National Farmers' Federation

Submission to the House Standing Committee on Economics

Inquiry into Economic Dynamism, Competition and Business Formation

11 April 2023

NFF Member Organisations

AGFORCE

ACGC Australian Chicken Growers' Council

Australian Dairy Farmers

Australian Forest Products Association

ALEC Australian Livestock Exporters Council

ALPA

Australian Organic

Australian Pork

AVA Australian Veterinary Association

Beechworth Honey

Canegrowers

CA Cattle Australia

Cotton Australia

farmers for climate action

Future Farmers Network

GICA Goat Industry Council of Australia

Grain Growers

National Farmers Federation Horticulture Council

KIAA

NSWIC New South Wales Irrigators' Council

nsw Farmers

Northern Territory Cattlemen's Assoc. N.T.C.A

The Pastoralists' Association of West Darling

Primary Employers Tasmania

ppsa Primary Producers SA

RGA Ricegrowers' Assoc. of Australia Inc.

Sheep Producers Australia

SoilsForLife

TFGA Tasmanian Farmers and Graziers Association

Victorian Farmers Federation

WAFarmers

Woolproducers Australia

The National Farmers' Federation (NFF) is the voice of Australian farmers.

The NFF was established in 1979 as the national peak body representing farmers and more broadly, agriculture across Australia. The NFF's membership comprises all of Australia's major agricultural commodities across the breadth and the length of the supply chain.

Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF represents Australian agriculture on national and foreign policy issues including workplace relations, trade, and natural resource management. Our members complement this work through the delivery of direct 'grass roots' member services as well as state-based policy and commodity-specific interests.

Statistics on Australian Agriculture

Australian agriculture makes an important contribution to Australia's social, economic, and environmental fabric.

Social >

In 2019-20, there are approximately 87,800 farm businesses in Australia, the vast majority of which are wholly Australian owned and operated.

Economic >

In 2019-20, the agricultural sector, at farm-gate, contributed 1.9 per cent to Australia's total Gross Domestic Product (GDP). The gross value of Australian farm production is forecast to reach $78 billion in 2021-2022.

Workplace >

In 2021, the agriculture, forestry and fishing sector employ approximately 313,700 people, including over 215,800 full time employees.

Seasonal conditions affect the sector's capacity to employ. Permanent employment is the main form of employment in the sector, but more than 26 per cent of the employed workforce is casual.

Environmental >

Australian farmers are environmental stewards, owning, managing, and caring for 49 per cent of Australia's land mass. Farmers are at the frontline of delivering environmental outcomes on behalf of the Australian community, with 7.79 million hectares of agricultural land set aside by Australian farmers purely for conservation/protection purposes.

In 1989, the National Farmers' Federation together with the Australian Conservation Foundation was pivotal in ensuring that the emerging Landcare movement became a national programme with bipartisan support.

Contents

EXECUTIVE SUMMARY 6

INTRODUCTION 7

THE EFFECT OF A DIVERSE AND DYNAMIC BUSINESS ENVIRONMENT ON PRODUCTIVITY, PRICES, AND BETTER-PAID JOBS AND OUR SUPPLY CHAIN RESILIENCE TO DISRUPTION 10

THE EXTENT TO WHICH ANTI-COMPETITIVE BEHAVIOUR AND CHANGES IN INDUSTRY STRUCTURES HAVE CONTRIBUTED TO RISING MARKET CONCENTRATION IN AUSTRALIA 13

CASE STUDY – AUSTRALIAN CHICKEN MEAT SUPPLY CHAIN 15

THE EXTENT TO WHICH ECONOMIC BARRIERS—SUCH AS REGULATORY COSTS AND BARRIERS TO FINANCE, INFRASTRUCTURE, SUPPLIERS, CUSTOMERS, AND WORKERS—CONTRIBUTE TO RISING MARKET CONCENTRATION AND SLOWING BUSINESS FORMATION RATES IN AUSTRALIA 17

PLANNING AND ZONING 17
SUPPLY CHAIN INFRASTRUCTURE 17
CONNECTIVITY 18

THE EXTENT TO WHICH BUSINESSES CONSOLIDATING THEIR MARKET POWER HAS UNDERMINED PRODUCTIVITY, STIFLED WAGES, MADE MARKETS MORE FRAGILE AND LED TO HIGHER MARK-UPS 20

MARKET PRICE TRANSPARENCY 20
REDUCED INVESTMENT IN PRODUCTIVITY ENHANCING TOOLS 22
LONG-TERM RESILIENCE OF THE AGRICULTURAL SUPPLY CHAIN 22
IMPACT OF NON-PRICE COMPONENTS ON PRODUCER RETURNS 23
ACCESS TO DISPUTE MECHANISMS 27
MANDATORY CODES OF CONDUCT 27
INCREASED RESOURCING OF THE ACCC 28
INTERNATIONAL MARKET ACCESS 29

Executive Summary

Competitive and dynamic industries are fundamental to the long-term prosperity of all Australians. Australian agriculture provides a key example of the role individual businesses can play to increase the economic dynamism and strength of local and national economies.

However, increased market concentration and the exploitation of market power is threatening the long-term viability of many farm businesses. This reduces their ability to invest in productivity enhancing assets, high paid jobs, or long-term business commitments.

