Misuse of market Power

In Australia, some 6000 dairy farmers, supply an oligopoly of milk processors and supermarkets, highlighting the lack of bargaining position that farmers are in. This is further exacerbated by exclusivity of the take or leave milk supply agreements, which means the farmers do not stand a chance of a "**fair go**". **Creeping acquisitions** and **mergers** have led Australia to having the most concentrated

1. liquid milk processing sector (eg Lion was allowed to purchase Dairyfarmers) and
2. supermarket sector (eg Coles bought BiLo, Woolworth purchased Franklins) in the world.

How these creeping acquisitions were approved by the ACCC, to allow 2 supermarkets to now control approximately 80 % of the supermarket sector, clearly a poor decision, as it is not in the best interest of competition in the longer term has created a massive imbalance in market power.

There are systemic instances of market power being misused in the Australia economy. The international company **Lactalis (Parmalat)**, dropped their price in NSW because Murray Goulburn did, and have subsequently dropped the price further in January 2017, despite a majority of their milk being used domestically and a resurgence in world export price. Last may with 3 months to go in the financial year, Murray Goulburn and Fonterra dropped prices to reflect export prices, they also introduced a retrospective clawback to get some money back they already paid to their dairy farmers for past 9 months, as loan to be paid back over 3 years. In addition, Murray Goulburn also dropped their price in NSW even though all of the milk is used for liquid milk market, either direct to Coles or indirectly to other processors such as Lactalis. **Coles** in 2011 (**fined $10 million)** have been found to be engaged **unconscionable conduc**t, by implement programs such as "Active Retail Collaboration" which required rebates to be paid by suppliers with a script threatening commercial consequence to ensure the suppliers complied. What is more incomprehensible, is Woolworth was cleared of any wrong doing in the "Mind the Gap" case, as it was found to be common practice for suppliers to be asked to make payments ranging from $4291 to 1.4 million each, to fill Woolworths gross profit shortfall. This decision is grossly irrational, dairy farmers cannot demand money from processors or supermarkets to fill their profit shortfalls. Most dairy farmers in southern Australia this year are getting up at **5:00 am every day**, to supply milk and dairy products for Australian consumers and are predicted to do it for **"nothing",** as the milk price they are receiving is below the cost of production leading them to making a financial loss and further into debt. This does however, highlight the current legislation the ACCC is governed by, is ineffective and outdated as was never deigned to deal with massive international conglomerates and oligopolies with 80% of the market. Considering the **ACCC has been complicit in the increased concentration of the supermarket and liquid milk processing sectors, they should be front and centre in correcting the distorted market we are now left with**.

Solutions

1. To **restore competition in Australia**, forced divesture where a player has more than 25% of each market, i.e. in groceries or fresh food or clothing or hardware or alcohol or hotels or poker machines, etc. To maintain competition in banking, we have the **four pillars of banking** policy, and this has led to Australia major banks being the most profitable in the developed world. Consequently, forcing the supermarkets to divest will improve the competitiveness of the smaller players, so we have a fairer and more equitable supermarket sector for consumers in the long term. Microsoft was forced to divest part of its business in the united states due to its dominant market power.

2. **Enforceable fines** which reflect profitability of the supermarkets, not the pittance they are currently paying for breaches. The supermarkets should be forced to pay 10% of their profits for significant and widespread breaches, and **individuals executives and company directors** who are responsible for these breaches be fined **25% of their salary** income **100% bonuses**.

3. **Increased legislative powers to the ACCC**. Introduce strong legislation that addresses the market failure in supermarket and liquid milk processing sector and also addresses the market dominance of the of supermarket duopoly. **Implement all recommendations, of the Harper Competition review in full** and **Competition and Consumer Amendment (Misuse of Market Power) Bill 2014**. Draft legislation that protects suppliers from delisting or range reviews for 5 years, if they appear in court to provide testimony against the supermarkets for breaches to competition policy. This will put less pressure on suppliers to come forward, for fear of losing contracts, delisting products etc., which has the potential to bankrupt the suppliers. Most agricultural business have assets in the millions, although indebted to banks, are family operated for many years. I am a fifth-generation dairy farmer, and don't want to be the one that loses the farm because I lost a contract and was forced out of business because i had no income and no one to

supply, like the 5th generation dairy farmers in Western Australia. In fact, many suppliers and even large ones have already gone into receivership eg CRF, Rosella as result of the supermarkets.

4. A **Mandatory Code of Conduct**, like the United Kingdom. The United Kingdom has implemented the legislation for a mandatory code of conduct because of market power of supermarkets, this is despite there being many more players and less concentrated supermarket sector in the United Kingdom.

Measures of success

When farmers, suppliers and other small shop owners make similar return on assets to the supermarket giants (farmers are recognised and remunerated for their hard work like the supermarket executives), this would be a **win/win** result and demonstrate a correctly functioning market. The current market is a **win/lose** situation, where the supermarkets make massive profits and suppliers and farmers profits are massively decreased.

We as farmers are not asking for handouts, but regulations that place farmers of all persuasions supplying the processors and supermarkets and small shop owners on **level playing field**, not the **distorted market situation which we are now faced with**, where the supermarkets and milk processors determine the price and supply conditions (milk supply agreements).

Dairy Case study

New Zealand is recognised as one of the cheapest places to produce milk, yet the home brand milk at Countdown stores (Woolworths owned supermarkets in NZ) is **not** selling for **$1 L, but 2.35 L**. By having a sustainable milk price in NZ their dairy industry is rapidly growing while Australia's has declined. The NZ government is very supportive of their dairy industry. The $1/L for milk has devastated the dairy industry in NSW, Qld WA in particular, by eroding every single dairy farmers profitability and sustainability and in the process has forced many dairy farmers out of business and many more are barely holding on. This is just so that the supermarkets can get a gimmick, to use as a loss leader to massively increase their own profits in recent years, where is the equity and fairness? In addition, to negate the negative publicity about the effect of $1 /L on decreasing the dairy farmers milk price. Coles engaged in misleading conduct by distributing via social media an animation suggesting that farmers received a higher farm-gate price after the milk wars had started. Eventually the ACCC forced Coles to remove it, but the damage of misinformation was already done, consumers did not know what to think, as the corrective measures were far less well distributed than the misleading animation.