National Farmers Federation

COMPETITION POLICY

Policy Position

The National Farmers' Federation (NFF) supports highly competitive industries in Australia, especially along the agricultural supply chain.

The NFF regards competitive markets as a fundamental driver of industry efficiency, productivity, innovation, investment and international competitiveness. It is critical that competition laws effectively maintain and improve competition at all levels.

The NFF believes in free and fair markets which promote competition, price transparency, timely and appropriate information flows and do not allow supply chain participants to exercise undue market power.

Background

Agriculture relies upon open and transparent marketplaces that promote competition within agricultural supply chains, enabling farmers to access requisite inputs and sell their produce at a competitive price.

Food and fibre production is a highly competitive industry with one of the lowest rates of market concentration in Australia. However, the agricultural supply chain does not share this competitive structure, with significant market concentration along the supply chain.

The farming sector is generally made up of small to medium enterprises in regional and remote areas. These producers are sandwiched between highly concentrated input markets and highly concentrated output markets. This makes effective competition policy important for farmers to prevent exploitation by firms with significant market power.

The imbalance in the agricultural supply chain leaves farmers vulnerable to exploitation. Existing competition laws and regulations allow supermarkets, processors, input providers and other firms to leverage their market power to the detriment of farmers. Australian agriculture has little influence on the price of produce in the market. This leaves many farm businesses economically vulnerable. This vulnerability and the broader imbalance between farmers and other concentrated players in the supply chain is perpetuated by additional factors such as global supply disruptions, fluctuations in input costs, limitations in infrastructure, and the perishable nature of produce.

The size and power disparity between these supply chain actors and farm businesses creates significant bargaining power issues and empowers anti-competitive behaviour. For example, this often includes:

- Pricing and commercial terms that are not in keeping with those expected of competitive markets;
- Poor value-for-money for inputs and services provided to farmers; and
- Inappropriate apportionment of risk between farmers and monopoly/oligopoly/monopsony commercial partners.

Due to the nature of the supply chains, this conduct has a substantial impact on the profitability, resilience and viability of farm businesses, and competition in agricultural supply chains more broadly.

Agricultural supply chains require measures which increase price transparency, address information asymmetries, and enable information flow through to consumers. The NFF recognises that each agricultural industry and its supply chain experience competition in different ways and this requires diverse actions to prevent the exploitation of Australian farmers.

The issue

Current competition law has proven ineffective at ensuring competitive markets in Australia. Agricultural supply chains now operate across highly concentrated markets, have poor geographical distribution, and face ongoing use of unconscionable conduct.

Agricultural supply chains see farmers subject to practices that reduce their competitiveness, profitability, and long-term economic sustainability. In some cases, this leaves farmers unable to operate profitable businesses. These practices include:

- abuse of bargaining power imbalance;
- unfair contract terms; and
- commercial terms that transfer risks and responsibilities that should be held elsewhere.

The existing competition policy frameworks have failed to provide farmers with the requisite protections from unfair use of market power:

- Misuse of market power provisions are very consumer-centric and provide minimal protections to supply chain abuses;
- Fair trading provisions are equally focused on consumers; and
- Unconscionable conduct provisions are so narrowly defined to render them of little use for small to medium enterprises, such as farmers.

These issues have been compounded by the under-resourcing of the Australian Competition and Consumer Commission who are unable to investigate and prosecute the full extent of firms who break existing laws and regulations.

Existing competition issues continue to have an impact on investment in Australian farms, reducing long-term productivity and profitability. Individual producer uncertainty in relation to produce pricing and the placement of undue risk on their businesses has discouraged strategic capital investment.

Australian agricultural supply chains are also impacted by planning and zoning laws and regulations in each state and territory. This reduces the ability of new firms to enter the market and offer additional opportunity to purchase inputs and sell products. Increasing the ease of new firms entering the market will support competition in agricultural supply chains in addition to reform of competition and consumer legislation.

What the industry needs

Australia needs broad, economy wide competition reform to ensure long-term competitiveness and dynamism, especially in agricultural supply chains. To redress the lack of competition, price transparency and power imbalances in agricultural chains, the National Farmers' Federation recommends:

- An unfair business practice framework be implemented to outlaw such behaviour, above and beyond unfair contract terms.
- Agricultural supply chains with significant market concentration, such as poultry meat, be governed by mandatory codes of conduct restricting unfair and uncompetitive behaviours (including the potential to explore a broader code for perishable agricultural goods).
- Increased penalties for anti-competitive conduct, including the use of unfair contract terms.
- Increased awareness of the ACCC collective bargaining class exemption.
- Initiatives that increase competition and options to consumers, such as the right to repair for agricultural machinery, be prioritised in any government legislative agenda.
- All recommendations of the ACCC Perishable agricultural goods inquiry (November 2020) be implemented as a matter of urgency, including that:
    - The business-to-business unfair contract terms framework should be strengthened;
    - An economy-wide provision unfair trading practices be introduced; and
    - The Food and Grocery Code of Conduct be strengthened and made mandatory.
- Support for the ACCC reforms to merger and acquisition provisions requiring:
    - Formal notification of mergers to ACCC above a certain financial threshold and mergers need to wait for approval by ACCC before the transaction goes ahead;
    - A greater focus on the competition implications of proposed mergers including the structural conditions that are changed by the acquisition, significance of the assets being acquired to that market etc;
    - Change the evidentiary burden of proof to challenge a merger by changing provisions to state lessening of competition is 'likely' as opposed to 'on the balance of probabilities';
    - Where one of the merger parties has substantial market power, an acquisition will be deemed to substantially lessen competition where it entrenches, materially increases or materially extends that market power;

    - The competitive effects of other agreements entered into by merger parties can be considered together with the merger as part of the substantial lessening of competition assessment (look at more than just the merger);
    - a public consultations process whenever there is a proposed merger within a concentrated market; and
    - Require an analysis of company ownership as part of reviews into proposed mergers and acquisitions.
- Commitment to funding and expanding the resourcing of the ACCC Agriculture Unit indefinitely.
- A state-by-state review into planning and zoning laws that prevent new businesses from opening and providing new opportunities to purchase inputs and sell products.
- A nation-wide analysis on the barriers to entry faced by new firms in the broader agricultural supply chain.
- Outlaw 'open book pricing' where supermarkets, processors and other supply chain firms require farmers to show them their margins and set a price for goods based on this information.