

Small Business Issues

The draft report raise questions about the position of small business in respect of power in the market place and access to remedies.

The problems include asymmetric interdependence, ie, many small producers are selling their goods and services in markets where there are few buyers, all or most of whom have far greater market power and resources. Competition policy is supposed to be about fair trading. It therefore follows that simply allowing a major buyer to pick off producers one by one should be countered by strengthening the position of smaller producers.

One option is encouraging and supporting collective action. For example, in the case of farming, Danish farmers receive a higher percentage of the final retail price of food products than any other farmers in the world. This has been attributed to the domination of Danish food production by farmer co-operatives that are involved in processing, marketing and extension work. This is an expected outcome, as the co-operative is the only business model where all the benefits go to the farmers, and the system in Denmark includes vertical integration. There is more about this on the Australian Farm Institute website - see http://www.farminstitute.org.au/blog/Ag_Forum/post/denmark-can-teach-australia-a-thing-or-two-about-agricultural-exports/

Casual observation in many areas in New South Wales suggests that towns with locally controlled producer co-operatives are better off, as the co-operatives often maintain stores and other services that stand alone processors or traders don't bother with. These conclusions are consistent with the Danish experience and with local analyses of how producers can maximise their positions, e.g., see the work of David Mckinna, such as <http://inform.regionalaustralia.org.au/economy/business-development/item/critical-success-factors-for-new-rural-industries> in which he describes the virtues of collective action at page 41.

The mere fact that farmers need permission to enter into joint selling arrangements creates, rightly or wrongly, the impression that the system is controlled by 'big' interests who want the small fry kept in their place. The explanation about the dairying industry at http://www.agriculture.gov.au/agriculture-food/meat-wool-dairy/dairy/collective_bargaining_in_the_dairy_industry2 reinforces this. If all milk suppliers act together in relation to a processor there is a one on one situation, not a 'lessening of competition'. The issue in those situations is that the producers and the processor are in competition with other such groupings, and so competition in any ordinarily understood sense is maintained. The issue between the producers and the processor is one of fair trading, which the law is supposed to support, rather than one of lessening of competition.

Surely all that is needed is an exemption from anti-cartel provisions for producers acting together for marketing purposes, subject to some kind of appropriate scale test. This is not

just a farming issue, e.g., it would apply equally to home industries like hand knitting, and no doubt many others, as suggested in the draft report.

There is already plenty of research about collective action and its value. The issue is implementation. In Australia it is often said that achieving successful and long lasting collective or co-operative action is particularly difficult compared with other countries. So there is a need for some kind of extension or like service for educating farmers and other small businesses about the value of collective action and co-operation and the techniques for doing it. There are indirect ways of getting started, e.g. by the use of voluntary Codes of Conduct, preferably incorporating continuous improvement systems (a continuous improvement approach is also supported by McKinna - see page17) so that the many begin acting in concert without necessarily overtly joining anything. A Code involving Certified Land Management (see www.almg.org.au) or similar will also have public good benefits, as it encourages farmers to go beyond mere legal compliance with their environmental and landscape management. They therefore should attract some public investment, further supporting regional economic and social wellbeing.

There may be a cultural issue with the access to justice problem. The competition system will surely have little credibility with smaller producers so long as it continues to operate on the basis that it is acceptable for producers to subsidise retailers and consumers, but wrong or unduly difficult for producers to seek fairness. The usual legal system is already bedevilled by large players tying up small players with expensive processes.

There is a vast criminology body of research, consistently indicating that the most successful systems are those that involve:

- a high probability of being caught, and of quick action, and
- the 'punishment' adversely affecting the usual personal and financial drivers of the individual.

So any system that allows the parties to delay action or get off easily will not work, and aggrieved individuals will know this, and so be inhibited about taking action. There are contrasts now. The immediate on the spot fine systems for matters like workplace safety are reasonably effective in influencing behaviour positively. On the other hand, the inordinate delays in addressing some major financial problems and then dealing with them by what many see as the equivalent of a slap with a wet lettuce leaf have lessened confidence in the systems and their administrators.

The need then is to make the competition system genuinely about fairness and to provide simple, quick acting systems like Small Claims tribunals where they don't already exist, introduce truly meaningful remedies, and to pursue public education campaigns inviting their use. There may need to be process matters dealt with, e.g., ensuring most costs are born by bigger parties, aligning remedies with the normal personal and financial drivers of miscreants, such as naming and shaming, and forbidding agreements with non-

disclosure or confidentiality clauses. More effective action on these issues would be well short of encouraging undesirable entitlement and litigious. There may also be a need for introduction of more imaginative techniques to overcome the asymmetric interdependence problem, e.g., a power to make those who achieve a defined market share publish their supply contracts, without naming the suppliers.

To summarise:

- The problems include the failure of current arrangements to address asymmetric market interdependence adequately, and the lack of emphasis on fair trading in competition policy and law
- Policy and law should actively encourage and support collective action by smaller producers
- Co-operatives increase relative returns to producers and often increase local overall social and economic wellbeing
- The collective bargaining provisions need recasting so that establishing collective bargaining units does not require any formal approval, subject to an appropriate scale test
- Several approaches are needed to encourage greater collective action, including Code of Conduct among producers, with potential for multiple benefits
- The disputes settling, competition administration and legal systems need substantial change, so that outcomes are quicker, at little or no cost for smaller producers, and remedies more directly affect and are aligned with the normal financial and personal drivers of the miscreants.

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