

Australian Food and Grocery Council welcomes ACCC court action against Coles

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The Australian Food and Grocery Council says testing allegations about the mistreatment of suppliers by Coles is the best way to ensure a competitive market and fair deals for consumers.



The Australian Competition and Consumer Commission (ACCC) has accused Coles of engaging in "unconscionable conduct" in breach of the Australian Consumer Law.

Among the most serious allegations are that Coles used undue pressure and commercial threats to obtain payments from five suppliers when Coles lost money on their products for reasons such as markdowns or damage.

"What we're alleging is that Coles used its superior bargaining position to demand money off its suppliers, money that it knew or should have known it didn't have a right to, that it used undue process pressure to get the money," ACCC chairman Rod Sims said.

Coles faces penalties of more than \$1 million for each breach.

Gary Dawson from the Australian Food and Grocery Council (AFGC) said it was time allegations that had been swirling around for years were "properly tested".

"Over recent years, there have been widespread reports of these sorts of practices being deployed by the major supermarkets to boost their bottom line at the expense of their suppliers," Mr Dawson told the ABC.

"So it's very important these practices be tested in court, these allegations be tested thoroughly because it's in everyone's interests, including consumers, that there be a fair and competitive market.

"There's no surprise here for anyone who's involved in the food and grocery space, the key reason why these sorts of practices are covered by the proposed industry code of conduct is that they've been popping up and reported regularly over the last few years.

"Importantly, when you get practices like retrospective demands for payments for all sorts of things with dubious justification, it does have a chilling effect on investment, on confidence. It erodes competitiveness and ultimately that flows through to less choice for consumers.

"So it is an important competition issue being tested here, so we welcome it."
Legal action to be watched closely

Sally Scott, a partner and commercial lawyer with Hall and Wilcox, which acts for Woolworths in personal injury claims said the case was important for a variety of reasons.

"For Coles it's important because it goes to the heart of how they do business with their suppliers and it will be important for their ongoing dealings with suppliers and how they can interact with them," Ms Scott told the ABC.

"It's also important for Coles because it has the potential for really significant penalties, we're talking about \$1.1 million per offence. We've got five suppliers so there's the potential for at least \$5.5 million in penalties and potentially more.

"A whole range of other businesses and suppliers come across similar issues, not only with the supermarket chains but also in their dealings with other businesses. So a whole range of small businesses and suppliers will be looking at this case.

"It's an area of law that is quite undefined, so lawyers would definitely be on the lookout for this case and hoping that the courts will give some better guidance as to how to interpret the legislative provisions of unconscionable conduct."

Ms Scott said it was likely to be a protracted court battle.

"It's likely to take several years, this is such a significant case for both the ACCC and the supermarkets, Coles in this situation," she said.

"If either side goes down, they're going to appeal, they're going to appeal all the way to the High Court."

Court documents lodged by the ACCC refer to "profit day" or "perfect profit day" each calendar year when managers were under pressure to demand payments from suppliers to increase the supermarket's profits.

Coles said the discussions around profit day were aimed at improving the profitability of the products.

"Products with poor sales performance limit Coles's ability to deliver value to customers," it said in a statement.

"The failure of suppliers to deliver agreed quantities of stock at agreed times, contrary to the terms of their contracts with Coles, results in significant shortages of stock in store. Empty shelves are a major source of customer frustration."

Coles said the individual communications were part of ongoing commercial negotiations with suppliers in the lead up to Christmas 2011.

It said the communications were normal topics for business discussions between grocery suppliers and retailers.

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Former Coles MD responsible, Ian McLeod

<http://www.abc.net.au/news/2014-10-17/grocery-lobby-welcomes-acc-court-action/5820072>

Jungle Drum Prose/Poetry. <http://jungledrum.lingama.net/news/story-1315.html>