QUEENSLAND FARMERS' FEDERATION
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Submission

25 September 2020

Director
Perishable agricultural goods inquiry
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Via email: aginquiry@accc.gov.au

Dear Sir/Madam

Re: ACCC perishable agricultural goods inquiry

The Queensland Farmers' Federation (QFF) is the united voice of intensive and irrigated agriculture in Queensland. It is a federation that represents the interests of 21 peak state and national agriculture industry organisations which, in turn, collectively represent approximately 14,000 farmers across the food, fibre and foliage industries. QFF engages in a broad range of economic, social, environmental and regional issues of strategic importance to the productivity, sustainability and growth of the agricultural sector. QFF's mission is to secure a strong and sustainable future for Queensland farmers by representing the common interests of our member organisations:

- CANEGROWERS
- Cotton Australia
- Growcom
- Nursery & Garden Industry Queensland (NGIQ)
- Queensland Chicken Growers Association (QCGA)
- Queensland Dairyfarmers' Organisation (QDO)
- Australian Cane Farmers Association (ACFA)
- Queensland United Egg Producers (QUEP)
- Turf Queensland
- Queensland Chicken Meat Council (QCMC)
- Bundaberg Regional Irrigators Group (BRIG)
- Burdekin River Irrigation Area Irrigators Ltd (BRIA)
- Central Downs Irrigators Ltd (CDIL)
- Fairbairn Irrigation Network Ltd
- Mallawa Irrigation Ltd
- Pioneer Valley Water Cooperative Ltd (PV Water)
- Theodore Water Pty Ltd
- Eton Irrigation Scheme Ltd
- Pork Queensland Inc
- Tropical Carbon Farming Innovation Hub
- Lockyer Water Users Forum (LWUF).

QFF welcomes the opportunity to provide comment to the Australian Competition and Consumer Commission (ACCC) regarding its inquiry into bargaining power in supply chains for perishable agricultural products in Australia. We provide this submission without prejudice to any additional submission from our members or individual farmers.

Background

Over the past 30 years, the environment in which farmers and the broader agribusiness sector operates has experienced significant change. The deregulation of markets, privatisation of infrastructure and services, and the concentration and globalisation at both ends of the farm business (i.e. input suppliers and commodity markets), intended to ensure that consumers receive the full benefit of vigorous competition between businesses to deliver goods and services, have made running a farming enterprise much more complex.

In some agricultural industries, the trend of greater consolidation in pre- and post-farm gate markets has negated some of the benefits expected from the years of competition reforms. While it has delivered lower prices for consumers, the unintended consequence of consolidation is that the benefits of competition are lost, challenging the long-term profitability of some farm businesses. As input costs have increased, profit margins have reduced which has led to less investment in innovation which in turn slows productivity growth within the sector. Therefore, Australian consumer laws and industry codes have an important role to play in balancing competition measures and ensuring that market power and manipulation does not further add to the profitability and competitiveness challenges faced by the sector.

QFF understands that the ACCC is commencing a three-month inquiry into bargaining power within supply chains for perishable agricultural products in Australia. The organisation appreciates the opportunity to identify and address how imbalances in these relationships can adversely impact the efficient operation of agricultural markets, and the ineffectiveness of existing market structures and regulations in delivering efficient and equitable outcomes.

Horticulture

Following the release of the Hilmer Review in 1993 which became Australia's National Competition Policy, market regulations that were perceived to hinder competition were removed in the belief this would stimulate innovation and enhance economic productivity. As a result, the policy pendulum governing the horticulture industry swung from a relatively heavily regulated market to become one of the least upon their repeal.

With industry concerns regarding the failure of the remaining relevant regulation to maintain fair and ethical practices in a free market environment driven by unconstrained competition, a new Horticulture Code of Conduct was enacted and came into force on 1 April 2018, replacing the old Horticulture Code established by the Trade Practices (Horticulture Code of Conduct) Regulations 2006. The Code aims to improve the clarity and transparency of trading arrangements between growers and traders in the horticulture sector. However, the industry continues to experience ongoing issues as a result of power imbalances between growers selling their produce through an agent or to a merchant.

Pursuant to the Horticulture Code of Conduct, growers and traders must not trade in horticulture produce without a written horticulture produce agreement. This agreement must specify among other things; any requirements for the delivery of the produce, what circumstances under which the trader may reject produce, any quantity and quality requirements, if a trader intends to pool produce, the price of the produce and payment timeframes, and the process for varying or terminating the agreement.

