



## **PROMOTION OF COMPETITION**

### **POLICY POSITION**

The NFF regards competition within the marketplace as a major driver of industry innovation, investment and international competitiveness. It is critical that competition laws are effective at maintaining and improving competition across the agricultural supply chain.

#### **Issue**

Agriculture relies upon open and transparent marketplaces that promote competition within agricultural supply chains, thus enabling farmers to get the best price for their produce. The farming sector is fragmented, made up of small to medium sized businesses in remote areas with limited access to market information. Fluctuations in input costs, limitations in infrastructure and the perishable nature of produce leave some farmers in an economically vulnerable position.

Consequently, there are imbalances between farmers and other players in the supply chain. This includes both upstream suppliers (such as telecommunications companies, energy networks, financiers and chemical and biotechnology companies) and downstream customers (including transport and logistics companies, food processors and retailers). Where anti-competitive conduct based on those imbalances occurs, it may be difficult to clearly distinguish them from legitimate business conduct. However, due to the nature of the markets, the conduct has a substantial impact on competition.

### **BACKGROUND**

Currently, the Competition and Consumer Act 2010 (CCA) does not provide sufficient protection against anti-competitive behaviour from firms with substantial market power. In contrast to jurisdictions such as the US and the EU, a lack of scale combined with less threat of sanction under Australian legislation means Australian farmers are more prone to anti-competitive behaviour.

In light of the need to stimulate productivity growth in the Australian economy, it is necessary to amend the CCA. To this end, the government commissioned an independent review of competition legislation, the Harper Review, in 2014. The review looked at competition policy across the economy and made wide-ranging recommendations, including changing section 46 to cover the effect of behaviour on competition in a market and covering 'concerted practices'. The Review also recommended that penalties for engaging in secondary boycotts be substantially increased.

NFF supported the vast majority of the review's recommendations. While section 46 has been amended, further changes are necessary, in accordance with the Harper Review's recommendations.

## **What the industry needs**

To ensure a fair, competitive and transparent marketplace, the NFF supports the following measures:

- Retain the 'effects test' in section 46 of the CCA which concentrates on the effect that particular conduct has on markets.
- Raise awareness about the ACCC Agricultural Enforcement and Engagement Unit and provide resources for small businesses to facilitate their engagement in the ACCC processes.
- Raise awareness about the advocacy and arbitration roles of the Australian Small Business and Family Enterprise Ombudsman.
- Amend the CCA to prohibit 'concerted practices' – the anti-competitive disclosure of pricing and other information.
- Align the penalties for engaging in secondary boycotts with other penalties in the CCA.