The National Farmers' Federation believes there are significant opportunities to ensure Australia's economy is competitive and dynamic now and into the future. This includes through:

- Wholesale reform of Australia's existing competition law
- Increased access to dispute resolution provisions for unfair business practices and unconscionable conduct
- Agricultural supply chains with significant concentration, such as poultry meat, being governed by mandatory codes of conduct restricting unfair and uncompetitive behaviours (including the potential to explore a broader code for perishable agricultural goods).
- Increased resourcing of the ACCC
- Improved market transparency across supply chains
- Investigation and reform of the planning and zoning systems in Australia and the impact of regulation on new business creation
- Improved connectivity across regional Australia
- Improved supply chain infrastructure to reduce transport and logistics costs for farmers and consumers

Each of these actions will support the ongoing profitability of agricultural businesses and their contribution to the dynamism and productivity of regional economies.

Introduction

Competitive, well-functioning markets are a fundamental driver of the dynamism, efficiency, and productivity of the Australian economy, individual businesses, and industries. Ensuring the economy is competitive and dynamic is essential for Australia's long-term growth and prosperity. Within the broader economic discussion of competition and dynamism, agriculture provides a key example of opportunities and threats the Standing Committee on Economics should consider.

Australian agriculture is a key example of the role individual businesses can play in providing economic dynamism, investment, and secure jobs. Agriculture also demonstrates the ongoing threat and impact of decreased competition and increased market concentration in Australia's supply chains.

The growth of agriculture and supporting services in Australia has been driven by the ongoing need to increase the productivity, profitability, and efficiency of individual businesses. Australian agriculture is one of the most dynamic and competitive agricultural industries in the world, in part due to economic reforms of the 1980s and 1990s which removed price and output controls, dismantled centralised marketing schemes, removed tariffs for the import of agricultural inputs and provided new export markets for agricultural produce.[1] As a result of these reforms, Australian farmers have become more efficient, productive, sustainable, and internationally competitive.[2] It is because of this, Australian farmers have been able to take advantage of new economic opportunities, support economic dynamism, create new jobs and encourage business formation across the country.

However, Australian agriculture's ability to continue these gains is dampened by growing market concentration along the agricultural supply chain and the associated impact of reduced competition.[3,4] While the direct impacts differ between agricultural commodities, decreased competition in the agricultural supply chain risks reducing or delaying the long-term investment in productivity enhancing infrastructure, expansion of farm businesses, and implementation of new practices. While recent years have seen Australian farmers take advantage of favourable seasonal conditions and high global commodity prices, increased market concentration may result in lower

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[1] Berger-Thomas L., Breusch J. & Lilley L., 2018, Australia's experience with economic reform. *Treasury working paper*.
[2] ibid
[3] Australian Farm Institute 2020, *How the relative bargaining power of Australian agricultural value chain actors affects trading practices – and this the efficient operation of these markets.*
[4] Sorrentino, Alessandro, Carlo Russo, and Luca Cacchiarelli. 2018. "Market Power and Bargaining Power in the EU Food Supply Chain: The Role of Producer Organizations." New Medit: Mediterranean Journal of Economics, Agriculture and Environment 17(4):21–31.

returns to farmers then otherwise would occur with lower levels of market concentration in the supply chain.[5]

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. Australian agriculture is generally made up of many small to medium businesses based in regional and remote areas. These individual businesses are sandwiched between heavily concentrated input and output markets that influence the overall market conditions available to farmers. The abuse of market power by firms with significant market concentration is now impacting farmers' ability to increase their productivity, profitability and adopt new technologies that ultimately underpin ongoing business viability.

Agriculture offers significant long-term opportunity and benefits for the broad Australian economy, especially in regional areas. To ensure this contribution and the ongoing dynamism of farm businesses, Australia must address the significant competition issues that exist across the agricultural supply chain and the Australian economy more broadly.

The Australian agricultural supply chain has an uneven distribution of market concentration which threatens the economic conditions essential for dynamic, productive and profitable farms. Food and fibre production has one of the lowest rates of market concentration in the Australian economy but must operate between concentrated input and output markets.[6] This discrepancy in market concentration along the supply chain is open to abuse by firms that hold significant market power, often to the detriment of farmers. This behaviour through higher prices for inputs, lower output prices, unfair risk burden and longer-term uncertainty can place significant pressure on individual farm businesses and often prevents them from realising their potential profitability and productivity or their ability to reinvest in their business.

Current competition law has proven ineffective at ensuring transparent and optimally competitive markets in Australia. Instead, the existing structures and tools in place have allowed the development of a concerning level of market concentration and the misuse of market power to the detriment of Australian farmers and farm businesses. To reinvigorate the dynamism, flexibility, and ultimately resilience of the Australian economy, the committee must explore the full range of diverse avenues available for competition reform, a reduction in barriers to entry for new firms, better

[5] Australian Farm Institute 2020, *How the relative bargaining power of Australian agricultural value chain actors affects trading practices – and this the efficient operation of these markets.*

[6] Leigh A & Triggs T 2016, Markets, Monopolies and Moguls: The Relationship between Inequality and Competition, *The Australian Economic Review*, vol. 49, no.4, pp. 389–412

measures to prevent negative impacts of market concentration and prevent exploitation of market power.

The effect of a diverse and dynamic business environment on productivity, prices, and better-paid jobs and our supply chain resilience to disruption

A diverse, dynamic business environment plays a significant role in productivity growth, secure, well-paid jobs and fair prices for suppliers and consumers. Agriculture's potential contribution to economic dynamism, especially in regional Australia, is threatened by the ineffective prevention of increasing market concentration and subsequent abuse of market power. Effective laws, regulations and business conditions are essential to underpin economic dynamism in agriculture and across the broader economy.

