

31 October 2020

Australian Competition and Consumer Commission

By email: waterinquiry@accg.gov.au

Dear Sir / Madam

RESPONSE TO ACCC INTERIM REPORT - INQUIRY INTO WATER MARKETS IN THE MURRAY-DARLING BASIN

We refer to the above matter and advise that this correspondence represents the response of Wex Water Pty Ltd ("Waterexchange") to the Murray-Darling Basin water markets inquiry Interim Report dated 20 June 2020. In respect of our feedback we submit the following:

1) General Comments on the Inquiry and Interim Report

The ACCC should be commended for producing a comprehensive interim report which provides a thorough overview of the Murray Darling water markets and the factors which influence them. The detailed report highlights the complexities associated with multiple water products, in multiple geographic locations which are governed by multiple regulators overlaid with the competing interests of buyers and sellers.

We note that ACCC consultation has included 10 public forums and 130 written submissions (of which only approximately 80 were from irrigators). No doubt the ACCC has also received private representations from individual irrigators, most likely some of the larger corporates. The report also seems to rely upon two older surveys conducted by external entities. The restrictions associated COVID have understandably restricted further consultation activities.

In respect of justifying the case for substantial structural reform, we are concerned that the consultation undertaken by the ACCC to date has only captured views from a relatively narrow subset of stakeholders.

We estimate there are at least 10,000 individual irrigators who have transacted in the water markets over the past few years. It is our strong view that the silent majority of these irrigators are satisfied with the current operation of the water markets. In our experience most irrigators have a trusted relationship with their Water Broker and only have a need to buy or sell relatively few times in a given water year, for which the transaction(s) typically runs smoothly.

In this regard we note comments such as found on page 7:

“A serious additional consequence of these problems is that many water users do not trust that the markets and key institutions are fair or working to the benefit of water users, in particular irrigation farmers. Impediments to informed and confident trading by many irrigators caused by these problems is likely to impede investment that is important for efficient agricultural production.”

It is our view that statements such as this (including similar statements in the ACCC press release which accompanied the interim report) may not be justified or supported by qualitative data. Indeed, we believe most water users have an alternative view in respect of trust of the markets and are benefitting significantly from the current operation of the water markets.

As such we recommend the ACCC seek to consult with a wider subset of irrigators and in particular the large number of small to mid-size family operations who typically would not attend a public forum or submit a formal submission. This may further inform the ACCC’s view in respect of stakeholder’s desire for substantial structural change to the existing market settings.

Notwithstanding the above, we acknowledge there are improvements and enhancements which would benefit the markets, and in this spirit, we submit the following feedback for the ACCC’s consideration:

2) Conduct of market participants

We are supportive of additional regulation for water brokers. We have reviewed the information provided in respect of the three options identified by the ACCC and at this stage do not have a definitive view as to which option might be the best fit. We would hope that further detailed information and consultation with water brokers / exchanges would occur before a final recommendation is made.

We have concerns in respect of the Government licencing option and its ability to provide a basin wide regime across state boundaries at a reasonable cost.

We also have concerns that applying the financial regulation framework may not be fit for purpose as it is not specifically designed for trading of water rights and as such may be unnecessary complex. As a general principal, irrigators view water rights more as an agricultural product than a financial product. As such they see the services of water brokers as more akin to rural livestock and real estate agents rather than stockbrokers or financial advisers. Under this option we are advised that water exchange operators would require an Australian Market Licence and the requirements to obtain such a licence are still unknown at this stage.

Whichever option is recommended we believe it should contain mechanisms to deal with following areas which are the most in need of additional regulatory oversight:

- Management of customers funds – requirement for proper management of customers funds including regular independent audits;
- Conflict of interest management – full disclosure of to customers of all commissions in respect of a particular trade, prohibition of brokers trading on their own account for profit, restrictions on IIO’s being both a broker and an approval authority;
- Mandatory training – adequate training of staff to ensure a minimum level of competency;
- Capital adequacy – water broking / exchange business should have adequate capital to address trade execution errors as and when they arise (as opposed to an industry fidelity fund which has previously failed).

