The Senate

Select Committee on Agricultural and Related Industries

Pricing and supply arrangements in the Australian and global fertiliser market

Interim report

December 2008

ISBN 978-1-74229-028-7

This document was prepared by the Senate Select Committee on Agricultural and Related Industries, and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

Membership of the Committee

Members

Senator the Hon Bill Heffernan	LP, New South Wales	Chair
Senator Don Farrell	ALP, South Australia	Deputy Chair*
Senator Mary Jo Fisher	LP, South Australia	
Senator Christine Milne	AG, Tasmania	
Senator Fiona Nash	NPA, New South Wales	
Senator Glenn Sterle	ALP, Western Australia	

**Senator Kerry O'Brien (ALP, Tasmania) was Deputy Chair from 19 February-14 October 2008*

Participating Members

Senator the Hon Ian Macdonald	LP, Queensland
Senator Barnaby Joyce	NPA, Queensland
Senator the Hon Richard Colbeck	LP, Tasmania
Senator Russell Trood	LP, Queensland

Committee Secretariat

Ms Jeanette Radcliffe, Secretary
Mr Peter Short, Principal Research Officer
Ms Rosalind McMahon, Executive Assistant

Parliament House, Canberra
Telephone: (02) 6277 3511
Facsimile (02) 6277 5811

Internet: www.aph.gov.au/Senate/committee/agric_ctte/index.htm
Email: agriculture.sen@aph.gov.au

Table of Contents

Chapter 1

Introduction

1.1 On 14 February 2008, the Senate referred the following matter to the Senate Select Committee on Agricultural and Related Industries for inquiry and report by 16 June 2008:

> The pricing and supply arrangements in the Australian and global chemical and fertiliser markets, the implications for Australian farmers of world chemical and fertiliser supply and pricing arrangements, monopolistic and cartel behaviour and related matters.[1]

1.2 The Senate subsequently extended the reporting date to 16 October 2008, and this was later extended to 2 December 2008.

Conduct of the inquiry

1.3 The inquiry was advertised in the *Australian*, metropolitan newspapers, a wide range of regional newspapers, and through the Internet. The committee also invited submissions from a wide range of organisations and individuals. The committee requested submissions by 19 March 2008, however this was subsequently extended to 3 April 2008. Due to public interest in the inquiry, the committee continued to accept submissions during the course of its inquiry.

1.4 The committee received 54 submissions – 46 public submissions and 8 confidential submissions. A list of individuals and organisations that made public submissions to the inquiry is at Appendix 1. The committee held four public hearings: Canberra on 16 May 2008, Melbourne on 23 July 2008, and Canberra on 11 and 14 November 2008. The committee also held a number of *in camera* hearings. A list of the witnesses who gave evidence at the public hearings is at Appendix 2.

1.5 The committee was concerned at the number of people who felt intimidated about expressing their concerns about the Australian fertiliser market and would not appear before the committee.

The committee's interim report

1.6 The committee has decided to report in two stages. This interim report addresses parts of the terms of reference relating to fertiliser supply and pricing arrangements. Chapter 2 outlines the structure of the fertiliser industry including the

---

1 *Journals of the Senate*, 14 February 2008, p. 145.

main industry players, market concentration and production and consumption of fertiliser in Australia. It also reviews current regulatory arrangements. Chapter 3 of the report discusses a range of competition issues, including the impact on the market of major players in the industry. The chapter also discusses the nature and extent of a range of market distortions and reviews a number of options to address these issues.

1.7 In its final report, the committee will further review issues related to fertiliser supply and pricing arrangements, including options for addressing anti-competitive behaviour through the *Trade Practices Act 1974*, and other options such as the adoption of an industry code of conduct and provision of a greater monitoring role for the Australian Competition and Consumer Commission. The committee will also investigate the need for a strengthening of current regulatory arrangements under which the industry operates. In addition, the committee will review whether there is a need for improving fertiliser use efficiency, and developing alternatives to chemical fertilisers and developing further domestic sources of supply.

1.8 The committee, in its final report, will also address the second part of the reference relating to pricing and supply arrangements in the Australian and global chemical market, and the implications for Australian farmers of world chemical supply and pricing arrangements.

1.9 The committee intends to table its final report by 30 June 2009.

Acknowledgement

1.10 The committee thanks those individuals and organisations who made submissions and gave evidence at the public and *in camera* hearings.

Chapter 2

Industry structure and regulation

2.1 This chapter discusses the nature and structure of the fertiliser industry including the main industry players and market concentration and provides information on production and consumption of fertiliser in Australia. The chapter also reviews the regulatory arrangements under which the industry operates.

Global fertiliser suppliers

2.2 The global fertiliser industry comprises a number of large manufacturers of fertiliser products. The committee understands that between 80 and 85 per cent of the world's rock phosphate is controlled by five entities.[1] The principal suppliers of imported fertiliser products are detailed below:

- OCP – the national Moroccan phosphates company. It is the world's largest exporter of phosphates and derivatives, operating on five continents.
- Mosaic – is one of the world's leading producers of concentrated phosphate and potash crop nutrients.
- Foskor – is one of the world's largest phosphate and phosphoric acid producers. Foskor exports its phosphate based products to a number of countries including Australia.
- Middle East producers – the major suppliers are Sabic (Saudi Arabia), Qafco (Qatar) and PIC (Kuwait/Bahrain).
- Wengfu – Chinese supplier of phosphate fertiliser and phosphate chemicals for world markets.
- Agrium – global producer and distributor of agricultural crop nutrients and other agricultural products and services.
- PCS – an integrated producer of fertiliser, industrial and animal feed products. The world's largest fertiliser enterprise by capacity producing the three primary plant nutrients.
- CANPOTEX – international marketing and distribution company wholly owned by Agrium Inc, Mosaic and PCS.[2]

2.3 Each of the companies listed above has supplied, or sought to supply, the Australian market.[3]

---

1 *Committee Hansard*, 14 November 2008, p. 12.

2 *Submission* 3, Hi Fert pp 5-6; *Submission* 26, IPL, Annexure 3.

3 Hi Fert, Correspondence, dated 7 August 2008.

The Australian fertiliser industry

2.4 Fertilisers are one of the major physical inputs to Australian agricultural production and account for more than 12 per cent of the value of the material and service inputs used in Australian agriculture. The fertiliser industry has annual sales in excess of $2 billion. The industry's full economic effect on Australia's GDP is in excess of $8 billion each year.[4]

2.5 Approximately 50 per cent of the 5 to 6 million tonnes of fertiliser used in Australia each year is manufactured in Australia with the balance imported from a variety of overseas countries. Superphosphate, manufactured from imported phosphate rock makes up 50 per cent of the domestically manufactured product sold in Australia. Some 62.5 per cent of nitrogen fertilisers, 33 per cent of phosphate fertilisers and 100 per cent of potassium fertilisers are imported into Australia.[5]

2.6 Over the five years to 2005–06, Australia imported an average 1.1 million tonnes of urea, around 700 000 tonnes of mono-ammonium phosphate (MAP), and around 200 000 tonnes each of triple superphosphate and di-ammonium phosphate (DAP). However, since 2006–07, there has been a decline in fertiliser imports. Imports of urea fell by 25 per cent in 2006–07, MAP declined by 16 per cent, while triple superphosphate and DAP declined by 47 and 60 per cent respectively. This is due to a number of reasons, including increased demand from other countries, particularly the United States, for fertiliser imports and a drought induced decrease in Australian cropping.[6]

2.7 By element, imports account for around 54 per cent of Australian phosphate consumption, 69 per cent of nitrogen consumption and 100 per cent of potash consumption.[7]

2.8 In addition to domestic use, Australia exports between 200 000 and 400 000 tonnes of fertiliser year, primarily from the Incitec Pivot Ltd (IPL) ammonium phosphate plant in North Queensland.[8] IPL indicated that approximately 250 000 tonnes or 26 per cent of DAP and MAP production from Phosphate Hill is exported.[9]

---

4 FIFA, *Fertilizer Industry Environment Report 2006*, (FIFA, 2008), p. 12. Hereafter referred to as FIFA report 2006.

5 *Submission* 26, IPL, pp 2-3.

6 *Submission* 35, DAFF, pp 5-6.

7 *Submission* 35, DAFF, p. 6.

8 FIFA, 'Fertilizer prices continue to rise', *Media Release*, 5 February 2008.

9 *Submission* 26, IPL, p. 9.

Fertiliser products

2.9 There are many solid, soluable and liquid products used as fertilisers in Australia. Solid mineral fertilisers make up the majority of the fertilisers used, although the production and use of liquids is increasing. Significant quantities of nitrogen are also applied as anhydrous ammonia – a liquefied gas.

2.10 The major fertilisers used in Australia are listed in Table 1. Many of these are used in blends to meet specific nutrient needs of crops and pastures.

Table 1: Major fertiliser products

Product **Approximate percentage of principal elements***

	N	**P**	**K**	**S**	**Ca**
Single superphosphate	-	9	-	11	20
Urea	46	-	-	-	-
Mono-ammonium phosphate (MAP)	10	22	-	2	-
Di-ammonium phosphate (DAP)	18	20	-	1.5	-
Potassium chloride (muriate of potash)	-	-	50	-	-
Ammonium sulphate (SOA)	21	-	-	24	-
Triple superphosphate	-	20	-	1	15
Anhydrous ammonia	82	-	-	-	-

*N – nitrogen P – phosphorus K – potassium S – sulphur Ca – calcium

Source: Fertilizer Industry Federation of Australia (FIFA), *Fertilizer Industry Environment Report 2006*, (FIFA, 2008), p. 13.