Australian agriculture has a long-track record developing and implementing new technology and practices to increase productivity, profitability and competitiveness. Between 1977-78 and 2021-22, on-farm productivity grew at an average annual rate of 1 per cent, with total factor productivity almost doubling over this period.[7] This increased productivity is highly competitive on a global comparison despite challenges in Australian agricultural production. ABARES outlines these challenges as including greater climate variability than other countries, distance from international markets and a smaller capacity for domestic rural research and development.[8]

While there are diverse factors that influence investment and business decisions, Australian farmers, like all businesses, are driven fundamentally by profit to increase investment and innovation to increase productivity. These investments have been essential to maintaining resilience and profitability across Australia's seasonal variability and to reduce operating costs to increase competitiveness in global trade markets. This has occurred while Australian farmers have become some of the least subsidised farmers in the world. For example, in 2016–18, just over 2 per cent of farm revenues were from government support compared to 55 per cent in Europe[9]. This demonstrates how low-subsidised, globally competitive firms can support a dynamic and diverse business environment that underpins productivity.

Australian agriculture's ongoing focus on enhanced productivity has also supported the creation of diverse services industries that support agricultural production. To support farm operation and to maximise the use of resources, many individuals now operate contract businesses that provide direct support services to farm businesses across Australia. This has created new firms that develop specialised skills and experience to deliver lower cost

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[7] ABARES, https://www.agriculture.gov.au/abares/research-topics/productivity/agricultural-productivity-estimates#climate-adjusted-tfp_2

[8] ABARES. https://www.agriculture.gov.au/abares/research-topics/productivity/international-comparisons

[9] Greenville, J. (2020) Analysis of government support for Australian agricultural producers, *ABARES Research Report 20.12*

operations for farms. This has a number of benefits for farmers and individuals who operate supporting businesses, including:

- Ability to quickly expand the farm workforce to address a time-bound activity
- Reduced risk to the farmer by ensuring on-farm activities are completed faster to reduce the chance of quality downgrade due to weather
- Increased flexibility in the use of staff to respond to changing seasonal conditions
- More effective use of resources and capital as machinery can be used across multiple farms across an entire season
- Greater diversity of skills pathways within the industry and the opportunity to specialise in specific skillsets.

Australian agriculture is also key to the creation and ongoing development of supporting industries. Supported by both government and private investment, agriculture's research, development and adoption of new technologies, tools and practices on farm underpins a large AgTech and supporting services industry. This has created a well-developed pipeline of highly skilled roles across diverse and technical subject matter in software, hardware, machinery, testing and mapping and precision agriculture. This has underpinned new, sophisticated, and well-paying jobs across regional Australia. Farmers' strong appetite for new technology has allowed numerous universities, start-ups and supporting firms to flourish in areas traditionally underserved by the otherwise metro-dominated technology sector in Australia.

Despite the existing track record, increasing market concentration and the subsequent reduction in competition within the agricultural supply chain threatens the ongoing economic dynamism and productivity enhancing activities in agriculture and regional Australia. In many cases, higher market concentration in the supply chain means that farmers receive a lower price for their output and operate with higher risk burden than if there was greater competition in the supply chain. Because of this, it is becoming harder for many farms to maintain or increase their on-farm investment due to uncertainty in market conditions, prices, and long-term markets. This investment includes the adoption productivity enhancing tools and practices and on-farm employment. The NFF is concerned that if allowed to continue, the increasing market concentration observed in the supply chain will make it more difficult for farmers to develop and implement new technologies that not only increase on-farm productivity but also underpin a diverse supporting industry.

The significant market concentration and reduced competition in Australia's agricultural supply chains fundamentally means that not all farmers receive a fair, market price for their product. The NFF welcomes the significant growth in farm-gate value in recent years drive by favourable seasonal conditions and high commodity prices. However, there are growing concerns that these high prices are not available to all farmers in all commodities because of market concentration within each supply chain. This issue has recently been highlighted by GrainGrowers who have highlighted large pricing anomalies observed during the 2021–22 grain marketing season. [10] GrainGrowers estimate that these anomalies could amount to billions of dollars of lost income for Australian grain farmers.[11] This lost income means that a substantial amount of income cannot be used on farm to either invest in productivity enhancing assets, increase financial resilience for the next drought, or increase employee wages. This is often compounded by uncertainty in the price the farmer will receive for their produce. This dampens long-term planning and investments given the uncertainty and lack of effective return on investment.

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The NFF refers the committee to the NSW Farmers Association's submission for a detailed case study on the impact of competition on prices paid to dairy farmers.

[10] https://www.graingrowers.com.au/news/graingrowers-calls-for-immediate-supply-chain-investigation
[11] ibid

The extent to which anti-competitive behaviour and changes in industry structures have contributed to rising market concentration in Australia

There are several complex factors that have contributed to rising market concentration in Australia and the Australian agricultural supply chain. The NFF believes that these factors have occurred alongside one another. This has seen both anti-competitive behaviour and rising market concentration grown as the result of the other.

In the agriculture supply chain, increasing anti-competitive behaviour has had a direct, negative impact on farmers through reduced prices, increased compliance costs, increasing unfair risk burden on farmers, and greater uncertainty for farmers. This has a direct impact on their long-term competitiveness, profitability, and long-term economic sustainability. In some cases, this leaves farmers unable to operate profitable businesses.

