

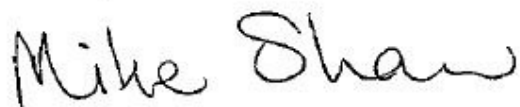


*Submission to*  
**ACCC inquiry into grocery pricing**

*March 2008*

## **1 The Victorian Farmers Federation Chicken Meat Group**

The VFF Chicken Meat Group represents 185 chicken growers in Victoria (around 90 per cent of the Victorian industry), These members produce 28 per cent of Australia's chicken meat and work as part of an industry that employs 5,000 people.



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## **2 Background**

There are five chicken meat processors currently operating in Victoria: Inghams Enterprises, Bartter Enterprises, Hazeldene Chicken Farm, La Ionica and Baiada Poultry. In general terms, the broiler chicken industry operates on the basis that day old chicks are delivered to contracted growers who raise the chicks to the stage when the processor considers that they are suitable for collection, processing and sale. The batch rate is a calculation of the number of batches of chicks placed per annum with the growers.

The processors own the chickens throughout and supply feed and medication to the growers at the processor's expense. Growers are paid a growing fee per bird. Each group of growers contracted to a particular processor is known in the industry as that processor's grower group ie. the Baiada Growers.

## **3 The Regulated Broiler Chicken Industry**

From the 1970's until 2001, the broiler chicken industry in Victoria was regulated under the Broiler Chicken Industry Act 1978 (Vic) and the Broiler Chicken Industry Regulations 1992 ("the Regulated System").

Under the Regulated System, a statutory committee, the Victorian Broiler Industry Negotiating Committee ("VBINC"), was established. The VBINC comprised grower and processor representatives and independent members. Amongst other things, the VBINC had power to fix a standard fee for broiler chickens which was to be paid by all processors to their growers, subject to variations determined by the VBINC.

Under the Regulated System, processors and growers were required to enter into contracts which contained terms and conditions prescribed by the Regulations. The contract could also contain other terms and conditions provided they were not inconsistent.

In 1999, the Act was reviewed on behalf of the Victorian Government. Following that review, the Victorian Government decided that the Regulated System imposed costs on the community which were likely to exceed the benefits and the system has been mothballed.

Following the review, the VBINC continued to meet whilst the broiler chicken industry underwent further review and lobbying. For example, in about December 2000 the VBINC determined a standard price for contracts under the Act which price was applicable to 30 June 2001.

In June 2001, the VBINC met for the last time and passed a resolution fixing the standard fee per bird for the duration of all existing contracts. The resolution also purported to extend to 30 June 2002 any contracts expiring before that date, and adverted to negotiations by growers with processors for new contracts.

## **4 ACCC authorisations**

On or about 28 June 2001 the Australian Competition and Consumer Commission ("ACCC") on the application of Marven Poultry and the other processors granted authorisation A90750 to allow growers to form processor negotiating groups to collectively negotiate standard growing agreements with their processor and deal collectively with their processor within a Code of Conduct ("Interim authorisation").

Whilst the Act exists, the Regulations containing the prescribed terms and conditions have sunsetted: Subordinate Legislation Act 1994 (Vic), section 5.

## **5 Negotiations following deregulation**

By about late 2002, the broiler chicken industry in Victoria had moved from the Regulated System to a deregulated industry. Following the abandonment of the Regulated System, it was common ground between the processors and the grower groups that new contracts needed to be negotiated.

Generally chicken growers have found the negotiations with processors extremely difficult. Under the deregulated system, there is no VBINC to fix fees periodically, and no contract in place with fee adjustment mechanisms. Consequently, there is no incentive for processors to reach agreement on the terms of new contracts. Processors have therefore procrastinated in contract negotiations and have been able to delay fee increases for protracted periods.

There is no incentive for processors to reach agreement with growers because there is no VBINC to periodically fix fees and no contract in place with fee review mechanisms. The commercial difficulty this creates for growers is often further compounded by processors refusal to allow the growers to transfer to other processors.

There is an "understanding" in the industry that processors do not compete with each other for growers and a processor will not touch a grower who is growing for another processor unless the other processor does not want the grower. As a matter of commercial reality, processors do not compete with each other for growers and a processor will not touch a grower who is growing for another processor unless the other processor does not want the grower.

The inference that may be drawn from this "understanding" is that processors do not wish to give growers any bargaining power. Whilst there have been isolated instances of growers changing to other processors, the practical experience is that growers are incapable of transferring to another processor. The experience has been that offers by growers to provide their services to other processors are declined without any or any proper explanation.

## **6 Taking Advantage of Substantial Market Power**

The market for the provision of chicken growing services to chicken processors in Victoria extends from the Mornington Peninsula to Geelong approximately and to Nagambie approximately ("the Market").

The Regulated System which previously operated has resulted in a market structure in which particular growers are assigned to particular processors, such that a grower who is associated with a particular processor is unable, in a practical sense, to grow chicks for any other processor. The processor thus represents the only entity for whom the grower can grow chickens. The processor thus has overwhelming control over the grower's livelihood.

Processors have therefore and at all material times had a substantial degree of power in the Market.

By reason of the matters referred to above, processors have taken advantage of their substantial degree of power in the Market for the purpose of deterring or preventing growers from engaging in competitive conduct in the Market.

## **7 Recommendations to improve competition and market power in the industry**

### **7.1 Potential changes to the Trade Practices Act (TPA)**

The detail of the Trade Practices Act 1975 (TPA) has a significant impact on the level of market power Australian chicken growers carry in the marketplace.

Relatively minor amendments to specific areas of the TPA (e.g. authorisation, notification, unconscionable conduct and collusion) could have very significant benefits to farmers by improving trading conditions, boosting market power and avoiding exploitation.

### *7.1.1. Collective Boycott Provisions*

As discussed above, Victorian chicken growers have been granted authorisation to collectively bargain however have been denied collectively boycott provisions. This situation is completely unworkable for growers because although they can collectively negotiate prices and conditions, they cannot collectively refuse to offer their product/services if these prices and conditions are not met.

### *7.1.2. The Public Benefit Test*

The current public benefit test which is used by the Australian Competition and Consumer Commission (ACCC) and the Courts to assess the merits or illegality of business actions in regard to their effects on competition takes a very narrow view of benefit. Essentially a public benefit is based on the price and choice a consumers will have, and how this price and choice may or may not be affected by a business/es conduct.

At present the provisions for the public benefit test do not recognise the benefits of preventing exploitation as a factor to be considered. It would seem logical that avoiding exploitation of suppliers is of benefit to the public in the long term and therefore should be considered in these provisions.

Failure in the public benefit test is often the reason why requests for authorisation to collectively bargain (and importantly to collectively boycott) are not approved.

### *7.1.3. Notification Provisions*

At present the notification provisions only apply to a defined group of people, at a particular point in time. Broadening the scope of the notification provisions to recognise a group of farmers (including future members) would make notification more viable for farmer groups.

## **7.2 Investigation of chicken processing companies**

The ACCC should use its powers under the inquiry into grocery pricing, to question chicken processing companies about their potentially anti-competitive business practices, and exploitation of growers.

The ACCC should seek to gain further information about possible collusive agreements between processing companies, by requiring company representatives to answer questions under oath.