Industry structure

2.11 The Australian fertiliser industry comprises manufacturers, importers, blenders, retail distributors and agents, fertiliser applicators, and a number of associated service industries. Both manufacturers and importers market through dealers and/or agents who provide farmers with a local service point and often employ advisory agronomists. Many manufacturers also operate regional distribution and blending service centres.

2.12 The main fertiliser companies and their areas of activities are listed below.

Table 2: Major fertiliser companies

	Description of fertiliser activities	**Premises locations***
ABB Grain Ltd (Fertiliser)	Import, distribution, sales, advice	SA, Vic
CSBP Ltd	Import, manufacture, distribution, sales, advice	WA
CSR Distilleries Operations Ltd	Manufacture, distribution, sales, advice	Qld
Elders Ltd	Import, distribution, sales, advice	WA, SA, Tas, Vic, NSW, Qld
Ruralco Holdings Ltd (Growforce)	Import, manufacture, distribution, sales, advice	Australia-wide
Hi Fert Pty Ltd	Import, manufacture, distribution, sales, advice	Vic, Qld, SA
Impact Fertilisers Pty Ltd	Import, manufacture, distribution, sales, advice	Tas, Vic
Incitec Pivot Ltd	Import, manufacture, distribution, sales, advice	SA, Tas, Vic, NSW, Qld
Interfert Australia Pty Ltd	Import, distribution, sales, advice	SA, Vic
Landmark	Sales, advice	Australia-wide
Summit Rural (WA) Pty Ltd	Import, manufacture, distribution, sales, advice	WA
Superfert Pty Ltd	Import, sales, advice	WA
United Farmers Co-operative Company Ltd	Import, manufacture, distribution, sales, advice	WA
Whitford Fertilisers	Import, distribution, sales, advice	WA

*While some companies listed have principal state location(s), their products may be distributed in other parts of Australia.

Source: FIFA, *Fertilizer Industry Environment Report 2006*, p. 7.

Industry concentration

2.13 The industry is dominated by two major companies. Incitec Pivot Ltd has a dominant market position in eastern Australia – with a 70 per cent market share at the wholesale level and a 58.5 per cent market share at the distribution level.[10]

2.14 In Western Australia, CSBP Ltd has an approximate market share of 65 per cent and annual sales of about one million tonnes, being a mix of imported and locally manufactured fertilisers. CSBP's market share has fallen from an estimated 90 per cent in 1995-96 as new fertiliser suppliers have entered the WA market. Summit Fertilisers has an estimated market share of 25 percent and United Farmers Co-operative an estimated market share of 10 per cent. A number of smaller operators, including Superfert, Whitford Fertilisers and ABB also operate in Western Australia.[11]

2.15 The Australian Competition and Consumer Commission (ACCC) noted that a number of market participants are vertically integrated and have a presence across more than one level of the supply chain. IPL, for example, operates a mine at Phosphate Hill in Queensland from which it sources phosphate rock for the manufacture of phosphate fertilisers. In addition, IPL, through Southern Cross International (SCI), supplies companies at the distributor level (including the IPL distribution business) and distributes to its agents and dealers at the retail level as well as engaging in some sales direct to end users in Tasmania. The agents and dealers who are supplied by IPL also source supply from distributors who are themselves supplied by SCI.[12]

2.16 Manufacturers CSBP and Impact also have distribution facilities/networks in Western Australia and the eastern states of Australia respectively. The distributor Hi Fert Pty Ltd is owned by retailers Elders and Landmark through their joint venture, ELF Australia Pty Ltd. Hi Fert supplies fertilisers to Elders and Landmark as well as their competitors.[13]

2.17 A study by IBISWorld of fertiliser manufacturing in Australia has characterised the level of industry concentration as 'high'.[14] According to the study the top two players alone (IPL and Wesfarmers CSBP) are estimated to account for roughly 70 to 80 per cent of industry revenues, indicating a 'high level' of industry concentration. The study commented that these concentration levels have risen in recent times following the merger of Incitec and Pivot in 2003. The study noted that

---

10 Mr James Whiteside, IPL, *Committee Hansard*, 23 July 2008, p. 15; *Submission* 26, IPL, p. 10.

11 Information provided by CSBP Ltd.

12 *ACCC Examination of Fertiliser Prices*, July 2008, p. 10.

13 ACCC report, pp 10-11.

14 IBISWorld characterises 'high' industry concentration as situations where the top four players account for over 70 per cent or more of turnover. See IBISWorld, Correspondence, dated 4 August 2008.

IPL's acquisition of Southern Cross Fertilisers in 2006 'has served to boost concentration levels further'.[15]

2.18 Details of the main producers/manufacturers; distributors/wholesalers and retailers are provided below.

Producers/manufacturers

2.19 Manufacturers source raw materials through imports or from domestic sources as well as importing finished fertiliser products from international suppliers. In general, fertiliser products are supplied by manufacturers to distributors or to dealers and agents at the retail level.

2.20 There are only three manufacturers of fertilisers in Australia – Incitec Pivot and Impact Fertilisers Pty Ltd operate in the eastern states while CSBP operates in Western Australia.[16] Of the major fertiliser manufacturers, Incitec Pivot has an estimated national market share in manufacturing of 55 per cent, CSBP (13 per cent) and others (32 per cent) in 2007.[17]

Incitec Pivot Ltd

2.21 Incitec Pivot is the dominant force within the Australian fertiliser manufacturing industry with a national market share of 55 per cent, and an east coast market share of 65-70 per cent in 2007.[18]

2.22 Incitec Pivot is an ASX listed Australian company, involved in the manufacture of fertiliser and industrial chemical products. It is the major company involved in the fertiliser industry in Australia. The company was formed in 2003 with the merger of the Incitec and Pivot companies. Its scale and production capacity greatly increased with the purchase of Southern Cross Fertilisers in 2006, Australia's only manufacturer of MAP and DAP fertilisers.

2.23 The company supplies more than 50 per cent of Australia's agricultural plant nutrient needs. Incitec Pivot operates a phosphate mine and ammonium phosphate manufacturing facility at Phosphate Hill in Queensland. IPL also manufactures urea, single superphosphate (SSP) and anhydrous ammonia fertilisers at sites in Queensland, NSW and Victoria. In addition to its manufacturing operations, IPL also imports substantial volumes of fertilisers.

---

15 IBISWorld, *Fertiliser Manufacturing in Australia*, November 2007, p. 9.

16 ACCC report, p. 8.

17 IBISWorld report, pp 24, 30 and Correspondence, dated 5 August 2008. Southern Cross Fertilisers, now owned by IPL, had an estimated market share of 12-15 per cent in 2005.

18 IBISWorld report, p. 24.

2.24 The company supplies about three million tonnes of fertiliser per annum, generating sales revenues in excess of $1 billion annually. IPL supplies fertiliser to retailers in the eastern and southern states. The distribution network is through a network of business partners, comprising independent distributors as well as IPL agents. Of IPL's 220 contracted business partners, 70 are agents and 150 are resellers or dealers.[19]

2.25 The table below shows the dominant market position of IPL in relation to market share of fertiliser products, especially DAP and SSP, where the company's market share in eastern Australia was 50 per cent and 67 per cent respectively in June 2008.

Table 3: Proportion of market share held by IPL in Eastern Australia by product – MAP, DAP, SSP

	MAP	**DAP**	**SSP**
June 2003	54%	62%	85%
June 2004	49%	56%	82%
June 2005	47%	59%	84%
June 2006	48%	52%	74%
June 2007	50%	48%	64%
June 2008	44%	50%	67%

Source: IPL, Correspondence, dated 7 October 2008.

CSBP Ltd

2.26 CSBP Ltd is a wholly owned subsidiary of Wesfarmers Ltd, an Australian public company. The company operates the fertiliser and chemicals business of the Wesfarmers group in Western Australia. It is involved in the manufacture and supply of fertilisers primarily to the broadacre cropping, horticulture, pasture and dairy sectors in WA, as well as providing soil and plant testing and agronomy services. It is also involved in the manufacture and supply of chemicals and acids for industry, mining and mineral processing. CSBP has manufacturing and distribution facilities at Kwinana (WA) and further distribution facilities at Geraldton, Bunbury, Albany Esperance and six inland depots.

19 *Submission* 26, IPL, p. 2.

Distributors/wholesalers

2.27 Distributors source fertiliser products from either domestic manufacturers or directly from international suppliers. The main distributors of imported fertiliser product in Australia are:

- Incitec Pivot Limited;
- CSBP*;
- Hi-Fert;
- Impact Fertilisers and Impact Fertilisers Australia;
- Summit*;
- United Farmers Cooperative*;
- ABB;
- Superfert*;
- Whitfert*; and
- Megafert/Interfert.

2.28 The companies marked with an asterix only operate in Western Australia. The other companies operate only in eastern Australia with the exception of ABB which operates in both markets.

2.29 For MAP and DAP many of the same companies that import also distribute product purchased from Incitec Pivot. According to the Fertilizer Industry Federation of Australia (FIFA), all of the domestically produced urea is sold by Incitec Pivot. Most of the companies sell through agents such as Elders, Landmark, CRT and other independent rural merchants.