Practices used by firms with significant market power have been well documented, including by the ACCC. The NFF refers the committee to the ACCC's Perishable Agricultural Goods Inquiry 2020 for a detailed discussion of abuses of market concentration in Australian agriculture. These practices include:

- abuse of bargaining power imbalance
- unclear and uncertain pricing for agricultural goods
- unfair contract terms, including but not limited to:
    - contract terms (durations) which do not allow the farmer sufficient time to amortise capital expenditure or obtain returns on investment
    - clauses which unreasonably transfer risk to the farmer and require him/her to pay indemnities under a broad range of circumstances
    - clauses which require the farmer to hold licensing, rights, or insurance in excess of his/her usual requirements. This includes full-replacement insurance policies covering property that is held on the farmer's premises but owned by the contract-issuing party
    - clauses which require farmers to provide evidence of contractors complying with a wide range of laws
    - clauses which require the farmer to pay a financial penalty when certain misadventures occur, where the method for calculating the amount of these penalties is not disclosed to the farmer
- commercial terms that transfer risks and responsibilities that should be held elsewhere
- exploitation of a lack of price and market transparency

The NFF refers the committee to the ACCC's Perishable Agricultural Goods Inquiry 2020 for a detailed discussion of abuses of market concentration in Australian agriculture.

In addition to these actions, there are emerging trends within specific agricultural industries where processors will obtain and control production data, enabling them to set prices paid to farmers as a cost-plus basis. This practice eliminates the incentives for farmers to invest in productivity improvements, since any cost savings resulting from these investments will cause a lowering of the output price. The access to and use of this data is compounded by increasing vertical integration of the supply chain where the producer and retailer have access to production data that can be directly compared to other external farmers.

In addition to the unfair business practices, the impact of greater market concentration has been compounded by existing competition policy frameworks. As they stand, the existing competition policy framework is insufficient to protect farmers from exploitation by firms with significant market power. This is due to:

- consumer-centric focus on market power provisions, providing minimal protections to supply chain abuses
- equal consumer centric focus of fair-trading provisions
- unconscionable conduct provisions are so narrowly defined to render them of little use for small to medium businesses, such as farmers.

In addition to these failings, the legislative and regulatory tools available to the ACCC have not been able to prevent increased market concentration. The under-resourcing of the ACCC has meant it is unable to investigate and prosecute the full extent of firms who break existing laws and regulations. The ACCC has also not being able to adopt new capability to proactively monitor firms and supply chains for increasing market concentration, abuse of market power and the use of unfair business practices. The ACCC is also not able to review natural changes in the distribution of firms and that impact market concentration. This includes changes in location of activities and changes in market share due to organic firm growth.

Case Study – Australian Chicken Meat Supply Chain

The Australian chicken meat supply chain offers a key example of how changes in industry structure have impacted market concentration and business dynamism.

Prior to 2000, state-based regulation recognised the bargaining power imbalance between growers and processors and the potential industry instability which could result.[12] During this time, states regulated key aspects of chicken-processor dealings, including periodic fee adjustments, contract terms and conditions, and disputes.

For example, the *Poultry Meat Industry Act 1986 (NSW)* (as at 1995) established the Poultry Meat Industry Committee. The Committee was comprised of processor and grower representatives, in addition to independent parties, and was charged with approving the form of agreements between processors and growers, the price payable to growers (under agreements and without agreements) and receive dispute claims. Under the *Poultry Meat Industry Act 1969 (SA)* (repealed), South Australia similarly safeguarded growers from the imbalance in grower-processor dealings.
However, following the implementation of the National Competition Policy in 2000 state regulations were largely abandoned and government's encouraged growers to obtain ACCC collective bargaining authorisations as a satisfactory alternative to address the imbalance of bargaining power.[13]

Victorian growers obtained authorisation in 2005, and many growers in other states followed suit. Collective bargaining worked reasonably well in Victoria and other parts of Australia, in that both processors and growers accepted and for the most part engaged with the negotiation process under these conditions.

However, several simultaneous factors over the past two decades have seen a move away from collective bargaining and contributed to the now highly concentrated and vertically integrated chicken meat supply chain, and the severely diminished (if not entirely non-existent) bargaining power of growers.

Firstly, Ingham's and Baiada significantly moved away from the traditional state-based models to become businesses operated on a national basis. In alignment with this transition, Ingham's and Baiada have progressively and strategically shifted production to where it will be most advantageous for them to grow chickens under contract and to process chickens. This has ultimately created 'growing hubs' and geographic monopsony environments,

[12] Victorian Farmers' Federation submission to the ACCC Perishable Agricultural Goods Inquiry 2020, <https://www.accc.gov.au/system/files/Victorian%20Farmers%20Federation_0.pdf>
[13] ibid

as the processors have invested in and continually acquired competitor supply chain infrastructure based on geographic proximity to hatcheries, growers, processing plants and markets.

The Victoria Farmers' Federation's submission to the ACCC Perishable Agricultural Goods Inquiry (VFF PAG submission) highlights how the evolution of Ingham's and Baiada's national approach resulted in growers having fewer processor options due to the establishment of 'growing hubs.'

This has seen a concentration of individual processing facilities in key growing regions, such that each region now commonly has one processor without any processor alternative for growers.[14] This natural evolution has effectively resulted in the elimination of competition between processors.

For example, growers located near Griffith and Tamworth are commonly contracted with Baiada, and growers in Southern Queensland are commonly growers contracted by Inghams, with no alternative processor. In NSW, just over ten years ago there were nine significant chicken meat processing plants in NSW owned by six different companies.[15] Today, two chicken meat processors operate four regional plants in NSW, producing 35% of the national market.