However, large retailers can use their market power to dictate the terms of these agreements to growers and merely codify a system of oppression that forces them to accept lower prices or prevents them from seeking new markets. Furthermore, without a government supported, independent market information service, growers are unable to make informed decisions about their business operations including where to send their produce and pricing. Without a service that works in their best interests they must rely on agents and merchants trading in good faith which is not always a reality.

Growers in the horticulture industry are price takers; with the price of critical input costs including energy, water and labour rising while profit margins decrease. Many are struggling to remain productive, particularly those without the ability to achieve economies of scale. Unable to remain resilient to these pressures, growers cannot expand their businesses, and without working capital and the innovation so critical to the success of a competitive market, failure is inevitable.

A culture of silence exists within the horticulture industry which further exacerbates the negative effects of these power imbalances. Many growers are reluctant to complain to the ACCC regarding alleged breaches of the Horticulture Code for fear that they will in turn be singled out by disgruntled traders and subjected to commercial repercussions. Furthermore, while a dispute resolution option exists within the Horticulture Code, intended to resolve any disagreements between growers and traders, many disputes do not reach the Australian Small Business and Family Enterprise Ombudsman who is appointed to provide mediation services. Whether for the lack of awareness of this available process or concerns regarding any impacts to their business as a result, growers are not accessing these services and exercising the rights they have been afforded.

Dairy

The Australian dairy industry has operated in a deregulated environment after support for manufacturing milk prices through the Domestic Market Support scheme ceased at a federal level and regulated sourcing and pricing of drinking milk was discontinued across the states. International prices are now the major factor in determining the price received by farmers for their milk, which is low by world standards and therefore must run very efficient production systems. Multiple issues have been identified across the dairy supply chain since deregulation culminating in the implementation of the Dairy Industry Code of Conduct, which came into effect on 1 January 2020. The Code regulates the conduct of farmers and milk processors in their dealings with one another and applies to retailers, such as supermarkets, but only to the extent that they purchase milk directly from farmers.

In 2011, major retailers reduced the price of private label fresh milk to $1 per litre which resulted in the immediate devaluation of Australia’s dairy industry – disproportionately affecting Queensland’s dairy farmers as all dairy production in the state goes directly to providing fresh white milk. As a result, processors were forced to compete for lucrative contracts supplying private label milk, and in attempt to minimise their own losses, they applied price pressure on their dairy farmer suppliers, thereby impacting the whole supply chain. With reduced profits due to processors dictating terms and farmers fearing reprisal if they refuse to comply, and the price of milk production increasing due to high input costs, a significant number of Queensland dairy farms have left the industry. This number will continue to decrease until the production of milk in volumes capable of sustaining domestic supply reaches a critical point, with the demand for dairy products in Queensland already exceeding local production.

In addition to a severe imbalance of power between processors and dairy farmers, issues also exist between processors and retailers. Given there are only three major processors in Queensland, which are each aligned to a major retailer, retailers have taken advantage of this power imbalance to prescribe the processors' product facing on shelves if they refuse to negotiate on the price for the privilege of processing for the retailers.

Additionally, the two-tiered pricing structure that exists within the fresh white milk market has resulted in the erosion of brand differentiation as perceived by consumers. Already a commodity product with minimal differentiation, processors find it difficult to negotiate and find balance with retailers on the price for their branded products which pay more sustainable and fairer prices to farmers. Where the price variation too large, branded products suffer as consumers fail to see a significant product differentiation in comparison to private label milk.

Despite the introduction of the Dairy Code of Conduct, there is still significant work to be done to remedy the excessive control, unrealistic demands and corporate bulling exerted by retailers on processors and farmer suppliers. Without a sustainable level of profitability across all levels of the supply chain, volume will continue to decline across all regions in Australia resulting in market failure.

Eggs

Irregularities and inefficiencies produced by regulatory arrangements led to the deregulation of the Australian egg industry and the privatisation of marketing and research and development bodies. The compliance framework governing the industry, Egg Standards of Australia, is a voluntary quality assurance program for egg producers and processors. It is designed meet the needs of regulators, retailers, farmers and egg buyers in areas including hen welfare, egg quality, biosecurity, food safety, work health and safety and environmental management. With its two distinct markets, egg farmers sell to retailers or through the box market to cafes and restaurants, aged homes and fruit shops. Farmers utilise cage, barn-laid and free-range production systems, the latter of which is overseen by the ACCC's 'A guide for egg producers'.

