National Farmers Federation

3 January 2024

Director
Consumer Policy Unit
Market Conduct and Digital Division
Treasury

Via email: consumerlaw@treasury.gov.au

Dear Director

RE: Consultation on proposed designated complaints

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to Treasury's consultation on the unfair trading practices (UTPs) consultation regulation impact statement (CRIS).

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. The NFF represents Australian agriculture on national and foreign policy issues including taxation, economic policy, workplace relations, trade and natural resource management.

Competition issues aren't new for Australian agriculture. But the lack of competition across Australia's agricultural supply chains is a problem that's getting worse. For decades, market concentration across the Australian economy has increased1. As market concentration has increased in Australia, farmers have fewer places to buy inputs and fewer places to sell their products.

In many cases, farmers and small businesses in the agriculture sector report significant concerns about commercial retribution if they challenge any misuse of market power. Because of this, the NFF believes that existing competition laws are not as effective as possible because farmers are unwilling to exercise their rights under the legislation.

The NFF supports the introduction of a clear complaints mechanisms that enables designated small business advocates to submit a complaint to the ACCC where they have evidence of a significant or systemic market issue that affects consumers or small businesses in Australia. The proposed scheme contains positive elements that should encourage greater use of the designated complaints process.

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The process outlined in the explanatory materials provides a clear and consistent framework for the operation of designated complaints. This framework, which includes how complaints can be made, opportunities to become a 'designated complainant' and timeframes for ACCC responses, provides clarity and certainty for representative groups that will engage in the designated complaints process.

Based on the explanatory materials, the NFF believes there are some changes that could improve the the selection and administration of designated complainants. The explanatory materials outline clear criteria for which organisations can apply for and be selected to be a 'designated complainant'. The government and ACCC should provide specific guidance material on what information and activities are needed to satisfy the compulsory approval criteria. This guidance material will support organisations to effectively apply to be a 'designated complainant' and where appropriate, communicate across industry their role and ability to engage in the process.

Additionally, there should not be an annual application period or cap on the number of 'designated complainants' appointed by the Minister each year. While the NFF appreciates the government's logic, a small cap may reduce the effective pool of organisations that become 'designated complainants'. This may result in organisations not being able to effectively engage in the process because they are not a selected. Additionally, the annual selection period may result in organisations applying to be a 'designated complainant' without the clear intention to refer complaints as a "just in case" approach.

Instead, the NFF recommends the government do not implement a cap on the number of potential 'designated complainants' and allow organisations apply to become a 'designated complainant' at any point across the year. This could be supported by greater guidance on what issues may be considered by the 'designated complainant' and the potential activities the ACCC can take if referred by the 'designated complainant'. This would support more effective engagement in the process, more targeted referrals, and clear expectations from all participants.

The NFF believes that it is important for this process to consider complaints and competition issues that fall within a single industry. This will ensure that a 'designated complainant' can make referrals for systemic issues within an industry and properly consider the unique circumstances within that industry that may not have cross-over with consumers and small-businesses in other industries. For example, the perishable nature of many agricultural goods means that producers often experience different impacts of a misuse of market power than other small businesses in the economy. It is important that a 'designated complainant' could refer these issues and have the specific issues considered by the ACCC.

The NFF supports the proposed transparency and reporting requirements of the proposed scheme. Effective transparency and reporting will ensure that consumers and small businesses can appreciate the ACCC's investigation and compliance activities. It will also support more effective policy development and discussion on competition issues in Australia.

Thank you for the opportunity to make a submission to this process. Please do not hesitate to contact me to discuss this submission.

Yours sincerely

TONY MAHAR
Chief Executive Officer