Since the 2020 Perishable Agricultural Goods Inquiry, the ACCC has investigated the use of unfair contract terms by chicken meat processors.[16] The NFF welcomes this investigation and believe it highlights the positive role the ACCC can play. However, it also highlights the failings of the legislative and regulatory powers of the ACCC which has no oversight of how geographical changes and organic business growth influence changes in market concentration.

[14] Victorian Farmers' Federation submission to the ACCC Perishable Agricultural Goods Inquiry 2020, <https://www.accc.gov.au/system/files/Victorian%20Farmers%20Federation_0.pdf>
[15] NSW Farmers Association submission to the ACCC Perishable Agricultural Goods Inquiry 2020, <https://www.accc.gov.au/system/files/NSW%20Farmers.pdf>
[16]https://www.accc.gov.au/media-release/chicken-meat-processors-address-potential-unfair-contract-terms

The extent to which economic barriers—such as regulatory costs and barriers to finance, infrastructure, suppliers, customers, and workers—contribute to rising market concentration and slowing business formation rates in Australia

There are several economic barriers that impact on market concentration, prevent effective market functioning, slow business formation, and ultimately reduce economic dynamism. Economic barriers such as planning and zoning regulation, housing costs, infrastructure quality, and access to services all impact the ability for farm businesses to realise growth opportunities, attract employees, and increase their efficiency and productivity. These barriers have an outsized impact on regional communities and agriculture.

At the highest level, the NFF wants to see a reduction in the barriers to entry for new firms across agriculture, the supply chain, and the broader economy. Increasing the ease for new entrants into all industries will directly support new competition, offering more options to businesses and consumers.

Planning and Zoning

Australian agricultural supply chains are impacted by planning and zoning laws and regulations in each state and territory. Onerous provisions through planning and zoning laws are slowing the development and increasing compliance costs of new businesses in regional economies. Preventing the development of land for infrastructure and buildings reduces the ability of new firms to enter the market and offer additional opportunity to purchase inputs and sell products. This reinforces the position of existing firms within the supply chain, supporting increased market concentration. 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.

Zoning and planning regulations are also making it harder for workers to move from metropolitan to regional areas to take up jobs and other economic opportunities. Poor development opportunities and restrictive conditions reduce the amount of available housing in regional towns. Not only does this reduce the supply of available housing for prospective employees but also increases the costs of rents.

Supply Chain Infrastructure

Access to markets and global supply chains have underpinned the profitability of Australian farms and regional economies for decades. These supply chains help farmers sell their produce into premium markets and access cheaper inputs. However, poor access to these markets, including through connecting infrastructure risks the ongoing viability and dynamism of agricultural businesses.

Trade and market access are vitally important to Australian agriculture, with more than 70 per cent of total production exported. Additionally, access to lower cost inputs is essential to the competitiveness and financial viability of Australian farms. As an open, trading economy, Australian industry must be able to export products with competitive freight in a timely manner. This offers opportunity for government to act to increase the competitiveness of Australian industry and lay the groundwork for ongoing growth and prosperity across the economy.

International freight supply chains are fast becoming one of the most critical challenges not just to the agriculture industry, but to any industry or business that relies on exports or imports. Australia has always suffered from highly inefficient and unproductive international freight supply chains, with the OECD rating nearly all of Australia's ports and stevedoring services in the bottom quartile for productivity globally. As an example, it costs the same to transport a container of grain from South Australia to Indonesia, as it does from Canada to Indonesia, despite the journey being nearly 10,000 km shorter.

Existing supply chain issues are exacerbated by increasing natural disasters occurring across Australia. Recent flooding across eastern Australia provides a key example of the extended impact natural disasters can play reducing access to domestic and international markets. Flooding across the Australian east coast have significantly reduced farm production and caused significant damage to infrastructure, severing local and arterial supply lines needed to move produce to customers. The impact of these floods and subsequent rebuild offers a new opportunity for the Australian Government to create a more resilience and robust freight network for Australian farmers, exporters and people living in regional areas. The repair and reconstruction of roads affected by flooding should be done to a high standard to withstand future climate change-induced stresses on road and freight networks.

Connectivity

Regional Australians, like their metropolitan counterparts, place the utmost importance on accessible, reliable, affordable, and quality connectivity services. Such services are fundamental to everyday economic, social, health and educational outcomes, the importance of which is often heightened for those living in regional, rural, and remote Australia. While significant advances have been made in recent years, many regional Australians continue to face connectivity challenges. Service quality, reliability and accessibility issues remain, presenting ongoing primary connectivity barriers for regional Australians, farms businesses and workers. As economic activity and service delivery continue to migrate online, such accessibility challenges must be addressed.

Improving connectivity in regional areas continues to present a fundamental opportunity to drive the competitiveness of the agricultural sector and dynamism of regional economies. For example, continually improving connectivity services are key to materialising an estimated $20 billion in agricultural output through realising the opportunity of new agricultural technology and connectivity. Recent years have seen an acceleration in the importance of connectivity services, and changes to the connectivity landscape.

The extent to which businesses consolidating their market power has undermined productivity, stifled wages, made markets more fragile and led to higher mark-ups

Increasing market concentration across the Australian economy has allowed supply chain actors to use their market power to undermine the resilience of farmers across the country. This is having a broad and significant impact on farm businesses, employees, and consumers. Increased market power is abused in multiple different ways.

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. Increased market concentration in Australia's agricultural supply chain has increased the size and power disparity between supply chain actors and farmers. This creates significant bargaining power issues and empowers anti-competitive behaviour. This often includes, but is not limited to:

- Pricing and commercial terms that are not in keeping with those expected of competitive markets, reducing the returns available to farmers to reinvest in their business or employ additional staff.
- Poor value-for-money for inputs and services provided to farmers
- Inappropriate apportionment of risk between farmers and monopoly/oligopoly/monopsony commercial partners.