2.30 The main distributor of fertiliser products is IPL, which has a market share of 58.5 per cent in the distribution of fertiliser in eastern Australia – this declined from 73 per cent in 2003.[20] Other distributors include CSBP and the companies listed below.[21]

Hi Fert

2.31 Hi Fert Pty Ltd is an importer and distributor of imported and locally manufactured fertiliser products. It is a joint venture company between Elders Ltd and Landmark Rural Holdings. Hi Fert markets and distributes fertiliser in eastern Australia (South Australia, Victoria, NSW and Queensland). Hi Fert operates 9 major distribution centres throughout Australia. It distributes more than 500 000 tonnes of

20 *Submission* 26, IPL, p. 10.

21 *Submission* 26, IPL, Annexure 4; *Submission* 3, Hi Fert, pp 7-8.

fertiliser products each year. Hi Fert does not manufacture its own fertiliser products nor own production facilities.[22] Hi Fert has a 15 per cent market share nationally.[23]

Impact

2.32 Impact Fertilisers Australia Pty Ltd is a joint venture between Impact Fertilisers Pty Ltd of Hobart (Tas) and the multinational Swiss-based company Ameropa AG, a corporation with fertiliser operations throughout the world. Impact supplies fertiliser products on the eastern seaboard mainly to independent dealers.

2.33 Other companies include:

- ABB Fertiliser – a part of ABB Grain – an agribusiness with rural services which includes fertiliser and agricultural chemicals supply. ABB distributes its fertiliser products in SA, WA, Victoria and NSW.
- Megafert – is a supplier of a range of fertiliser products in South Australia, Victoria and NSW.
- Summit Fertilizers – supplier of a broad range of fertiliser products in Western Australia from five locations located at Kwinana, Geraldton, Bunbury, Albany and Esperance.[24]

Retailers

2.34 Retailers, often also described as agents and dealers, are involved in the day-to-day sale of fertiliser to end-users (customers).

2.35 The market share of the retail sector in eastern Australia is shown in Table 4 below. The largest part of the retail distribution market are the independents – numerous privately owned businesses – generally family owned and operated.[25] However, Elders and Landmark have a relatively large share of the retail market in eastern Australia.

---

22 *Submission* 3, Hi Fert, pp 3-4,7.

23 *Submission* 3, Hi Fert, p. 16.

24 *Submission* 3, Hi Fert, pp 7-8.

25 *Submission* 26, IPL, Annexure 4; *Submission* 3, Hi Fert, pp 8-9.

Table 4: Retail fertiliser market in eastern Australia

Independents	68%
Elders	13%
Landmark	12%
RuralCo	4%
GrainCorp	3%

Source: *Submission* 26, IPL, p. 27.

2.36 The major companies include:

- Elders Ltd – Elders is a wholly-owned subsidiary of Futuris Corporation Ltd. Elders is a leading distributor and retailer of products and services in the agricultural sector. It provides fertilisers, chemicals and agronomic advice from locations across Australia. Elders is a 50 per cent participant in the ELF Australia joint venture (the owner of Hi Fert).
- Landmark – is one of Australia's leading national retailers of fertiliser; in addition to providing a range of other farm services. Landmark sources its stock through from major suppliers, including IPL, Impact, CSBP and Summit. Landmark is part of a joint venture with Elders Ltd, through ELF Australia, which owns Hi Fert.
- GrainCorp – publicly listed Australian agribusiness predominantly involved in grain bulk handling. Operates under the Ag Plus brand for rural merchandise.
- RuralCo – operates through a number of businesses (CRT, Roberts, Ruralco, Growforce) that specialise in rural merchandise, fertiliser, stock feed, grain storage and other activities.[26]

Production

2.37 Australian fertiliser manufacturers produced nearly 3 260 000 tonnes of fertilisers in 2006.[27] Manufacturing includes processing raw materials such as phosphate rock or atmospheric nitrogen into easily-used products, or coating existing products with trace elements. Table 5 lists the quantities of each of the main products in Australia, and their main nutrient constituents.

26 *Submission* 3, Hi Fert, pp 8-9; *Submission* 26, IPL, pp 25-27.

27 FIFA report 2006, p. 22.

Table 5: Fertilisers made in Australia in 2006 and the nutrients they supply (tonnes)

Major products	Total tonnes	Nitrogen	Phosphorus	Sulphur	Calcium
Urea	214 000	98 440	0	0	0
Sulphate of ammonia (SOA)	237 983	49 976	0	57 116	0
Anhydrous ammonia	69 812	57 246	0	0	0
Di- ammonium phosphate (DAP)	342 985	61 737	68 597	5 145	0
Mono-ammonium phosphate (MAP)	255 710	25 571	56 256	3 836	0
Single superphosphate	1 026 651	0	92 399	112 932	205 330
TOTAL	**2 147 141**	**292 970**	**217 252**	**179 029**	**205 330**

Source: FIFA, *Fertilizer Industry Environment Report 2006*, p. 22.

2.38 More recent data indicates that just under one million tonnes of MAP and DAP is produced in Australia, all from the Incitec Pivot plant at Phosphate Hill near Mt Isa (Qld). Incitec Pivot exports between 250 000 and 300 000 tonnes of MAP and DAP annually. Export tonnage is almost all DAP, as this is the preferred product in target markets (Asia and the Subcontinent), although there are occasional exports of MAP. Approximately 230 000 tonnes of urea is produced per annum. Domestically produced urea is rarely exported from Australia. Approximately 80 000 tonnes of anhydrous ammonia is produced annually and 250 000 tonnes of sulphate of ammonia (SOA) per annum is used in agriculture.

Consumption

2.39 The total tonnage of the major fertiliser products (imported and domestic) used in Australia, and the total tonnage of nutrient elements in those products are listed in Table 6. Including other less common products, just over 5 million tonnes of fertilisers were used in 2006. Urea (for its N), single superphosphate (P and S), and DAP and MAP (N and P) are the main products.[28]

28 N – nitrogen; P – phosphorus; S – sulphur; K – potassium; Ca – calcium.

Table 6: Tonnage of major imported and domestic fertiliser products used in 2006

Product	Tonnes	Approximate tonnage of principal elements				
		N	P	K	S	Ca
Single superphosphate	1 065 488	0	95 894	0	117 204	213 098
Urea	1 032 066	474 750	0	0	0	0
Mono-ammonium phosphate (MAP)	676 766	67 677	148 889	0	13 535	0
Di-ammonium phosphate (DAP)	579 171	104 250	115 834	0	8 688	0
Potassium chloride (muriate of potash)	299 993	0	0	149 997	0	0
Ammonium sulphate (SOA)	288 841	60 657	0	0	69 322	0
Triple superphosphate	106 944	0	21 389	0	1 070	16 042
Anhydrous ammonia	69 814	57 246	0	0	0	0
TOTAL	**4 119 081**	**764 580**	**382 006**	**149 997**	**209 819**	**229 140**

Source: FIFA, *Fertilizer Industry Environment Report 2006*, p. 13.

2.40 Total NPK consumption in Australia has generally increased in the past 20 years – from around 730 000 tonnes in 1983 to a peak of 1 670 800 tonnes in 2004. The effect of severe drought has had a significant impact on fertiliser demand over the past few years.[29]

Regulation of the industry

2.41 Regulatory arrangements in relation to the description, sale and use of fertilisers in Australia are the responsibility of state and territory governments. No state requires that fertilisers be registered, however, all have specifications for how

29 FIFA report 2006, p. 14.

fertiliser must be described and labelled, and the maximum permissible concentrations for certain impurities.[30]

2.42 For example, in Western Australia the *Fertilizers Act 1977* and the *Fertilizers Regulations 1978,* set out the labelling requirements in that state. These labelling requirements specify that the name and brand of the fertiliser; name and address of the manufacturer or formulator; and minimum percentages of specified ingredients are to be attached to the fertiliser container. There are no specific requirements for MAP and DAP fertilisers, but the general labelling requirements apply. The nitrogen, phosphorus and sulphur levels in these products are required to be on the product label or invoice.[31]

2.43 The states generally, with the exception of Victoria, do not undertake regular testing of ingredients in fertiliser products, such as NPK levels. Victoria does sample testing each 2-3 years, with the last testing undertaken in 2004-5; further testing is scheduled for 2009. Some states, such as NSW, undertake testing when a problem has been identified to the department. Other states view the issue as a fair trading issue, more appropriately addressed under that specific legislation.[32]

2.44 One study noted that the state and territory acts 'vary considerably in their scope and detail'.[33] The study also noted that FIFA has identified in excess of 150 specific differences in fertiliser regulations between the states.[34]

2.45 Under laws that had applied since the 1930s (until the 1990s in some states) companies wanting to sell fertiliser products were required to have the product registered. They also had to provide detailed information about its content. In recent decades there has been a move to self regulation in the industry. Some commentators have argued that the move away from a strict regime of registering fertiliser products has effectively meant that companies now 'police themselves'. With the demise of the registration process, it has been argued that state agriculture departments are no longer in a good position to know what is on the market in relation to fertiliser products.[35] The WA Department of Agriculture and Food described that state's fertiliser compliance regime as 'reactive', with the department limited to investigating complaints from suppliers, farmers and the general public.[36]

---

30 FIFA, *Fertilizer Regulation & Importation*, April 2007.

31 WA Department of Agriculture and Food, Correspondence, dated 28 October 2008.

32 Advice from state agriculture departments.

33 IBISWorld report, p. 17.

34 IBISWorld report, p. 18.

35 Gerald Ryle, 'Fertiliser companies now police themselves', *Sydney Morning Herald,* 7 May 2002.

36 WA Department of Agriculture and Food, Correspondence, dated 28 October 2008.

2.46 Other regulations also apply to fertiliser products. Fertiliser imports are subject to Australian quarantine regulations administered by the Australian Quarantine and Inspection Service. Most fertiliser products require an import permit and are required to conform to import conditions. Certain fertilisers are classified as 'dangerous goods' and storage, transport and handling are regulated under state dangerous goods regulations. Fertiliser import, transport, storage, manufacture and use may also be subject to regulation relating to environmental risks. State environment departments and Environment Protection Agencies administer these regulations.[37]

