australia, given our limited population, to have three significant supermarket forces, Coles, Woolworths and what I regard as being the third force, being the collection of Aldi, the IGAs, the Supabarns, the FoodWorks and now Costco—we must not forget Costco; about a third of the floor space of Costco is essentially a supermarket floor space—and of course then the convenience stores and such like. So I think there are three healthy forces in Australia in terms of supermarkets and, as I said, for a country of 23 million people I think that is probably as good as we can expect.

THE CHAIR: You have talked a bit about the Martin report and I appreciate that you do not think it is going in the right direction. It appears to me that, right or wrong, it simply has not really been implemented. I will go through the list that you put here. Kingston: the car park is still there. There has been no amendment to the territory plan. I do not know what is happening internally to government or Supabarn, but certainly from an outside point of view nothing has happened.

Mr Cockburn: I think that is right. By and large, of the policy that has been adopted, if you were to look at the implementations, I notice that, I think, Coles in their submission went through the 15 or so recommendations and made their own commentary alongside of it. I disagreed with some of their commentary but by and large I think the point they were making was that not a great number of those recommendations have been implemented.

THE CHAIR: That is basically the point I was going to make: the Martin report may or may not be right, but it is effectively irrelevant because the government, for whatever reason, did not do it—

Mr Cockburn: So far, of course.

THE CHAIR: so far. I have no idea what they are going to do at Kingston. We are hoping to talk to the minister again—

Mr Cockburn: We would like very much to know about Kingston as well because one of our members has a significant vested interest in what is going to happen in Kingston. As you know, there has been a departure. There was the original intention about what would be involved in Kingston, then the master plan came out and then there was the revised plan. We would certainly like to know what is happening in Kingston as well. It does raise of course the trickiness of this whole situation; what do you do in a situation like Kingston where you have to accept that with the time it will take to develop a new supermarket on whatever site is ultimately chosen there are going to be enormous disruptions to commerce in Kingston—not just the existing Woolworths supermarket but the surrounding retailers as well?

THE CHAIR: Absolutely. The same goes for Dickson, which I know better, being a resident of Downer.

Mr Cockburn: I am sorry; I was talking about Dickson; I meant Dickson.

THE CHAIR: You said Kingston but you possibly meant—

Mr Cockburn: Apologies. I meant Dickson.

THE CHAIR: I was wondering why you said Woolworths and Kingston but I thought I would let that one—

Mr Cockburn: Sorry. I meant Dickson.

THE CHAIR: It will be very interesting to see how anything—

Mr Cockburn: I suppose the general point I make about the Martin report is that when you read the Martin report thoroughly—and I did, and I was involved in discussions with the late Mr Martin and the staff—a lot of conclusions were drawn by them out of their inquiry that were not justified by the facts they found. As I said, I think they came to a conclusion that there was a significant market failure in the supermarket industry in the ACT whereas I think all of the evidence placed before them was that that just was not the case.

MR SESELJA: The other part of the Martin report which I want you to comment on is the issue around wholesalers. There was some time devoted to this idea of trying to get an extra wholesaler here in the ACT and, whilst there has been some evidence heard by this committee that there may be progress on that, I think the jury is very much out on that. I would like your thoughts on competition in the wholesale market. Is it effectively the same as we have in the broader supermarket sector?

Mr Cockburn: Yes, it is. I must confess this is not an area of expertise of mine at all, so I am hesitant about even commenting in any way about it. But certainly from the evidence that has been put before this committee it seems to be extremely doubtful that the ACT could sustain another significant wholesaler. So until Canberra grows a

lot larger I think the situation will remain as it is.

MR SESELJA: The other aspect of the Martin review that I had some concerns with and that I would not mind your commenting on was restrictions around experience of supermarket operators—whether or not they have particular experience and background. I am interested in your thoughts on that. It seemed to me to be not particularly good for new entrants and attracting as many—

Mr Cockburn: I am sorry; I must confess I did not follow you there.

MR SESELJA: There was an aspect of the Martin review—I forget which recommendation it was—that talked about restricting certain sites to operators who had a certain level of experience. I am interested in your thoughts on that particular part of it.

Mr Cockburn: Realistically I do not think that one can expect that you are going to get people able to come into the industry without significant experience. That means that by and large you are going to remain generally with the existing operators, so that will be Coles, Woolworths and the independents—those under the IGA banner. So our new entrants will come from the experienced supermarket operators such as Aldi and Costco. I think that is really the only way that that sort of growth will occur.

MR SESELJA: I am interested in the Shopping Centre Council's view on restrictive covenants as they are used; I know the ACCC has had a fair bit to say about this. From my understanding they have virtually been phased out. I could be wrong on that. But what is the Shopping Centre Council's view of restrictive covenants?

