



AgForce Queensland Industrial Union of Employers

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Competition Policy Review Secretariat
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Ms Barron

AgForce Queensland welcomes the opportunity to provide a submission to the 'root and branch' review of Australia's competition policy, including the *Competition and Consumer Act 2010* (CCA).

AgForce is the peak industry group representing the majority of beef, sheep and wool, and grain producers in Queensland. AgForce exists to ensure the long term growth, viability, competitiveness and profitability of these industries. Our members provide high quality food and fibre products to Australian and overseas consumers, manage a substantial proportion of Queensland's natural resources and contribute significantly to rural and remote communities.

In engaging with our members during the recent Agricultural Competitiveness White Paper process a key theme that emerged was concern about the increasing concentration of commercial interests in the supply chain, both up and downstream of the farm gate. This concern was expressed through identifying a lack of transparency in negotiations as well as potential abuse of market power in commercial dealings. Inequality in the marketplace results in producers being 'price takers' with limited bargaining power, due to the sector being largely made up of small businesses in rural and remote areas with limited opportunities for collective organisation. This disparity in power also has implications for producers negotiating access to transportation infrastructure, such as rail and port facilities. The Secretariat is referred to AgForce Queensland's submission to the Agricultural Competitiveness White Paper Issues Paper for further details.

We see a transparent, competitive but fair marketplace as a necessary ingredient to Australian agriculture achieving profitability gains and a long term sustainable future, while continuing to deliver cost-effective, high-quality food and fibre products to consumers. Competition law must address the unique nature of the agricultural supply chain and provide a proactive means of delivering disincentives to anti-competitive behaviour, as well as remedying the negative outcomes of instances of such behaviour.

As a member of the National Farmers Federation (NFF), AgForce has informed and supports the NFF submission on the Review and refers the Secretariat to that submission for the full details. That submission and the identification of possible areas of reform were supported by the input of competition law experts Minter Ellison.

ADVANCING RURAL QUEENSLAND

Priority areas identified for further examination included:

1. **Unconscionable conduct** – suggested reforms include greater certainty in the form of a legislative definition of 'unconscionable conduct', and statutory recognition of disadvantage such as for those producers of perishable goods. Such perishable goods would include feedlot cattle and grass-fed cattle that are ready for slaughter and have a limited window of opportunity to maximise returns to the producer. These changes would contribute to supply chain transparency and more balanced bargaining positions.
2. **Misuse of market power** – suggested reforms include the introduction of an 'effects test' into section 46 to replace the existing purpose test and introducing administrative monetary penalties to give the ACCC greater power to regulate anti-competitive behaviour.
3. **Unfair contract terms** – suggested reform includes recognition of the competitive disadvantage faced by producers (who are often small businesses) of perishable goods, such as slaughter-ready cattle, through the targeted and reasonable extension of the protections afforded to consumers.
4. **Collective bargaining** – suggested reforms include enabling the ACCC to focus the approval process on whether a collective boycott relating to primary products causes a 'public detriment', as well as allowing limited interim boycotts for the purpose of progressing negotiations. Further, raising the threshold for primary production bargaining above the current \$5 million would expand access. Together this would increase the ability for peak bodies to commence and progress collective bargaining and boycott applications on behalf of their members.
5. **Codes of conduct** – a potential reform is introducing a mandatory industry code applying to food products with robust, efficient and accessible (avoiding retributive reactions from purchasers) dispute resolution options and provisions for code infringements.
6. **Statutory duty of good faith** – a potential reform is the introduction of a statutory duty of good faith in commercial contracts as well as to the pre-contractual conduct of parties in a stand-alone statutory code or legislation. This would assist with reducing the risk of 'take it or leave it' negotiation practices or contract clauses.
7. **Powers of the ACCC** – suggested reforms include regular price monitoring across 'at risk' industries, including primary production industries, by the ACCC under Part VIIA of the CCA without a direction by the Minister. The ACCC could also be given greater divestiture powers to improve the deterrence impact in the relevant markets.
8. **Access to essential services** - the unique circumstances of primary production is not strictly taken into account during the consideration of access to essential services or access undertakings. Essential elements include unfettered access to major infrastructure essential for the handling of bulk commodities, such as railways and ports. Further reforms are necessary to improve small businesses' ability to utilise access to essential services provisions (including dispute mechanisms).
9. **Protection from agri-terrorism** – this is behaviour including illegal farm invasions (or drone use), creating biosecurity or safety risks, and other actions that are aimed at disrupting legitimate agricultural production, and causing market disruptions and significant financial impacts. Potential reforms to address this include extending the definition of 'in trade and commerce' within section 18 of the Australian Consumer Law in Schedule 2 of the CCA to include misleading and deceptive conduct which intends to or actually causes an impact to 'trade or commerce'. The exemption for environmental groups in relation to secondary boycotts should be removed where their conduct constitutes such 'agri-terrorism'. Competition protection with stiff penalties for illegal conduct that intentionally or recklessly causes, or is carried out for the dominant purpose of causing, a market disruption should be introduced.

10. **Establishing a Perishable Goods Commissioner** within the ACCC – to ensure that appropriate protections are supervised and enforced for vulnerable perishable goods producers who suffer from limited bargaining power and 'take it or leave it' contract terms or contract variations. Such a Commissioner would be able to receive and investigate complaints, assess product value and impacts, issue penalties for improper practices and lift supply chain transparency.

Conclusion

AgForce supports the review of competition law and sees an effective framework as an essential element in ensuring primary producers are treated fairly in the marketplace and enabled to secure appropriate levels of profitability for the production and other risks they take on. We would encourage the Review to fully consider the unique characteristics of agricultural products and the supply chain and support the reforms outlined in this and the NFF submission.

Further enquiries should be directed to Dr Dale Miller, Senior Policy Advisor, via telephone on 07 3236 3100 or via email (at millerd@agforceqld.org.au).

Yours sincerely



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