Each of these activities has direct flow on effects that reduce the dynamism of the agricultural supply chain and regional economies. This conduct has a substantial impact on the profitability, resilience and viability of farm businesses, and competition in agricultural supply chains more broadly. Because farm businesses are not able to receive effect prices for their production, they are not able to properly reinvest in long-term productivity enhancing tools, infrastructure, and practices. This has a direct impact on:

- business growth, through expansion of new initiatives or activities within the business
- employment opportunities due to increased risk and uncertainty of farm business activities
- diversification and the adoption of new commercial opportunities within a business
- sustainability and environmental impact due to a lack of investment in new technologies and practices

Market Price Transparency

Increased market concentration has also coincided with a greater exploitation of the lack of price transparency within the supply chain. Price transparency refers to the information available to a farmer to accurately compare a contract price with product supply, demand, market conditions, and prices paid to other farmers. In the agricultural supply chain, it is the lack of market price transparency that is used against farmers. The asymmetric information is a key tool that is used to leverage market power, contribute to increased market concentration, and reduce the economic dynamism of agricultural businesses.

Often, businesses with significant market share will leverage the lack of market price transparency to pay farmers and agricultural firms less for their produce than they would otherwise receive in a free market. This occurs through lack of price transparency and lack of alternative markets or competitors within the supply chain and data asymmetry in determining prices paid for produce. This has the greatest impact in perishable goods supply chains where produce must be sold within a specific period before it spoils or degrades in value.

Market concentration in the agricultural supply chain has created a situation where there are many sellers and only few buyers. This situation provides wholesalers and retailers with broad access to data on the price and volume being offered for produce across the whole supply chain. At the same time, growers only have access to their own data. This provides a significant commercial advantage to the retailers who can leverage their asymmetric data to offer the price paid to growers for the product.

This asymmetric information is compounded through a lack of transparency in how the weekly 'market' price is determined. While there are numerous factors that determine how a price is determined, growers are not provided any information to determine how the price was set. For example, growers are not able to determine if the price they are offered is the lowest price offered, a weighted average, or determined by a supply and demand model that matches the elasticities of other fresh fruit.

This prevents the effective functioning of the market through a lack of information. Agricultural industries, especially vegetable production, occurs in short timeframes with means of production that can easily and readily substitute between products. For example, a grower on the outskirts of a major city can easily substitute production of broccoli, carrots, and lettuce.

While there is asymmetric information within the supply chain, growers typically accept the given market price for numerous reasons. Primarily, perishable products must be sold within a specific timeframe before it spoils or degrades in value. This prevents the storage of product to sell in line with changes in offered pricing. Additionally, the increased market concentration of buyers within the supply chain risks growers being faced with potential commercial retribution from their commercial decisions regarding accepting or rejecting the market price.

This market price transparency is compounded by the increasing market concentration within the supply chain. The long-term reduction in available buyers now means that farmers have fewer options to sell their product. This has seen wholesalers and retailers refuse or delay increases in prices paid for product regardless of the increasing costs of production.

The reduced pricing through asymmetric information is a key contributor to increased fragility within the agricultural supply chain. Farmers are often not able to receive a significant return for their product, increasing their susceptibility to disruption through market changes, natural disasters, and other unexpected changes. Increasing this fragility and associated risk undermines the long-term productivity of industry, reduces wages paid to employees and reduces the overall market signals that support supply and demand.

Reduced investment in productivity enhancing tools

Commercial arrangements in agricultural supply chains hinder the long-term productivity growth of the industry by deterring productivity-enhancing investments made by farm businesses. Often these investments will not be made because the producer's supply arrangements leave the farm business too uncertain of its of future revenue, or simply provide the farm business with such a small portion of this revenue that investments are not viable. Not only does the reduced investment prevent farmers from increasing their productivity, but it also prevents relative, long-term reductions in the price of goods for consumers. Productivity increases in Australian agriculture have provided a dual benefit of profitable farm businesses and lower cost goods for Australian consumers. However, if allowed to continue the exploitation of market power within the supply chain will prevent the long-term benefit from continuing.

Lack of ongoing investment also threatens the environmental performance of food production in Australia. New productivity enhancing investments are key to reducing the environmental footprint and carbon emissions of Australian farms. New investments on farm through machinery, technology, and innovative practices reduces the need for chemical inputs, reduces carbon emissions and ultimately reduces the number of negative externalities associated with agricultural production. This offers multiple benefits for both the farm business and broader society.

Long-term resilience of the agricultural supply chain

Greater market concentration has also reduced the long-term resilience of the agricultural supply chain. This present a significant risk for both input and output markets for Australian farmers. Reduced number of input suppliers has increased the risk of key inputs (e.g., urea, AdBlue, liquid fuels) to significant disruption. The small number of suppliers means that if there is disruption, farmers risk not being able to access the key inputs that underpin productivity and production.

Concentration of output suppliers has similarly decreased the resilience of agricultural supply chains. Fewer number of significant purchasers presents a risk that business failure or supply chain disruption will stop the ability of produce reaching consumers and key markets. For example, business failure of supply chain distributors can completely prevent the ability of farmers selling their produce to retailers. For perishable agricultural goods with seasonal production, this risks significant financial impact where seasonal production is relied on for annual income.