Mr Cockburn: We certainly do not support the restrictive covenants. We were never willing parties to the inclusion of restrictive covenants in supermarket leases and shopping centre leases. We are glad that they are going. As you say, I think we are almost through the grandfathering period now. I know that at the Canberra Centre, for example, there was a situation where there was a restrictive lease covenant and I think the grandfathering period is almost through in relation to the Canberra Centre.

MR SESELJA: But is it the case that in many cases some of those restrictive covenants, even with grandfathering, have been voluntarily abolished?

Mr Cockburn: Yes, they were.

MR SESELJA: But that is not the case at the Canberra Centre?

Mr Cockburn: Not that I am aware of, but I must confess I am not directly involved with the Canberra Centre. QIC are members of ours but I am not directly involved there. So I cannot comment about that.

THE CHAIR: Talking about planning in Canberra, Canberra traditionally has had a retail hierarchy with the town centres, group centres and local centres. Do you think that is a good idea? Has that worked?

Mr Cockburn: We do. Essentially I think Canberra has been the model for what is

known as the activities centre policy that all cities in Australia have tried to emulate; the idea that you will effectively decentralise your city into recognised activity centres where you try to accommodate as much commercial residential public facilities as you can. It is not as pronounced in any other city as it is in Canberra. I think it has worked remarkably well. The economists would say that it is a horrifying interference in the market and that the end result will be a restriction of retail space and therefore higher prices and therefore higher rents. We have only been talking about supermarket floor space but we also made the point here that, if you are looking at general floor space, retailing floor space has grown substantially over that same 20-year period in Canberra. I think it is a significant response to those who say that this sort of planning policy is going to be anticompetitive and harmful to consumers. We think it has worked quite well in Canberra.

THE CHAIR: Are you aware of the recent commentary that some of the local shopping centres are growing significantly bigger than they were originally planned to be, Giralang being the most topical example? Traditionally the local centres tended to have supermarkets under 1,000 square metres and some of them 300 square metres—definitely smaller. If this moves to be 1,500 or even up to 2,500 square metres and so becomes basically a small full-line supermarket, do you think this is going to impact on the hierarchy and impact on the viability of the surrounding shopping centres?

Mr Cockburn: It will have an impact. Will it destroy the hierarchy? I do not believe so. The reality is that any planning system has to have the flexibility to be able to grow. We by and large do not like the idea of floor space caps. We do not think they have worked in any planning system. The most notorious example was in Perth where under the previous activity centres policy they had a cap on the amount of total floor space that could be provided in the activity centre itself, so it was not just a cap on shopping centres or on supermarkets; it basically said 80,000 square metres of floor space is the maximum you can go to. I think it was planning gone mad, in the sense that planners basically thought, “If we can put a cap on this activity centre, anyone who wants to come into here cannot come in so they will automatically go to that activity centre.” It was a failure to understand retailing and how retailing gets located wherever it is. It is reliant on so many factors, but socioeconomic factors are a very significant part of that. Just because you could not get into this activity centre, there was no reason why you were going to go to that activity centre.

So generally I think floor space caps do not work; they introduce a rigidity into the planning model which I think provides problems for everyone. Sensibly implemented, I think you can grow the local centres and I think you can grow the group centres without actually destroying the intent of the hierarchy of centres.

THE CHAIR: You were saying earlier that we have a lot of retail supermarket space per capita. If we are growing some local centres and we already have a lot of space, you do not think this would lead to lack of viability in surrounding centres? I guess where I am coming from is: where are the extra customers going to come from?

Mr Cockburn: Ultimately I think the market sorts that out. The fact is, as we know, that there is no barrier at the moment to Coles and Woolworths going into the group centres. But when you look at the group centres—

THE CHAIR: They are there in fact.

Mr Cockburn: They are there but—

MR SESELJA: Not competing.

Mr Cockburn: Usually both of them are not there; usually one has looked at it and said, “They are already there; we do not believe the capacity is there for us to go in there as well,” the exceptions obviously being Dickson and Kingston. Manuka is a classic example. Anyone would have thought that Manuka could have sustained two major full-line supermarkets, but in fact it could not. At the end of the day those market decisions are best taken by those who are going to be putting their time and their money on the line. And sometimes when they put their money on the line it will work out to be a success; other times it will be a loss.

THE CHAIR: I think we have come to the end of our questions, Mr Cockburn. Thank you very much for attending today.

Mr Cockburn: Thank you very much for allowing me to attend.

THE CHAIR: Hansard will produce a transcript which we will send to you as soon as possible for you to correct if there is anything wrong in it.

The committee adjourned at 2.34 pm.