

ACCC Successful in Case Against Safeway.

Price fixing and misuse of market power in bread market.

A penalty of \$8.9 million has been imposed on Australian Safeway Stores Pty Ltd for fixing the price of bread and misusing its market power in a number of instances.



The Full Court unanimously agreed that the Australian Competition and Consumer Commission had established that Safeway had engaged in price-fixing of bread to be sold at the Tip Top bakery store located in Preston Market. The majority of the court found that Safeway had misused its market power in four of nine incidents pleaded.

The penalties imposed on Safeway were:

- \$900,000 for the pricing fixing at Preston Market
- \$2.1 million for the misuse of market power in the Frankston incident
- \$1.9 million for the misuse of market power in the Cheltenham incident
- \$2.1 million for the misuse of market power in the Vermont incident
- \$1.9 million for the misuse of market power in the Albury (May 1995) incident

The court also declared that Mr Mark Jones, the bread category manager at the time, was knowingly concerned in the price fixing arrangement between Safeway and Tip Top in relation to the price of bread at Preston Market. The court ordered Mr Jones pay a penalty of \$50,000.

The allegations of misuse of market power concerned the supply of bread by Tip Top, Buttercup and Sunicrust Bakeries to retailers who discounted the price of bread. The ACCC alleged that Safeway took action against each of the bread manufacturers to induce them, or attempt to induce them, to take action to have the discounting cease.

It was alleged that Safeway refused to accept further supplies of bread from a baker where the baker was supplying retailers who were discounting the price of bread. The space normally occupied by the affected baker being filled with another baker's product. The ACCC alleged that Safeway recommenced purchasing bread from the manufacturer concerned once the discounter ceased discounting.

In handing down the penalties Justice Goldberg said: "Conduct in contravention of s46 is regarded by the [Trade Practices] Act as inherently anti-competitive. This is supported by the fact that such conduct cannot be authorised under the Act".

Justice Goldberg also stated that in determining an appropriate penalty he had taken account that: "Safeway's conduct in breaching s46 was deliberately calculated to restrict competitive conduct".

He further noted: "that the penalties imposed on Safeway ought to be substantial and reflective of the need, in particular, for general deterrence".

ACCC Chairman, Mr Graeme Samuel, pictured left, said "the penalties imposed make it clear that businesses which possess market power need to be careful about the way in which they go about their activities".

The handing down of penalties by the Federal Court marked the conclusion of a lengthy legal process that began with the instituting of proceedings by the ACCC in the Federal Court on 23 December 1996.

"While this matter was vigorously contested by Safeway throughout the entire proceedings, the ACCC remained of the view that Safeway had engaged in conduct in breach of the Trade Practices Act. The ACCC's decision to pursue the matter has been vindicated.

"This case demonstrates the ACCC's resolve to pursue difficult, hard-fought litigation through to a conclusion", Mr Samuel said.



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- **Responsible Service of Alcohol (on behalf of Liquor Licensing Victoria)**
- **Food Safety Supervisor**
- **Apply Food Safety Practices (WRRLP.6C)**
- **Monitor Food Safety Plan (WRRLP.7C)**
- **Occupational Health and Safety**

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