



National
Farmers
Federation

Horticulture
Council

11 October 2024

Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

To the Committee,

RE: Inquiry into 'big box' retailer price setting

The NFF Horticulture Council (the Council) on behalf of greenlife growers and the wider national horticulture industry, would like to thank the Senate for referring to the Committee an inquiry into and report on the price setting practices and market power of 'big box' retailers in Australia.

The Council is the recognised peak body for forming policy and advocating on behalf of the national horticulture industry. Established in 2017, it now comprises 20 national commodity and state-based horticulture bodies, who together represent the full breadth of an incredibly diverse industry.

The efficient, transparent and fair domestic wholesale and retail markets for horticultural products has been a core policy priority of the Council since its establishment. In late 2022, the Council created its own Competition Taskforce to develop policy and advocate in this important field.

The 'big box' retail format, featuring large footprint stores, large inventories, bulk products, and self-service shopping experience, has proven successful particularly in the USA, but also in Australia, where Bunnings is now dominate in the home improvement, nursery and hardware markets, and Costco is making steady inroads in the food, grocery and electronics markets.

While the growth of Costco is likely leading to positive outcomes for suppliers and consumers, to the extent it is actually competing with the major incumbent supermarkets, the success of Bunnings in capturing a national market share of 70 percent, and approaching a near monopoly in some locations in nursery retail, has without doubt dramatically reduced competition and resulted in poor outcomes particularly for suppliers, where market power has been wielded in pushing prices down and transferring costs and risks across.

The Australian nursery industry, cultivating seedlings, plants, trees and shrubs for landscaping, gardening and agriculture is valued at approximately \$2.8 billion and employs around 25,000 people across the country. Despite this diversity and size, individual growers are particularly vulnerable to poor trading practices by Bunnings, given its market power, the perishable nature of the product and that no viable export market options exist.

Efficient, transparent and fair domestic wholesale and retail markets for plants and nursery products deliver not just resilient supply chains, sustainable and innovative business, and secure regional jobs but also wider public goods, including access to quality, affordable plants, proven to have strong positive links to human health and wellbeing.

Given the evident market power of Bunnings, the troubling testimony of individual nursery businesses to the Senate inquiry into supermarket pricing practices revealing exceptionally poor, manipulative and coercive trading practices of Bunnings, and the benefits arising from markets that are fairer and more equitable, the Council recommends that the Federal Government regulates this trade through mandatory code of conduct, should Bunnings by the time this committee reports its finding not agree to submitting to a voluntary code.

The object and purpose of any new code applying to retailers of significant size in the national nursery should be consistent with other industry codes of conduct, including:

- Regulating standards of business conduct in the nursery supply chain and to build in order to sustain trust and cooperation throughout that chain.
- Ensuring transparency and certainty in commercial transactions in the nursery supply chain and to minimise disputes arising from a lack of certainty in respect of the commercial terms agreed between parties.
- Providing an effective, fair, equitable and accessible dispute resolution process for raising and investigating complaints and resolving disputes arising between large nursery retailers and suppliers.
- Promoting and supporting good faith in commercial dealings between large nursery retailers and suppliers.

It is well understood penalties that are insignificant relevant to the benefit accrued from the prohibited behaviour or to the turnover of the business do not act as a deterrent and are instead viewed as a cost of doing business.

Consistent with findings made by the recent Senate inquiry into supermarket pricing practices and the Emerson review of the Food and Grocery Code of Conduct, the Council recommends a new code includes provision for significant penalties that will act as a proper deterrent to poor behaviour.

Further, significant penalties will only act as a deterrent for poor behaviour where there is a reasonable prospect of contraventions of a new code being uncovered. The Council recommends the ACCC should have the power to investigate the practices of any individual retailer at any time, regardless of whether they have a reasonable suspicion of any wrongdoing. These powers should include the ability to compel the sharing of historic purchase price data.

Only those markets described as “perfect”, characterised by a free and open flow of information between all participants of equal bargaining power, will deliver efficiency and fairness without intervention. Domestic markets for nursery products are far less than perfect and given the flow of information and power of big box retailers, could be more accurately described as “perfectly imperfect”.

While greater intervention, in the form of government regulation, is arguably required in this market, this too creates its own frictions and costs. A new code must balance the benefits it creates in terms of increased efficiency, transparency, or fairness against the additional transaction costs it introduces.

The Council would welcome further engagement with the Committee as their inquiry unfolds. We would recommend in particular that the Committee seeks out the direct testimony of those who have previously or currently directly supply Bunnings and other large nursery retailers and put in place arrangements for them to do so anonymously.

To discuss this, any of the above or the following submissions further, please be in contact with Richard Shannon, Executive Officer to the Council either by email at [REDACTED] or phone on [REDACTED]

Yours sincerely,

[REDACTED]

JOLYON BURNETT
Chair
NFF Horticulture Council