The recent collapse of Scott's Refrigerated Logistics offers a key example of the risk of supply chain concentration on agricultural output. Scott's Refrigerated Logistics is a national freight company that provides cold chain transport across Australia, with depots in each mainland state.[17] The collapse of this company in February 2023 provided a significant risk to the ability for Australian farmers to transport their perishable goods from farm to retailer and consumer. This demonstrates how the increased concentration reduces resilience within the supply chain. The sudden disruption highlighted the vulnerability of the supply chain that has increased as a result of increased market concentration. Because there are fewer firms, the sudden removal of a large firm caused significant short-term disruption as other firms did not have the capacity to replace the lost infrastructure. A similar situation with less market concentration would see greater supply chain resilience as other firms would be able to more effectively replace the lost capacity of the firm that had suddenly exited.

Impact of non-price components on producer returns

The increased concentration of retailers has had a direct impact on the compliance costs borne by Australian farmers. Due to the limited number of purchases within the concentrated retail market, supermarkets and other purchases can dictate terms and conditions beyond the price paid for goods. These conditions, including cosmetic condition, regulatory compliance and certification schemes are often a baseline condition required to sell produce into major outlets.

Compliance and certification for these schemes increase the burden and costs on farmers. However, farmers do not receive any commensurate increase in price to match the compliance costs. This reduces the effective price received by the farmer for their produce.

[17] https://www.abc.net.au/news/2023-03-01/scotts-refrigerator-logistics-collapse-impacts-supply-chain/102037532

Drawing on international examples, how Australia could lower economic barriers to competition and business formation, further limit anti-competitive behaviour, and better manage changes in industry structure that would entrench, increase, or extend market power

Competition Reform

Australia needs broad, economy wide competition reform to ensure long-term competitiveness and dynamism, especially in agricultural supply chains. The NFF offers a series of recommendations that will increase competition and underpin dynamism is the Australian economy and agricultural supply chain.

To remove the abuse of market power, the committee should recommend:

- 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 be introduced for anti-competitive conduct, including the use of unfair contract terms.
- There are active campaigns to increase 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.
- Implementation of all recommendations of the ACCC Perishable agricultural goods inquiry (November 2020) 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
    - the Food and Grocery Code of Conduct be strengthened and made mandatory
- the Australian Government commit 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.
- the Australian Government 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.

The Committee should also make recommendations that prevent increased market concentration from occurring in the future. This includes:

- Reforms of the ACCC authority and provisions overseeing merger and acquisition to require:
    - 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, including the significance of the assets being acquired to that market
    - 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
    - a public consultations process whenever there is a proposed merger within a concentrated market
    - Require an analysis of company ownership as part of reviews into proposed mergers and acquisitions.

The NFF welcomes the Australian Government's recent actions to reduce the prevalence of unfair practices and increase the penalty of the use of these practices. However, there are additional steps the Australian Government can take to reduce barriers to challenge these practices and reduce the unconscionable conduct.

The NFF recommends a reform of the unconscionable conduct provisions in the *Competition and Consumer Act 2010* to more clearly specify business practices, contractual arrangements and principles that constitute 'unconscionable conduct'. Recent reform of unfair contract terms was an important action that signifies progress towards fair and competitive supply chain interactions. However, unfair contract terms are limited in their applicability to the contents of a contract and therefore cannot capture those behaviours that fall outside of the contract, including behaviour during contractual negotiations and behaviour that occurs once the contract is in force.

As such, there are grounds for the strengthening of unconscionable conduct provisions. However, strengthening of these provisions should occur regardless of perceptions of their relationship with competition in the supply chain. Economic dynamism is inherently tied to the ease-of-doing business.

As such, unconscionable conduct can be seen as a direct action that decreases the ease-of-doing business and economic dynamism as a result.

The European Commission's green paper on *'Unfair Trading Practices in the Business-to-Business Food and Non-Food Supply Chain in Europe'* provides a model the Committee could consider for a definition of unconscionable conduct. This paper, which has been foundational for recently introduced prohibitions in the European Union, has identified four characteristics which it considers captures most unconscionable conduct. These are:

1. One party unduly or unfairly shifting its own costs or entrepreneurial risks to the other party
2. One party asking the other party for advantages or benefits of any kind without performing a service related to the advantage or benefit asked
3. One party making unilateral and/or retroactive changes to a contract, unless the contract specifically allows for it under fair conditions
4. One party unfairly terminating a contractual relationship or issuing an unjustified threat of termination of a contractual relationship.

These characteristics provide a good starting point for the development of Australian principles and practices that provide greater clarity as to what constitutes unconscionable conduct.

The Committee should also consider the European Union's 2019 directive on unfair trading practices in the agricultural and food supply chain, which explicitly prohibits 16 specific 'unfair trading practices'. The NFF considers there to be merit in the two-tier approach taken by this directive in its categorisation of unfair trading practices as 'black' (prohibited outright) and 'grey' (allowed if the supplier and the buyer agree on them beforehand in a clear and unambiguous manner). The ten black practices are:

1. Payments later than 30 days for perishables
2. Payments later than 60 days for other agri-food products
3. Short notice cancellations of perishable agri-food products
4. Unilateral contract changes by the buyer
5. Payments not related to a specific transaction
6. Risk of loss and deterioration transferred to the supplier
7. Refusal of a written confirmation of a supply agreement by the buyer, despite request of the supplier
8. Misuse of trade secrets by the buyer
9. Commercial retaliation by the buyer
10. Transferring the costs of examining customer complaints to the supplier.

