

Australian Chicken Growers' Council Limited

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SUBMISSION TO THE COMPETITION POLICY DRAFT REPORT

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Australian Chicken Growers Council (ACGC) represents the interests of contract meat chicken and turkey growers nationally through six state organisations.

These are:

- New South Wales Farmers Association Poultry Meat Group
- Queensland Chicken Growers Association,
- South Australian Poultry Meat Group.
- Tasmanian Farmers and Graziers Association Chicken Meat Group,
- Victorian Farmers Federation Chicken Meat Group,
- West Australian Broiler Growers Association.

The Australian Chicken Growers Council welcomes the opportunity to provide comment on the draft report of the review of Competition Policy.

While this response will be primarily focussed on proposed changes to the Act and their application to small business, there are other areas which will also impact the industry such as changes to the arrangements relating to electricity and gas pricing.

In the previous submission ACGC raised a number of areas of concern relating to authorisation and collective bargaining. These included

- 1) The requirement for a processor to negotiate with the legally constituted negotiating group as authorized by the ACCC with regard to terms and conditions of contracts including grow fees. A processor should not be in a position to try and exclude any grower from the negotiating group.
- 2) The need for a dispute resolution mechanism which would allow such negotiations to be brought to finality.
- 3) A further review of the unconscionable conduct provisions of the Act to make them more applicable to the issues that may arise between a processor and a contracted grower.

A separate issue relating to the market power of supermarkets was also raised in our previous submission, particularly with relation to their capacity to make somewhat arbitrary decisions which require changes to farm production systems for a perceived benefit in the market place. The unilateral adoption of mandatory standards have the potential to impact on returns and viability of farms, additionally these decisions appear to be made without any real consideration of their impact on suppliers or for that matter its customers in some instances. This in fact results in a distortion of normal market conditions where consumers are free to make their own decisions about which products they wish to buy at which price points and farmers are able to supply these markets if it is profitable to do so.

In regards to this matter ACGC notes that the draft report does discuss the issue of the supermarkets' market power and its misuse. The fact that ACCC is pursuing court action against Coles is a very positive indication that ACCC believes that Coles is in breach of the CCA.

Contract meat chicken growers do not normally interact with supermarkets, but as was indicated in our previous submission, contract growers are impacted by marketing decisions which can lead to additional operating costs. Supermarkets are often not prepared to accept the associated flow on costs, which in turn makes it unlikely that the processor will be prepared to recognize the increased operating costs as part of the grow fee. It therefore becomes very important that there is a robust framework for collective negotiation between growers and their processor, to maintain returns to growers at an acceptable level.

ACGC would support the introduction of a mandatory Code of Conduct for supermarkets and their suppliers although it recognizes that it may not have any direct impact on meat chicken growers.

Because the code would not extend to the relations between processors and growers, ACGC, believes that a mandatory code of conduct for collective bargaining between growers and processors should be developed. Such codes for negotiating groups have existed in a voluntary form in states under previous legislation authorizing collective bargaining.

Section 19 of the draft report which deals with exemptions has a number of recommendations which are of particular interest to ACGC and its members. While currently meat chicken growers in all states are covered by an authorisation for collective bargaining, any simplification of the process would be welcome in the future when the authorisations are due for renewal

The concept of block exemptions would greatly simplify the process as it is believed that current arrangements would qualify for exemption under such a framework. ACGC would strongly support a change to the legislation to enable the ACCC a general power to grant block exemptions.

It should be noted that the notification process has only been used by one grower group in South Australia but was subsequently changed to an authorisation. The need, under the current legislation, to report changes in membership of the group was seen to be unnecessarily restrictive. To date applications for authorisation in the mainland states, have been made by the relevant state organization on behalf of its members. This allows both existing and future members who wish to be part of the collective to be covered by the authorisation.

While authorisations are currently used by grower groups, ACGC would strongly support the proposition that the notification process need not be repeated if there is a change in membership but not a change in the activity.