Fertilizer Working Group

2.47 A Fertilizer Working Group, which is convened by the Department of Agriculture, Fisheries and Forestry (DAFF), and includes representatives of the states, CSIRO, Food Standards Australia New Zealand and the industry, has been established with the aim of ensuring that environmental and food safety standards for fertilisers are consistent across jurisdictions.[38]

2.48 The Working Group has succeeded in harmonising permissible heavy metal levels in fertilisers but there are still a large number of inconsistencies including product labelling and the requirements and wording of warning statements.[39]

2.49 With regard to labelling, the members of the Working Group have agreed in principle to the development of an Australian standard or industry code of practice that would specify the appropriate description and labelling for fertilisers to ensure harmonisation between states. The states are expected to continue to include public interest measures such as maximum permissible concentrations of certain impurities, and OH&S, environmental and food safety warnings in their regulations.[40] In August 2008, the Working Group agreed that the states would review a draft code of practice for fertiliser description and labelling developed by FIFA to determine any areas where it conflicts with current regulation.[41]

Committee view

2.50 The committee considers that the states and territories should have uniform standards relating to the description, sale and use of fertiliser products. The committee notes that the Fertilizer Working Group has agreed in principle to the development of an industry code of practice that would specify the appropriate description and

---

37 FIFA, *Fertilizer Regulation & Importation*, April 2007; IBISWorld report, pp 17-18.

38 The Fertilizer Working Group reports to the Primary Industries Standing Committee. This committee reports to the Primary Industries Ministerial Council.

39 The Working Group is currently involved in a project with the CSIRO examining the issue of contaminants in fertilisers.

40 Advice from DAFF, 7 November 2008.

41 FIFA, *Draft Code of Practice for Fertilizer Description and Labelling*, August 2008.

labelling for fertilisers. The committee believes that this work should be concluded as a matter of priority.

2.51 The committee is also firmly of the belief that state agriculture departments, as part of their regulatory oversight functions, should regularly test the specified ingredient levels, such as NPK levels, in fertiliser products to ensure that users have confidence in the integrity of these products.

2.52 The committee will consider these and further issues related to the regulation of the industry in its final report.

Chapter 3

Competition issues and market distortions

3.1 This chapter reviews a range of competition issues, including the impact of the market dominance of key players in the industry. The chapter also discusses the nature and extent of a range of market distortions. The chapter highlights the need for effective competition in the industry and for greater transparency.

Market dominance

3.2 The dominant market position of key players in the industry, especially Incitec Pivot Ltd (IPL) in eastern and southern states, and CSBP Ltd in Western Australia, and the possible implications this holds for competition, was commented upon extensively during the inquiry. For example, the National Farmers Federation (NFF) noted that 'it is prudent to examine the effect of increased rationalisation within the fertiliser supply market, particularly on the east coast of Australia, on the prices offered to Australian farmers'.[1]

3.3 Submissions expressed concerns about the market dominance of key players and the possible impact on fertiliser prices. The Australian Cane Farmers Association stated that:

> Our concern is that with recent mergers in the Australian fertiliser industry, additional profit resulting from domestic market power may also be embedded in the price increases. When accounting for currency, freight and handling, and margin, the price differential between global and Australian prices appears excessive.[2]

3.4 The Bookham Agricultural Bureau also raised similar concerns.

> We are concerned at the perception that a monopoly power is held by Incitec Pivot. That this monopoly power is beneficial to that company is apparent from is profitability and burgeoning share price. On two occasions the Australian Competition and Consumer Commission (ACCC) considered the competitive effects of mergers and acquisitions in the fertiliser industry and came to the conclusion that there would be no lessening of competition…One company now has fifty percent of the domestic fertiliser market. Irrespective of the global pressures on the price of fertiliser this cannot be a healthy situation for the consumer.[3]

---

1 *Submission* 20, NFF, p. 8.

2 *Submission* 27, Australian Cane Farmers Association, p. 1.

3 *Submission* 9, Bookham Agricultural Bureau, pp 1-2.

3.5 Similarly, Mr Rodney Abbott of the Australian Fertiliser Services Association (AFSA) commented that:

> **Mr Abbott** – They [IPL] effectively control the market. They manufacture a very significant quantity of the fertiliser consumed in Australia. They sell a portion of that manufacture to the other wholesale suppliers so the market is very aligned, if you like, to one manufacturing source.
>
> **Senator O'BRIEN—**So there was an error made in permitting the merger of Incitec and Pivot?
>
> **Mr Abbott—**It certainly reduced competition.[4]

3.6 CANEGROWERS Isis Ltd stated that IPL, through acquisitions and mergers, 'has all but removed the competition in Queensland and can manipulate the market'.[5]

3.7 Similar concerns were raised in relation to the market dominance of CSBP in Western Australia. One witness characterised the situation in the following terms:

> Traditionally, CSBP were the only supplier here until some competition was introduced. They still have a strong presence and probably are the market leader—the trendsetter…despite not having a large manufacturing capacity these days, they have certainly maintained their market dominance.[6]

3.8 One submission stated that the fertiliser market in Western Australia is 'dominated by a small number of large suppliers'.[7] Another witness described the situation in Western Australia as 'maybe a duopoly or a cartel'.[8]

3.9 CANEGROWERS Isis provided a telling example of the use of market power by IPL. The company attempted to facilitate bulk purchase orders with fertiliser companies Incitec Pivot and Hi Fert, which ultimately proved unsuccessful. The company stated that Incitec Pivot was not prepared to discuss the matter, claiming it was a matter for their local distributor/retailer to offer. CANEGROWERS Isis argued that it was their understanding that Hi Fert wanted to build market share in the area but expressed concerns to CANEGROWERS at possible retaliation by IPL (by reducing the price, sales would then flow away from Hi Fert) and declined to negotiate an agreement.[9] CANEGROWERS Isis expressed the belief that the

---

4 Mr Rodney Abbott, Australian Fertiliser Services Association, *Committee Hansard*, 16 May 2008, p. 28.

5 *Submission* 18, CANEGROWERS Isis, p. 2.

6 Mr Trevor De Landgrafft, WAFarmers, *Committee Hansard*, 16 May 2008, p. 64.

7 *Submission* 14, PGA Western Graingrowers, p. 1.

8 Mr Michael Fels, WAFarmers, *Committee Hansard*, 16 May 2008, p. 64.

9 *Submission* 18, CANEGROWERS Isis, pp 1-2; Mr Geoffrey McCarthy, CANEGROWERS Isis, *Committee Hansard*, 23 July 2008, pp 61-62.

companies 'were firm in their knowledge that that growers had limited options but to buy fertiliser at the prices charged'.[10]

3.10 Some submissions alluded to the existence of cartel-like behaviour amongst major companies.[11] One submission noted that in the eastern states there are strong business linkages between the major suppliers of fertiliser which facilitates 'cartel-like behaviours'.

> Specifically, the main producer/wholesaler is IPL (Incitec-Pivot Limited) a merger of the previous two main suppliers into South-east Australia. IPL through its ownership of Southern Cross Fertilisers in Queensland is currently a monopoly manufacturer of phosphorus products in Australia.
>
> IPL's next biggest competitor is Hi-Fert, which was once owned by WMC and then BHP but is now wholly owned by Elders and Landmark. Yet two of IPL's largest wholesale/retail customers are Elders and Landmark.
>
> Given the incestuous business relationships where various entities are both customer and competitor there is reduced price competition and increased opportunity for cartel-like behaviours.
>
> IPL made a smart business decision, vertical integration, in purchasing Southern Cross Fertilisers – manufacturer and exporter of phosphorus products – and this seems to have contributed to their rapidly rising share price. However how much of the fabulous IPL share price has been generated by gratuitous profit made by wholesale and retail price gouging of the Australian farmer using the excuse of world parity pricing?[12]

3.11 The question was posed as to how the government can effectively ensure that farmers are protected from cartel-like pricing when the fertiliser companies are vertically integrated and 'enmeshed in business arrangements with competitors who are also their customers'.[13]

3.12 Another submission also noted that:

> Instead of opening the market to other competitors, the fertilizer industry has shrunk to eliminate local and international competition and any semblance of customer service, with local dealers being little more than debt collectors and delivery men for the cartels who control the market.[14]

3.13 AgForce Grains noted that while there seems to be little direct evidence of collusion or restrictions on competition, individual farmers are concerned that anti-competitive behaviour exists, particularly in the fertiliser market 'but do not have the

---

10 *Submission* 18, CANEGROWERS Isis, p. 2.

11 A cartel is an organisation of independent firms which has as its aim some form of restrictive influence on the production or sale of a commodity.

12 *Submission* 22, Peter & Yvonne Abel, p. 2.

13 *Submission* 22, Peter & Yvonne Abel, p. 2.

14 *Submission* 34, Ms Margaret Menzel, p. 2.

resources or scope to investigate and prove it'.[15] PGA Western Graingrowers also noted that 'it is difficult, if not impossible for growers to assess whether cartel behaviour is having an effect on the price of fertiliser', just as it is for the Australian Competition and Consumer Commission (ACCC) to determine these matters.[16]

3.14 As alluded to above, much of the focus of the debate during the inquiry centred on the operation of Incitec Pivot due to various mergers and acquisitions that have occurred in recent years. As noted in chapter 2, Incitec Pivot is a relatively new company, created by the merger of Incitec Ltd and Pivot Ltd in June 2003.