In the 2018-19 financial year, Queensland egg farmers produced 25 per cent of the 6.22 billion eggs produced nationwide. With contracts and supply arrangements varying across different retailers and markets, and farmers often subject to confidentiality arrangements, it can be difficult to specify where any adverse effects of competition exist and how they impact the supply chain. However, egg producers face a clear imbalance of power with retailers setting animal welfare and egg policy for the industry.

Egg farmers face significant pressure to phase out the caged egg production system to meet a perceived consumer expectation, despite caged farms meeting all requirements under the industry standard. Instead of allowing this choice of egg purchase to be decided by the consumer and market driven as intended by agricultural competition policy, major retailers have taken it upon themselves to set this expectation. This is despite consumers supporting this more affordable product at the checkout. Moreover, the onus to adapt to a new production system would be borne by egg farmers, further disadvantaging them. Should retailers no longer sell cage eggs, a significant shortage of eggs is predicted.

Biosecurity is a particularly important issue for the industry, with diseases such as the recent outbreak of Avian Influenza in Victoria causing instability for farmers' risk profile should their farm be impacted by disease. The costs associated with a biosecurity response under the Emergency Animal Disease Response Agreement are shared between the industry and governments. However, retailers and animal welfare organisations, who are classed as stakeholders and contribute to setting consumer expectations, do not shoulder the burden of the cost for these efforts.

Chicken Meat

The chicken meat industry is predominantly vertically integrated. This means that individual companies own almost all aspects of chicken production – parent breeding farms, hatcheries, feed mills, processing plants and, sometimes, meat chicken rearing farms. While the chicken industry does not operate though such a complex supply chain as other agriculture industries, this retailer, processor, and grower structure does give rise to imbalances of power that can be detrimental to its productivity and growth.

Chicken meat processors utilise standard form contracts when negotiating with growers because they wish to engage with a group rather than one on one. However, while there is a degree of equivalence across most growers within the industry, there is enough differentiation to create individuality. Therefore, processors use this as leverage to set a higher standard than is required by the industry and gain agreement from other farmers for commercial arrangements that may cause loss, for example making capital upgrades at the growers' expense.

The ACCC has authorised Queensland chicken meat growers to collectively bargain with processors. These arrangements are intended to lead to transaction cost savings and provide growers with the opportunity to have effective input into the terms and conditions of their contracts with chicken meat processors. The processors, however, are not required to solely negotiate with the grower group. In the past, processors have exploited their market power in these circumstances by negotiating separate agreements with individual farm businesses when contract negotiations become difficult. This undermines the strength of a united negotiation position and reduces the effectiveness of the collective bargaining authorisation.

The chicken meat industry is subject to multiple animal welfare standards which outline production practices and animal welfare requirements that aim to meet the birds' behavioural and physiological needs. These comprehensive frameworks, implemented by the RSPCA, Animal Health Australia, Free Range Egg and Poultry Australia, McDonald's Australia and KFC among others are designed to assist the industry to continually improve and demonstrate good animal welfare outcomes. However, while this creates market opportunities for growers it also creates greater compliance and administration demands if they are supplying to more than one market, as separate guidelines must be followed and reported against. For some businesses, this is unnecessarily complicated and costly, and it is not sufficiently rewarded through the prices that growers receive. The duplication of standards and the associated costs remain a barrier to the increased productivity and capacity of the industry.

Increasingly, markets are placing value in the true cost of producing items being reflected in the price that consumers pay for them. However, chicken meat growers, are not in a position to pass on the costs of producing chicken meat due to retailers refusing to reflect the high costs of the industry's critical inputs. And yet, when retailers reduce prices and their sales increase, these profits are not passed down the supply chain. This power imbalance allows retailers to set the price for the product and affects processors in particular, who must cover the grow fees and cost of grain for the growers. This can result in the provision of poorer quality feed which thereby affects the welfare and weight of the birds. Moreover, as growers are responsible for these factors, processors can penalise growers for failing to uphold their contractual obligations.

Conclusion

While the Australian agriculture sector has continued to grow and consumers have benefitted from cheaper, safer and plentiful food, fibre and foliage, power imbalances across various industries and supply chains have resulted in reduced innovation, productivity and growth. With increased competition, consolidation trends are heading towards a point that the benefits are lost and addressing this issue is crucial for the future of the sector.

It is necessary to balance competition measures with the value distributed to all participants within the agriculture sector's supply chains and maintain efficiency gains against the costs of consolidation. While competition is central to the operation of agricultural supply chains, it is clear markets do not always work well. Addressing this is a fundamental for the delivering of functioning agricultural markets that provide fair outcomes for all participants.

Yours sincerely

Dr Georgina Davis
Chief Executive Officer