It is noted that in relation to collective bargaining it is the Panel's view that one of the ways that the authorisation and notification procedures can be simplified is by "empowering the ACCC to grant an exemption (including per se prohibitions) if it is satisfied that either the proposed conduct is unlikely to substantially lessen competition or that the proposed conduct is likely to result in a net public benefit.

The Panel goes on to note that "the regime could also better facilitate any efficiency-enhancing collective boycott activities".

The Panel's view is supported by ACGC, and it is assumed that it is a correct understanding of the Panel's view that the ACCC should be empowered to grant an exemption enabling collective boycott activity, if the ACCC is satisfied either that the proposed conduct is unlikely to substantially lessen competition or that the proposed conduct is likely to result in a net public benefit.

It is submitted that the position with respect to authorisations for boycotts has been confused since the decision of the Competition Tribunal in 2006 in re VFF Chicken Meat Growers Boycott Authorisation. The consensus has since been that the test applied by the Tribunal was such that no boycott authorisation would ever again be granted under the legislation as it stands at present.

On the basis of the Panel's view, it would appear that the difficulty, if not impossibility, of satisfying the standard of public benefit applied by the Competition Tribunal in the VFF case could be overcome by demonstrating that the proposed conduct is unlikely to substantially lessen competition.

In this connection, members of groups such as chicken growers are by definition not competitors once they are authorised to collectively bargain with the processor to which they are contracted. They do participate in pool schemes, but these simply govern the amounts of payments to growers by reference to individual levels of performance, and could not be regarded as placing the growers in competition. Nor are the growers in competition with the processor.

It is submitted that there is in fact no competition involved. The Panel's view would bring clarity to what has been a confused area. ACGC strongly supports the Panels and ACCC view that provision for collective boycott in certain circumstances would form an important part of any reform to competition policy.

ACGC also raised the following matters in its original submission ensuring that;

- 1) All parties are required to be engaged in a collective bargaining arrangement (i.e. both processor and growers)
- 2) Processors cannot exclude growers from a negotiating group.
- 3) That there is an option available for collective boycott if the processor refuses to negotiate.

While the Panel has expressed the view that a better notification regime could facilitate increased efficiency in the process through enhancing collective boycott activity, there appears to be no other reference to collective boycotts as a means of finalizing a negotiation. ACGC sees this as a very important issue if collective bargaining is to be of value to all parties. (Please see original submission).

The draft report does however discuss whether alternate dispute resolution mechanisms should be available for small business such as contract meat chicken growers. For contract negotiations including grow fee updates access to arbitration may provide an outcome provided it was compulsory for all parties to be meaningfully engaged. ACGC would note however it would need to ensure that this did not burden growers with unnecessary cost and time.

It is common for processor's standard forms of chicken growing contracts to include a dispute resolution process, firstly mediation, and then, only if the dispute relates to money issues, arbitration. However, the arbitration process normally involves one or either of the large commercial dispute resolution organisations. The cost is in fact much the same as full litigation. There needs to be a readily accessible low cost process which will apply to all disputes and provide an outcome

Unconscionable conduct was also raised in the original ACGC submission. ACGC is not of the view that the current provisions are adequate given the treatment of growers by their processors. We have seen in recent times examples where the leadership of a collective bargaining group have been not offered contract renewal, when the balance of the group were offered contracts, which seems a blatant case of intimidation. ACGC supports provisions in an authorisation which requires all members of a collective to be treated fairly and without discrimination. Most growers would be very reticent to take on an action themselves as it is highly unlikely that they would continue to have a contract regardless of the outcome. Where there are issues that might be deemed 'unconscionable behaviour' category they usually involve a number of growers who are not competitors. The ACCC needs to be resourced so as to be far more responsive to complaints from small business of unconscionable conduct, rather than dealing only with the big picture items.

ACGC is very happy to elaborate on any matters outlined in this brief submission.