3.15 The ACCC, in its assessment of that merger, determined that despite the merger leading to the merged party having very high market shares in some product categories, the importation of fertiliser products was likely to operate as an effective competitive constraint on the merged entity, thereby thwarting any attempt to raise the price of fertiliser to farmers.

> Although it is expensive to enter any of the markets through the establishment of a new manufacturing facility, the importation of fertiliser products is fairly routine and does not present an insurmountable barrier. Independent imports of fertiliser products represent in excess of 20 per cent of all fertiliser products used by Australian farmers.
>
> On this basis, the Commission believes that the proposed merger is unlikely to result in a substantial lessening of competition.[17]

3.16 Incitec Pivot's scale and production capacity was greatly increased in August 2006 with the purchase of Southern Cross Fertilisers Pty Ltd, Australia's only manufacturers of mono-ammonium phosphate (MAP) and di-ammonium phosphate (DAP). Again, the ACCC assessed that the proposed acquisition was unlikely to result in a substantial lessening of competition.

> The ACCC considered that the availability and substitutability of imports as an alternative to the domestic supply of phosphate fertilisers, together with the prevalence of import parity pricing for these products, would be capable of continuing to be a constraint on IPL (and SCF) post-acquisition.[18]

---

15 *Submission* 24, AgForce Grains, p. 14.

16 *Submission* 14, PGA Western Graingrowers, p. 1.

17 ACCC, 'Acquirer: Incitec Ltd; Target: Pivot Limited', 16 October 2002, cited in ACCC, Correspondence, 24 April 2008. See also Mr Tim Grimwade, ACCC, *Committee Hansard*, 14 November 2008, p. 29.

18 ACCC, 'Incitec Pivot Limited – proposed acquisition of Southern Cross Fertilisers Pty Limited', 26 July 2006, cited in ACCC, Correspondence, 24 April 2008. See also Mr Tim Grimwade, ACCC, *Committee Hansard*, 14 November 2008, pp 29-30.

3.17 The committee questioned the ACCC in relation to the efficacy of the threat of imports as a restraint on the exercise of market power. Mr Tim Grimwade, General Manager, Mergers and Assets Sales Branch of the ACCC told the committee that:

> Often the threat is sufficient to constrain the exercise of market power by the merged entity. Indeed, if there is import parity pricing then that threat does exist. Market participants did point to—I am trying to recollect in Southern Cross—a number of potential or actual importers, including HiFert, and the threat of import by other participants in the industry.[19]

3.18 However, when pressed by the committee to provide an example of this actually occurring, Mr Grimwade stated that 'offhand, I cannot tell you'.[20]

3.19 More recently, Incitec Pivot announced the further acquisition of Dyno Nobel, an explosives manufacturer and supplier that is also involved in the North American fertiliser market. The ACCC concluded that the proposed acquisition was unlikely to result in a substantial lessening of competition in the manufacture and supply of ammonia, ammonium nitrate or fertiliser products.[21]

3.20 The fertiliser industry argued that, despite the market dominance of key players, a competitive market situation exists in Australia. IPL stated that:

> The supply of fertiliser in Eastern Australia is highly competitive, and cannot be described as monopolistic. The high degree of competition within the supply chain to supply product to distributors also disproves any suggestion of cartel conduct within the industry.[22]

3.21 IPL conceded that although the company is 'unquestionably a large player' in the supply of fertiliser in eastern Australia, other large manufacturers and suppliers such as Hi Fert and Impact place a 'constant and substantial competitive discipline' on IPL.

> Competitive tension is further heightened within Australia by the relatively low barriers to entry in the industry, given readily available port and distribution facilities, limited brand loyalty given the commodity nature of the products, and significant customer switching. IPL’s market share in the distribution of fertilisers has dropped from 73% to 58.5% since 2003, providing clear evidence of the competitive nature of the industry.
>
> In addition to direct competitors, IPL faces competition from numerous large, rural agribusinesses, some of which are also IPL’s own customers.

---

19 Mr Tim Grimwade, ACCC, *Committee Hansard*, 14 November 2008, p. 30.

20 Mr Tim Grimwade, ACCC, *Committee Hansard*, 14 November 2008, p. 30.

21 ACCC, 'ACCC not to oppose proposed acquisition of Dyno Nobel Limited by Incitec Pivot Limited', *News Release*, 15 May 2008.

22 *Submission* 26, IPL, p. 10.

These include ABB and Hi Fert, which also directly import fertiliser in competition with IPL.[23]

3.22 The committee questioned IPL in relation to the above assertions. IPL acknowledged that its market share at the wholesale level is 70 per cent of the east coast market – which is a considerable greater than its share of the retail market (which is 58.5 per cent).

CHAIR—In your executive summary of your presentation, you say:

The healthy state of competition in the industry means that it cannot be described as monopolistic, or involving any cartel conduct.

How much of the Australian market do you supply?

Mr Whiteside—At a retail level, our market share is—

CHAIR—No, at the wholesale level.

Mr Whiteside—It is around 70 per cent of east coast Australia.

CHAIR—You do not think that is monopolistic? You are pulling my leg, aren't you?

Mr Whiteside—I think, if you look at the structure of the market—

CHAIR—No. Isn't 70 per cent of anything a monopoly?

Mr Whiteside—No, I do not believe it is.

CHAIR –… Think about it: you do not think 70 per cent of the market puts you in a monopoly position?

Mr Whiteside—If you suggest that being in a monopoly position gives us control—

CHAIR—A majority.

Mr Whiteside—and means other organisations cannot operate freely in that market—

CHAIR—That is not what I am saying at all. You are the majority supplier with 70 per cent of the market. I would have thought you had a monopoly on the market.[24]

3.23 The committee notes that monopoly situations are generally characterised as situations where there is only one supplier and market barriers make it impossible for new competitors to enter the market. A monopoly firm has no competition and thus has market power. The committee notes, however, that complete monopoly situations are rare but there are often situations where one large firm dominates a market. In these situations, with only a few much smaller competitors, this larger firm is able to exercise monopoly control. In this sense, a monopoly-type situation in the fertiliser industry could be seen to exist with regard to IPL and CSBP.

23 *Submission* 26, IPL, p. 10.

24 Mr James Whiteside, IPL, *Committee Hansard*, 23 July 2008, pp 15-16.

3.24 The committee further notes that barriers to entry in the industry are high, especially at the manufacturing level. An IBISWorld study of fertiliser manufacturing in Australia concluded that the barriers are high and 'these barriers are increasing'. The study noted that large initial capital outlays are required to enter the industry; strong customer loyalty derived from existing ownership structures can pose significant entry barriers; and given that the majority of raw materials are imported, manufactures must maintain a significant network of international suppliers to provide raw materials for fertiliser manufacture.[25]

3.25 Submissions and other evidence indicated a greater degree of competition at the retail level than at the wholesale level. A NFF member survey showed that on average, farmer survey participants had 3.3 distributors in their local region. However, the NFF stated that while there are multiple suppliers/distributors in each region there are only a limited number of fertiliser companies who supply these distributors. For example, there are seven stores in Bundaberg that sell fertiliser. Six of these sell Incitec Pivot and one sells Summit fertiliser. Summit also sources some of its fertiliser from Incitec Pivot.[26]

3.26 The NFF further noted that approximately 9 per cent of NFF survey participants also stated that they had only one fertiliser distributor in their local region. – 'it is these situations that particularly concern the NFF, as there is a greater potential for excessive profiteering and price gouging due to monopolistic pressures'.[27]

3.27 The Australian Fertiliser Services Association also argued that competition at the wholesale level has been reduced but competition at the retail level 'is still very strong'.[28]

Committee view

3.28 The committee considers that the market dominance of large players in the fertiliser industry seriously compromises effective competition in the industry. This in turn has implications for the pricing of fertiliser products in this country. The committee notes that recent mergers and acquisitions in the industry have resulted in an increase in market concentration and a lessening of competition.

3.29 The committee believes that an effective monopoly may exist in relation to the fertiliser industry in Australia – with the market dominance of Incitec Pivot in eastern and southern states and CSBP in Western Australia. The committee considers that the fertiliser industry operates in a distorted market not governed by the usual

---

25 IBISWorld, *Fertiliser Manufacturing in Australia*, November 2007, p. 16.

26 *Submission* 20, NFF, p. 10.

27 *Submission* 20, NFF, p. 10.

28 Mr Rodney Abbott, Australian Fertiliser Services Association, *Committee Hansard*, 16 May 2008, p. 37. See also *Submission* 5, Australian Fertiliser Services Association, p. 2.

supply and demand factors and is, to a large extent, a law unto itself in the setting of fertiliser prices.

3.30 The committee notes the widespread perception in the farming community that fertiliser was stockpiled to inflate prices paid by customers. The committee believes that fertiliser prices in these instances should not have increased when 'old' stock was still available. Similarly, companies should, as a matter of course, pass onto customers the benefits of the recent falls in global fertiliser prices in local prices.

Market distortions

3.31 Concerns were raised during the inquiry that the market dominance of key players in the industry have led to distortions in the market and advantageous pricing structures for companies which have disadvantaged farmers. Particular concerns were raised regarding the availability of supply of fertiliser products from late 2007 to early 2008, and these issues are discussed below.

Stockpiling of product

3.32 A number of submissions and other evidence alleged that there was hoarding of fertiliser product in sheds and on ships and that it was not released until prices increased.