The six grey practices are:

1. Return of unsold products
2. Payment of the supplier for stocking, display, and listing
3. Payment of the supplier for promotion
4. Payment of the supplier for marketing
5. Payment of the supplier for advertising

6. Payment of the supplier for staff of the buyer, fitting out premises

These principles offer a clear starting point for legislative and regulatory clarification on the full scope of unfair business practices and ensure greater fairness in food supply chains. Should the committee find that the reformed unconscionable conduct provisions outlined here are not suitable for inclusion in the *Competition and Consumer Act 2010*, the NFF asks that provisions to the same effect be included in a more suitable legislative framework.

Access to dispute mechanisms

The Australian Government has recently taken steps to reduce the prevalence of unfair contract terms and business practices. However, within the current system contract terms must be considered by a court to be ruled as unfair. This presents a significant, often insurmountable barrier for small businesses. Legal action within the courts requires substantial upfront costs with little certainty of recouping costs if successful. This reduces the likelihood that small businesses will challenge contract term and business practices they consider to be unfair or unconscionable.

The NFF believes that recent changes implemented are unlikely to fully address the issue of unfair contract terms in the agriculture industry, due to the need for enforcement action via court proceedings. To this end, the NFF recommends the establishment of alternate dispute resolution mechanisms to uphold farmers rights and precent the use of unfair contract terms provisions. These mechanisms can and should be delivered through the introduction of codes of conduct to govern various agricultural supply chains where there is significant market concentration and a recorded history of unfair business practices and unconscionable conduct.

Mandatory Codes of Conduct

The lived experience of farm businesses has shown that legislation has been insufficient to combat the use of unfair contract terms and practices, and that unfair contract terms does not address all the perverse outcomes of uneven bargaining power between farmers and other supply chain stakeholders. Codes of conduct not only provide a robust enforcement pathway for unfair contract terms provisions, via alternate dispute mechanisms, they can address other anti-competitive and unfair and unconscionable conduct within the supply chain.

The Dairy Industry Code of Conduct provides a clear example of the benefit and efficacy of these codes. Prior to the introduction of the Dairy Industry Code of Conduct in January 2020, unfair contract terms were common and rarely challenged by farmers. The introduction of an industry code changed this, codifying the law, and giving farmers an easy and risk-free process to raise issues and resolve contractual disputes.

As such, the NFF recommends that a mandatory code of conduct be established for all perishable agricultural goods. This code should capture all business-to-business dealings where at least one party is a producer of perishable agricultural goods. The code should have the same legal status as the Dairy Code of Conduct and should apply to all commodities with perishable goods. Its provisions should, as far as possible, place the same obligations on all supply chains.

Where supply chains are so dissimilar that provisions cannot be drafted in a similar way, the NFF supports the Code containing different provisions for different commodities. Where the Code conflicts with other codes of conduct, such as the Food and Grocery Code of Conduct, the Horticulture Code of Conduct or the Dairy Code of Conduct, the code that provides the most stringent set of protections to the farmer should take precedent.

The NFF considers that at a minimum, the following provisions should be included in the Perishable Agricultural Goods Code of Conduct:

1. An obligation on all parties to act in good faith
2. A set of minimum disclosure requirements for every supply contract
3. A right to certain dispute resolution processes
4. A requirement that supply contracts specify a minimum price
5. An obligation that contracts specify quality requirements which leave minimal room for the purchaser to apply discretion. Where a significant portion of consignments do not meet the quality requirements but are accepted by the purchaser regardless, the section of the contact which sets out these requirements should be redrafted to rectify this situation.

Increased Resourcing of the ACCC

It is important that the ACCC is fully equipped to monitor, review, and enforce changes in industry structure. This is essential to ensure that the ACCC can effectively prevent the misuse and abuse of market concentration in the Australian economy.

Greater resourcing for the ACCC will allow it to provide greater oversight and engagement with concentrated industries and those that have a history of unfair business practices and unconscionable conduct. This is most relevant for perishable agricultural good. Given the high level of concentration in both the retail sector and, for many perishable commodities, the processing sector, greater resourcing of ACCC will allow it to institute a regular review of perishable food supply chains.

The rationale for instituting this review is the same rationale as that which underlies the ACCC's monitoring of regulated infrastructure: high levels of market concentration with the potential to harm consumers and businesses by allowing the largest players to accrue supernormal profits. This review should occur every two years, and should monitor the supply chains against the following criteria:

1. The level of concentration which exists at retailer and processor level, with further examination triggered if the level of concentration is found to have increased since the last review
2. The behaviour of purchasers towards their suppliers and whether this behaviour is suggestive of excessive market power. For example, the practice of imposing pseudo-regulations on farm businesses through contractual conditions which dictate standards on animal welfare and other activities
3. Analysis of the prices and margins paid to suppliers and whether these prices and margins are suggestive of competition in the supply chain.

International Market Access

More than 70 per cent of Australia's total agricultural production is exported. This offers significant opportunity for Australian farmers. However, trade opportunities are often industry specific meaning that some commodities are solely reliant on the Australian domestic market. This exacerbates issues of market concentration from Australian retailers.

The NFF commends the Australian Government's long-term work securing new markets through Free Trade Agreements. However, the technical market access required to export to these markets is often slow and does not allow farmers to export to the recently opened markets. This means that farmers are not able to full realise the benefits of FTAs and the Australian Government's market development activities.

Accelerating work on technical market access through greater resourcing of the Department of Agriculture, Forestry and Fisheries and targeted industry bodies is an essential aspect of increasing choice for Australian farmers. The addition of new markets will allow farmers to choose between domestic sales or export markets.