These requirements should be positive, ongoing obligations on water broking / exchange businesses with associated compliance checks in order to prevent issues, rather than relying on reactionary penalties after a problem has occurred. It is noted that most of the above areas are further detailed within the AWBA code of conduct which may be a good starting point for further discussion.

3) Improving trade processes and market transparency

The suggested practical changes to trade processing and the underpinning by clear and comprehensive mandates all seem sensible and worthwhile. However, we suggest improving the reporting of trades by IIO's should be made as soon as practicable.

In respect of digital technologies, we concur that a digital protocol to enhance interoperability between the various entities is the best option for the water markets. In this regard Waterexchange is already well advanced with existing digital interoperability in place with a number of IIO's and discussions underway with DELWP and others. This interoperability has provided benefits in respect of faster trade processing times together with live time reporting / approval of trades which has delivered a more seamless customer experience.

We question the need for another water market information platform. We note that BOM and Waterflow already exist and are providing this function. Should the suggested improvements in State water registers occur it will be water brokers and advisory firms in the private sector who will analyse this raw data and build on it to provide real, meaningful insights for customers. Another website simply publishing water market data would be of limited value to irrigators.

We believe a mandated centralised digital option is not suitable for the water markets for the following reasons:

- Buyers and sellers demand options and flexibility in terms of how they transact their water products. Many have developed their own discrete method of engaging in the markets which does not involve a centralised digital platform. Farmers often transact between themselves on a "contra" basis and some do not have the IT skills to execute on a digital platform;
- Presumably it would create either a Government or Private monopoly to operate the market which is anticompetitive and may stifle future market development and innovation;
- The foundations of water trade are rooted in State based legislation as such centralisation would require significant ongoing goodwill between the States and / or a referral of powers which seems unlikely;
- If the improvements to trade processing and information as contemplated are achieved many of the proposed benefits of a centralised option such as improved price discovery etc would no longer be relevant.

4) Improving market architecture

Reform in this area will need to be carefully planned and considered as changes to the underlying market architecture can lead to perverse outcomes on irrigators entitlement values and farming operations.

Throughout the past decade there has been many changes to various trading rules, some of which have been poorly executed and created unintended winners and losers. Examples include the abolition of the Vic 4% and 10% rules, NSW conversions of GS to HS entitlement, exchange rate trade, changes to interstate tagging arrangements, multiple changes to the Vic carryover system,

changes to how IVT openings are managed, introduction of the NSW usage fee and so on. Even more recently we note that there are proposed changes to Vic Goulburn IVT arrangements and salinity charges.

We believe irrigators are weary from a decade of water reform. Many stakeholders have already made significant water related investment decisions based on the existing market framework and further change is not a desirable outcome for continued confidence and investment.

Notwithstanding the above, of the reform options suggested by the ACCC we suggest removing entitlement tagging and alternative mechanisms for Water Authorities to manage IVT openings have merit. Reform to these areas could create a fairer and more equitable outcome for all irrigators and not just benefit a selected few.

5) Changes to market governance

To some extent this proposed area of reform is outside of our area of expertise. The willingness of States and other institutional authorities relinquishing powers to create a more harmonised governance structure is a question for them.

As per our opening comments in 1) we question if the case has been made for major structural reform. We implore the ACCC to consult further with the silent majority of stakeholders and not be overly influenced by a small minority who were excessively exposed to the allocation market in a severe drought and hence pursuing change for their own commercial benefit.

From a private business point of view, we have worked hard within the existing governance and market architecture framework to create a seamless, positive water market experience for customers. We are proud to have ongoing repeat customers in an ultra-competitive industry.

Should you require any additional information in respect of this feedback please contact the undersigned.

Yours sincerely



Todd Oakley

General Manager