3.33 The NSW Farmers Association stated that their members questioned how there can be fertiliser stockpiled in sheds or on ships waiting to be unloaded yet retailers do not have any available for sale or they cannot inform the customer of when it will be available or at what price.[29]

3.34 The NSW Farmers Association noted that:

> …people who have been saying to me that there is no shortage of fertiliser; it is a matter of companies controlling the release of fertiliser, which is applying pressure to the market. I do not know whether that is right or not…I have heard similar stories where people do believe that there is product out there, but the release of that product is applying the pressure and is therefore applying pressure to the price variations.[30]

3.35 The Hon Dean Brown AO, Premier's Special Adviser on the Drought, South Australian Government, provided a number of statements from farmers on the Eyre Peninsula outlining serious concerns relating to trading practices, including the stockpiling of product. The farmers were identified as Farmers A to E. In the case of Farmer A the farmer had sought to obtain fertiliser from a company but the company

29 *Submission* 4, NSW Farmers Association, p. 5.

30 M Alexander Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 16.

refused to supply it to the farmer, knowing that the price was likely to go up; the company told the farmer to get the fertiliser elsewhere.[31]

3.36 Another farmer noted that:

> It is also hard to work out the pricing of DAP this year and the availability of it. I have been told that there is plenty of fertiliser available but it is being held back as the price rises.[32]

3.37 The NSW Farmers Association noted that the Australian crop production is relatively constant, as is the area of crop planted. Similarly, one would expect the demand for fertiliser to be relatively constant, allowing fertiliser suppliers to fairly accurately predict patterns of demand – 'it is difficult to understand why with a relatively constant demand cycle how there can be a shortage of product'.[33]

3.38 IPL rejected the assertions of hoarding of fertiliser product.

> If people saw stock in our company's sheds during a time when we were not taking orders, then that stock had been either sold or allocated to customers and was awaiting dispatch. At no stage in 2007 or 2008 have we had fertiliser stocks in our sheds which we were unwilling to sell. Stock in up-country sheds in most cases is owned by our distributors, and IPL has no influence on its availability to farmers.[34]

3.39 The committee questioned IPL further on the allegations of hoarding. IPL initially denied that there were situations where there were fertiliser supplies in storage and that the company would not price or supply product.

> **CHAIR**—Are you denying that there were fertiliser supplies in storage that you would not price or supply?
>
> **Mr Rintel**—Yes.[35]

3.40 This statement was later qualified by IPL to indicate that there was a period when the company did not take orders due to insufficient stocks.

> **Senator NASH**—Are you saying that on absolutely no occasion did Incitec give any direction whatsoever to any agent or reseller to withhold a price?
>
> **Mr Rintel**—To the best of my knowledge, absolutely not. There was a period of time in November and December last year when Incitec Pivot had stopped taking orders for ammonium phosphates as we did not have

---

31 *Submission* 36, Mr Dean Brown, p. 1; Mr Dean Brown, *Committee Hansard*, 16 May 2008, pp 2, 7.

32 *Submission* 33, Mr Tony Hedges, p. 1.

33 *Submission* 4, NSW Farmers Association, p. 5. See also Mr Alexander Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 14.

34 Mr James Whiteside, IPL, *Committee Hansard*, 23 July 2008, p. 14.

35 Mr Jamie Rintel, IPL, *Committee Hansard*, 23 July 2008, p. 20.

> sufficient stocks in our shed to meet the unprecedented demand, which had been brought forward significantly. On that basis, we were not in a position to provide pricing on ammonium phosphate because we did not have a known cost position on the product at that particular time.[36]

3.41 IPL provided to the committee, on a confidential basis, information on the quantity of MAP, DAP and single superphosphate (SSP) held in storage over the past two years and the overall storage capacity over that period. While the data indicate substantial volumes of stock on hand in late 2007 and early 2008, IPL noted that the stock on hand figures do not represent the volume of fertiliser 'sitting in sheds' and available to be sold. During the stock shortages in late 2007 and early 2008 IPL stated that up to 100 per cent of the volumes indicated in some months were already committed to IPL's dealers and agents.[37]

3.42 The committee further questioned IPL if any impediments were placed on agents by the company limiting their capacity to resell fertiliser products.

> **CHAIR—**Are you prepared to say here today that there were no agents in Australia whom you supplied in the spring of last year that had any restriction on their capacity to resell fertiliser as soon as it hit the shed?
>
> **Mr Rintel—**To the best of my knowledge, no.[38]

3.43 The committee also questioned IPL about their export of fertiliser products in late 2007, when farmers were experiencing difficulties in sourcing supply.

> **Senator NASH—**Given what you have said about the importance of the Australian market, why did you continue to export at the end of last year when there was obviously a supply issue here?
>
> **Mr Whiteside—**We did not. We exported at a time when we did not believe there was a supply issue…
>
> **Senator NASH—**We are talking about September last year onwards?
>
> **Mr Whiteside—**I will get our export program for you. Certainly by December we were not exporting any product. Our exports occurred in July, August and September, and maybe into October, when our forecast was that we would have sufficient product to meet domestic demand.[39]

3.44 As noted above, IPL stated that the company was not exporting product 'by December'. IPL subsequently provided information to the committee, on a confidential basis, on the total quantity of fertiliser exported by month between July and December 2007. The information indicated that the company did in fact export

36 Mr Jamie Rintel, IPL, *Committee Hansard*, 23 July 2008, p. 21.

37 IPL, Correpondence, 7 October 2008.

38 Mr Jamie Rintel, IPL, *Committee Hansard*, 23 July 2008, p. 41.

39 Mr James Whiteside, IPL, *Committee Hansard*, 23 July 2008, p. 34.

fertiliser product to several overseas countries in July through to October 2007 and in December 2007.[40]

3.45 The committee notes that IPL was exporting fertiliser products at the same time as Australian farmers were having difficulties in obtaining supplies locally.

3.46 The ACCC in its report on fertiliser prices stated that suppliers withholding stock from the market in order to sell later at higher prices will not generally breach the *Trade Practices Act 1974* (TPA) unless it involves some misleading or deceptive conduct on the part of suppliers. For example, a supplier might misrepresent the reason for its inability to supply or not truthfully explain why it chose not to supply.[41] The committee notes that the TPA needs to be strengthened to address this concern.

Price gouging

3.47 General allegations of price gouging by companies were made during the inquiry. 'Price gouging' refers to situations where suppliers are said to be taking advantage of rising international prices by increasing their own prices beyond levels that could be justified in the circumstances.

3.48 One witness stated that:

> It is hard to believe that there would have been no price gouging. I believe there would have been product within Australia that was sourced at much lower cost and the opportunity has been taken. It will be difficult to achieve that evidence, of course, but it is very hard to believe that it would not have occurred. It would also be useful to simply look at a company like Incitec Pivot, which has been manufacturing here and making considerable profits over time when the competition from overseas was very strong. Now that the competition from overseas is different and there is a shortage of supply, they are simply choosing to make more profit. It is nought to do with their cost of production.[42]

3.49 Witnesses raised the issue of price gouging by companies in relation to fertiliser that was in store yet companies were reluctant to provide information on pricing or availability of the product.[43]

3.50 The committee also raised the issue of whether the expectation of high grain prices and a shortage of fertiliser encouraged price gouging by companies. The NSW Farmers Association argued that such situations may reflect profiteering by companies.

---

40 IPL, Correspondence, 7 October 2008.

41 *ACCC Examination of Fertiliser Prices*, July 2008, pp 26-27.

42 Mr Trevor De Landgrafft, WAFarmers, *Committee Hansard*, 16 May 2008, p. 64. See also Mr John Hall, Hall Farms Pty Ltd, *Committee Hansard*, 23 July 2008, p. 9.

43 See, for example, Mr John Hall, Hall Farms Pty Ltd, *Committee Hansard*, 23 July 2008, p. 12.

> The phrase 'price gouging' is very strong and there is a certain amount of allegation there which I do not want to make. All I can tell you is that there have been lots of discussions about people having concern in that area. I suppose if you are sitting on the other side and you are a commercial operator then obviously commercial operators are about making profits for their companies so I cannot tell you what their basis of thinking is, but I can tell you that ours is extreme frustration at the prices.[44]

3.51 The committee notes that in evidence to the inquiry, IPL rejected 'outright' any accusation of price gouging or unfair conduct.[45]

3.52 The ACCC, in its report on fertiliser prices, found little evidence of price gouging. The report noted that practices such as raising of prices by suppliers until a sufficient number of purchasers drop out of the market, unless carried out in conjunction with anti-competitive arrangements 'is neither illegal under the Trade Practices Act nor economically inefficient or undesirable'. The ACCC noted that charging higher prices in a time of shortage is not uncommon and 'is not of itself a breach of the Trade Practices Act'.[46] Again, the committee notes that the TPA needs to be strengthened to address this issue.

Availability of fertiliser

3.53 Evidence to the committee indicated that the availability of fertiliser was a problem for farmers, especially in the period from late 2007 to early 2008. The NSW Farmers Association stated that members reported that when they approached their retailer they were unable to get information on when fertiliser would be available. Furthermore, when farmers attempted to order fertiliser they were unable to receive any certainty regarding price. The Association also reported that when farmers had managed to purchase fertiliser, the price had suddenly increased when the product arrived.[47]

3.54 The Association stated that:

> This year would appear to me to be a very different situation. If you go back and have a look over the last 10 to 15 years, many fertiliser companies were actually offering fertiliser with payment two, three and four months down the track. Now you are getting into a situation where you cannot even get a price for the product in some cases because they are not sure what it is going to be, or we are led to believe they are not sure what it is going to be.[48]

---

44 Mr Alexander Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 22.

45 Mr James Whiteside, IPL, *Committee Hansard*, 23 July 2008, p. 14.

46 ACCC report, p. 26.

47 *Submission* 4, NSW Farmers Association, pp 5-6.

