



30 November 2023

Professor Allan Fels AO  
Australian Council of Trade Unions  
Level 4, 365 Queen St  
Melbourne VIC 3000

Dear Professor

**RE: Inquiry into price gouging and unfair pricing practices**

The National Farmers' Federation (NFF) welcomes the opportunity to provide a submission to the Inquiry into price gouging and unfair pricing practices.

Competitive, well-functioning markets are a fundamental driver of an efficient and productive economy. Ensuring a competitive economy is essential for Australia's long-term growth and prosperity. However, Australia has experienced increasing market concentration and decreases in competition

Australian 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. 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.<sup>1</sup> 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.

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. Often these investments will not be made because the producer's supply arrangements leave the farm business too uncertain of its 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

---

<sup>1</sup> 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.*

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.

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 returns to farmers than otherwise would occur with lower levels of market concentration in the supply chain.<sup>2</sup>

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. This submission outlines four key issues that have exacerbated a lack of competition in Australian supply chains.

First, 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. This inquiry must explore the full range of options to rectifying the failure of existing law and recommend reforms that will strengthen competition law for consumers and small businesses in Australia.

This has been made worse by a lack of adequate resources for the ACCC to conduct compliance under the existing law. 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 been 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.

Second, 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-

---

<sup>2</sup> 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.*

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 inquiry 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:
  - o contract terms (durations) which do not allow the farmer sufficient time to amortise capital expenditure or obtain returns on investment
  - o clauses which unreasonably transfer risk to the farmer and require him/her to pay indemnities under a broad range of circumstances
  - o 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
  - o clauses which require farmers to provide evidence of contractors complying with a wide range of laws
  - o 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

Third, 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.

Fourth, 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.

## Proposed Competition Reform

The NFF believes that 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 in the Australian economy and agricultural supply chain.

The NFF recommends a number of clear reforms and actions to increase competition in Australia's economy and reduce the opportunity for large businesses with significant market share to abuse their market power. These recommendations include:

- 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, the Food and Grocery Code of Conduct be strengthened and made mandatory
- 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.
- Introduction of mandatory price reporting and disclosure schemes that require businesses in the agricultural supply chain, especially wholesalers and retailers, to disclose information used to determine pricing offers.
- Development of price reporting platforms that provide real-time market price information to farmers. These platforms can aggregate data from various sources to help farmers make informed decisions about when and where to sell their products.
- Implement access to justice mechanisms that are easier to access for farmers and small businesses to lower barriers to challenge unfair contract terms or misconduct.
- Implement training and education programs that upskill farmers, improve their negotiation skills and understanding of market dynamics and empower them to better navigate price negotiations.

- Better promote the ACCC collective bargaining provision that allows eligible small businesses to bargain collectively without breaching competition laws.
- Increased ACCC powers to access data from supply chain companies to more effectively monitor and analyse markets and the impact of increased market concentration and reduced competition.
- Outlaw the use of Agency Agreements as a form of retail price maintenance.

These recommendations should also be supported by reforms of the existing mergers and acquisitions scheme. These reforms should change the mergers and acquisition regime 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
- 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 thanks Professor Fels AO for the opportunity to comment on the issue of price gouging in Australia's economy. The policy contact for this matter is Kade Denton, General Manager, Trade & Economics via e-mail: [kdenton@nff.org.au](mailto:kdenton@nff.org.au) or phone (02) 6269 5666.

Yours sincerely



**TONY MAHAR**  
Chief Executive Officer