48 Mr Alexander Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 15.

3.55 The Association noted that this creates a great degree of uncertainty for buyers in the market.

> …many members of ours and many members of the industry are out there and are extremely frustrated. They struggle to have control over any pricing and inputs they really must be using. They do have a lack of control over any pricing, a lack of ability to budget…We do not know where it will be in six months time and, when we have to do some key budgeting for all of these things, it is impossible to work that in.[49]

3.56 The Australian Fertiliser Services Association (AFSA), which represents small and medium size businesses in the retail sector, complained about the lack of transparency with regard to information from manufacturers and importers concerning fertiliser supply and pricing. The Association argued that their members are the 'meat in the sandwich' between manufacturers and their customers – the farming community. Mr Abbott, National President of AFSA, noting difficulties in sourcing supplies of fertiliser, stated that:

> These supply limits are affecting most regions but are particularly severe in Victoria. The reasons and mechanisms for these supply limits to date have been poorly communicated by the manufacturing and importing sectors, creating an element of distrust in the market.[50]

3.57 Mr Abbott noted that 'in the case of our own business, we were unable to source fertiliser from our normal supplier for two months, without explanation'.[51] AFSA also noted that small retailers:

> …[have] little or no control over the content, accuracy and timing of communication from manufacturers and importers about current and future supplies. A lack of communication raises concerns about transparency and therefore what is likely to happen in the industry in the future.[52]

3.58 IPL acknowledged difficulties in meeting demand in 2007-08. IPL noted that while fertiliser suppliers can generally anticipate likely farmer demand based on historical consumption and forecast conditions, in 2007-08 there was a significant change in farmer purchasing patterns which resulted in many farmers bringing forward fertiliser purchases. In addition, there was an improved rainfall outlook across many regions in eastern states after years of drought.

> The combination of these factors led farmers to bring forward their fertiliser purchases and resulted in an unforeseen level of early season demand for fertiliser in Australia, well beyond forecasts. In the period October 2007 to

---

49 Mr Alexander Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 14.

50 *Submission* 5, Australian Fertiliser Services Association, p. 2.

51 Mr Rodney Abbott, Australian Fertiliser Services Association, *Committee Hansard*, 16 May 2008, p. 26.

52 *Submission* 5, Australian Fertiliser Services Association, p. 2.

> February 2008, IPL experienced a significant increase in fertiliser demand compared to the same period 12 months earlier.
>
> Domestic suppliers moved rapidly to meet this unanticipated demand. However, their ability to source substantial volumes on very short notice was affected by global supply chains. Lead times for delivery of imported product meant that during December 2007, and January and February 2008, IPL stocked out of fertiliser at a number of its distribution facilities.[53]

3.59 The committee questioned IPL as to why the company failed to anticipate the increased demand from farmers, given that all in the industry – both farmers and suppliers – were aware of likely price increases.

> **Mr Rintel—**It was not reflected in the forecast which we rely on our business partners to provide us of, firstly, quantity of produce and, secondly, timing of requirement…
>
> **Mr Whiteside—**…we did everything we could to bring forward supply. We brought forward a number of imported vessels to try and meet early demand but we were not able to meet all additional demand because of the short notice.[54]

3.60 IPL noted that there was 'unforecast demand' in the spring for the subsequent winter cereal crop 'which we had never experienced before' which meant agents and dealers were unable to supply product.[55]

3.61 IPL provided to the committee, on a confidential basis, information on historical demand and known demand forecasts for fertiliser products for 2007 and 2008. The data indicates a significant bringing forward of demand in December 2007 to March 2008, with actual sales well above the previous year levels and significantly above forecasts. The data shows that while IPL was able to supply more fertiliser than it had anticipated in response to demand, there were inadequacies in meeting overall demand.

Failure to honour contracts

3.62 The inquiry received numerous allegations of companies failing to honour contracts. The farmers in question were then compelled to renegotiate contracts but at a higher price.

3.63 Mr Dean Brown provided a number of statements of concern in relation to trading practices from farmers on the Eyre Peninsula. The farmers were identified as Farmers A to E.[56] In one case, Farmer B, had ordered fertiliser from a rural supply

---

53 *Submission* 26, IPL, pp 10-11.

54 Mr Jamie Rintell/Mr James Whiteside, IPL, *Committee Hansard*, 23 July 2008, pp 30-31.

55 Mr James Whiteside, IPL, *Committee Hansard*, 23 July 2008, p. 41.

56 *Submission* 36, Mr Dean Brown, pp 1-4.

outlet at an agreed price. The company withdrew from the contract, having reached an earlier agreement to supply it. As a result, the farmer's only option was to re-order at a higher price. Farmer C placed an order with a supplier. The supplier informed the customer that their supplier had refused to honour the order, yet there was ample product in store.[57] Mr Brown observed that:

> Each of these cases reflects a rising fertiliser price. The company, having agreed to a price—this is for the breach of contract—then pulled back from supplying it and eventually the farmer had to buy it at a higher price.[58]

3.64 Further statements were provided by Mr Brown involving alleged breach of contract. Farmer D alleged that a company broke a contract to supply fertiliser that had been ordered via a local agent. This resulted in a dramatic loss of income for the farmer as the crops were unable to be sown in time. Farmer E also placed an order for the supply of fertiliser which the company did not honor – 'the result of all of that was that Megafert did not end up supplying the fertiliser. It was sold to someone else, apparently at a higher price'.[59]

3.65 Mr Brown also cited the case of a farmer near Ceduna:

> …where they had actually had a firm, written contract for a certain tonnage but where they only got about half that tonnage at the contract price and then had to pay about $300 more per tonne for the other half is, I think, a clear example of an extreme breach of a contract and there was absolutely no doubt in that case exactly what had occurred.[60]

3.66 Mr Brown indicated that the cases cited above reflected the 'norm' in terms of problems encountered by farmers on the Eyre Peninsula.

> In the examples I have had of personal conversations with farmers, I think there are much more extreme cases than these. In some cases, though, the farmers were not willing to provide evidence…So I stress the fact that I think there are much more extreme cases than are outlined in the letters from farmers A to D.[61]

3.67 The committee notes that IPL stated that 'the broken contracts that the committee has heard about in South Australia are not contracts involving Incitec Pivot; they are contracts between farmers and fertiliser distributors'.[62]

---

57 *Submission* 36, Mr Dean Brown, pp 2-3; Mr Dean Brown, *Committee Hansard*, 16 May 2008, p. 2.

58 Mr Dean Brown, *Committee Hansard*, 16 May 2008, p. 2.

59 Farmer E, cited by Mr Dean Brown, *Committee Hansard*, 16 May 2008, p. 3.

60 Mr Dean Brown, *Committee Hansard*, 16 May 2008, p. 10.

61 Mr Dean Brown, *Committee Hansard*, 16 May 2008, p. 10.

62 Mr James Whiteside, IPL, *Committee Hansard*, 23 July 2008, p. 14.

3.68 In other evidence to the committee, a farmer stated that he had placed an order with a company which he understood to be a binding agreement at a particular price, but that the supplier refused to honour the order. The farmer participated in verbal negotiations, but this was later confirmed in written advice from the company, including their buy-in price.[63]

> We were given a delivery date…On the day the fertiliser was to be dispatched from Incitec we got a message from our local rep, who said that they had turned the trucks around and they were not going to deliver the fertiliser. This caused some ructions with our supplier. We rang them and they said they had found some product and they were going to continue with the supply...We kept ringing and eventually it got to the point where, in early February, the agreement was withdrawn and we had to meet another agreement to secure supplies. It cost the group I am involved with about $60,000 extra, over the cost of the fertiliser.[64]

3.69 The witness indicated that although he may have a civil claim against the company, he was reluctant to pursue the claim through the courts because of the imbalance in potential resources available to a small group of producers vis-a-vis the supplier involved.[65]

3.70 The NSW Farmers Association stated that indicative prices are often quoted but this is often not the final price paid by farmers:

> We have certainly had people who have gone in to get indicative prices of fertiliser and been told a price, only to be told another price later on. It is not my experience that firm contracts have been written, but it is most definitely my experience that indicative prices have been given. I think some of the companies have been very cautious in how they are giving those indicative prices because of the volatility in the market. There is some of that going around; there is no doubt about that. It also adds very much to the frustration when people think they have locked it in at a price and have then gone and done their budgets on that, only to turn around and find that the input costs due to fertiliser increases have moved once again. It is something that has happened. You have heard it from growers and we have most definitely heard it from growers. All I can say is that that sort of thing has been worrying people.[66]

3.71 The ACCC, in its report on fertiliser prices, stated that it was not provided with specific allegations of suppliers failing to honour contracts on a systematic, or even individual basis, with the allegations being general in nature. The ACCC noted

---

63 Mr Terence Fishpool, *Committee Hansard*, 16 May 2008, pp 50-51, 54-55.

64 Mr Terence Fishpool, *Committee Hansard*, 16 May 2008, p. 50.

65 Mr Terence Fishpool, *Committee Hansard*, 16 May 2008, pp 50-51.

66 Mr Alexander Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 16.

that commercial disputes such as these are of a contractual nature and generally do not fall within the ambit of the TPA.[67]

3.72 The ACCC indicated to the committee, however, that if allegations of bullying or intimidation were involved it could come under the unconscionable conduct provisions of the TPA. The ACCC, could not, however, cite a successful prosecution under these provisions in recent years, although three cases are before the courts at present.[68] The committee considers this situation again highlights the need for a strengthening of the TPA.

Misuse of market power

3.73 Other examples of the misuse of market power were highlighted during the inquiry.

Port access

3.74 Some witnesses argued that there is difficulty in accessing portside warehousing space for imported fertiliser products, in circumstances where companies wish to deal directly with overseas suppliers. Mr Andrew Helps of Climate Friendly Fertiliser Pty Ltd stated that:

> It is always a problem when quasi-monopolies are operating in a marketplace, when there is no genuine competition. You look at what is happening and you say, 'Gee, I could make a dollar; I could bring some cargoes in there,' but you cannot get them in because there is no port capacity.[69]

3.75 The committee also received *in camera* evidence supporting these arguments.

3.76 Other witnesses argued that port access is not a major problem. Mr Paul Duckett of the Australian Energy Company stated that:

> One of the features of the industry is that, as long as you have the storage capacity at the ports, anyone can order a shipload of urea or phosphate fertiliser and bring it in tomorrow. In fact, we have seen a number of start-up organisations in recent years which have done just that.[70]

Restricted distribution arrangements

3.77 Confidential information was received from a fertiliser manufacturer indicating that for over 30 years the company has been unable to purchase raw

---

67 ACCC report, p 27.

68 Mr Brian Cassidy/Mr Mark Pearson, ACCC, *Committee Hansard*, 14 November 2008, pp 32-34.

69 Mr Andrew Helps, *Committee Hansard*, 16 May 2008, p. 48.

70 Mr Paul Duckett, *Committee Hansard*, 23 July 2008, p. 5.

chemicals directly from an overseas manufacturer or their Australian agents but instead has to go through several middlemen to make a purchase which forces up the price of the product.

Other issues

3.78 Other questionable business practices were highlighted during the inquiry.

3.79 The committee received evidence of alleged intimidation of resellers where a single supplier operates. One witness noted that:

> **Mr Katter**—I am reluctant to say anything that would indicate any of my retailers, because—
>
> **CHAIR**—They are intimidated.
>
> **Mr Katter**—They are definitely intimidated. I would not like to go beyond saying that there is an implied intimidation out there. None of them would divulge that because they have to rely for a range of products—
>
> **CHAIR**—On a sole provider.
>
> **Mr Katter**—Yes. There is no-one else in Australia who can provide that range of products, so if you want to be a single-stop shop then you better stay in with Incitec.[71]

3.80 In other evidence, the committee received confidential information of sugarcane farmers on 30-day accounts having the costs to the reseller passed onto the users of the 30-day account from the original supplier at 18 per cent per cent. Mr Brian Cassidy, Chief Executive Officer of the ACCC, indicated that such practices may be a breach of the unconscionable conduct provisions of the TPA.

> If in the contract you have a unilateral variation clause which allows you to subsequently change the contract having signed it, you can change the contract and say that the percentage is going to be 18 per cent a month. That is something that is able to be examined under the unconscionable conduct provisions. I cannot give you a straightforward answer on that. It would really depend on the circumstances surrounding how they get charged the 18 per cent.[72]

3.81 Other practices also came to light. In confidential evidence, a reseller stated that notification of fertiliser price increases are often advised close to close of business with little time given to pick up the fertiliser product. Previously, price lists were notified allowing a period of grace to collect the product.

---

71 The Hon Bob Katter MP, *Committee Hansard*, 11 November 2008, p. 26.

72 Mr Brian Cassidy, ACCC, *Committee Hansard,* 14 November 2008, p. 41.

Addressing anti-competitive behaviour

Review of the Trade Practices Act

3.82 Many of the allegations cited above relating to stockpiling of fertiliser products, price gouging, and problems related to the availability of fertiliser raise important issues concerning the role of the Trade Practices Act and the ACCC.

3.83 The Trade Practices Act contains a number of provisions related to anti-competitive practices and misuse of market power. The relevant sections of the Act are outlined below.

Part IV – restrictive trade practices

Section 45 – Anti-competitive practices

3.84 Sections 45 to 45E of the TPA deal with a variety of prescribed agreements and anti-competitive arrangements between businesses. This section applies to cartel behaviour, although the TPA does not specifically use that term.

Section 46 – Misuse of market power

3.85 Section 46 provides that a corporation that has a 'substantial degree of power' in a market shall not 'take advantage' of that power for the purpose of eliminating, or substantially damaging, a competitor in that, or any other market; preventing the entry of a person into that or any other market; or deterring or preventing a person from engaging in competitive conduct in that or any other market.

Section 47 – Exclusive dealing

3.86 Section 47 of the TPA prohibits anti-competitive exclusive dealing which has the purpose of substantially lessening competition in a relevant market.

Section 48 – Resale price maintenance

3.87 Section 48 of the TPA states that a corporation or other person shall not engage in the practice of resale price maintenance.

Section 50 – Mergers and acquisitions

3.88 Section 50 prohibits acquisitions which would have the effect, or be likely to have the effect, of substantially lessening competition in a substantial market in Australia, in a state or territory.

Part IVA – Unconscionable conduct

3.89 The concept of unconscionable conduct generally involves a stronger party exploiting an evident special disability or disadvantage suffered by another party.

3.90 During the inquiry concerns were raised as to the effectiveness of existing powers under the TPA to address anti-competitive practices and misuse of market power. One submission commented on the 'complacency' of the ACCC which has allowed monopoly or near monopoly situations to develop.[73]

3.91 The limitations of the TPA in addressing anti-competitive behaviour was illustrated in evidence from the ACCC. Mr Cassidy stated that:

> The Trade Practices Act, as it currently stands, does not make unlawful so-called price gouging, price exploitation or any other name that you might want to use for prices rising more rapidly than perhaps they should. Whether they should or not is a matter for the government. As the law stands at the moment, there is nothing that we can do to stop prices from increasing.[74]

3.92 The committee believes that there is a need for a strengthening of the competition provisions of the TPA to better protect consumers from anti-competitive behaviour.

Industry codes of conduct

3.93 Industry codes of conduct provide a mechanism for enhanced transparency especially in relation to pricing and supply issues for certain industries. The TPA provides for the establishment of industry codes of conduct. There are a number of different types of industry codes – non-prescribed voluntary industry codes of conduct, prescribed voluntary codes of conduct and mandatory codes of conduct.

3.94 A non-prescribed voluntary industry code of conduct is administered by the industry itself and sets standards that are voluntarily administered by the industry. The Commonwealth Government does not have a role in enforcing non-prescribed voluntary industry codes of conduct.

3.95 A prescribed voluntary code of conduct is a code that is binding on signatories and is enforced by the ACCC under the TPA. A breach of a prescribed voluntary code of conduct is also a breach of the TPA. There are currently no voluntary codes of conduct prescribed under the Act.

3.96 Mandatory codes are administered and enforced by the ACCC and are binding on the industry they cover. There are currently three mandatory codes in operation – the Franchising Code, the Oilcode and the Horticulture Code of Conduct.[75]

---

73 *Submission* 9, Bookham Agricultural Bureau, p. 2. See also *Submission* 12, Mr Sam Nucifora, p. 1; *Submission* 43, Mr Peter Schwarz, p. 1.

74 Mr Brian Cassidy, ACCC, *Committee Hansard*, 14 November 2008, p. 17.

75 www.accc.gov.au (accessed 12 November 2008).

3.97 The committee will examine the efficacy of industry codes of conduct and their applicability to the fertiliser industry in its final report.

Monitoring role

3.98 Part VIIA of the TPA enables the ACCC to examine the prices of selected goods and services. The ACCC's functions under this Part are:

- to hold price inquiries in relation to the supply of goods and services, and to report the findings to the responsible Commonwealth minister;
- to examine proposed price rises when, for example, the minister has declared the relevant goods or services to be 'notified' goods or services;
- to monitor the price, costs and profits of an industry or business under the direction of the minister and to report the results to the minister.

3.99 The committee believes that an increased monitoring role for the ACCC in relation to the fertiliser industry has some merit and is another option that it will examine further in its final report.

Committee view

3.100 Evidence to the inquiry raised serious concerns regarding the degree of protection available to farmers and others from anti-competitive practices and abuses of market power under the Trade Practices Act. Instances of the stockpiling of fertiliser product; price gouging; difficulties in securing supply of fertiliser; uncertainty regarding price; and a failure to honour contracts were provided during the inquiry.

3.101 The committee believes that the powers of the ACCC need to be strengthened so that the Commission can more effectively fulfil its role in promoting competition and fair trading and in providing for effective consumer protection. The committee will examine in greater detail the most effective means of achieving this outcome in its final report.

3.102 The committee will also examine, in its final report, the potential for increased transparency of the fertiliser industry through the introduction of an industry code of conduct. It will also examine the efficacy of implementation of an increased monitoring role of the industry by the ACCC.

Senator the Hon Bill Heffernan
Chair

Appendix 1

List of Submissions

1. K & SJ Henderson WA

2. Australian Energy Company VIC

3. Hi Fert Pty Ltd VIC

4. NSW Farmers' Association NSW

5. Australian Fertiliser Services Association VIC

6. Mosaic International Australia Pty Ltd VIC

7. **CONFIDENTIAL**

8. **CONFIDENTIAL**

8A Climate Friendly Fertiliser Pty Ltd VIC

9. Bookham Agricultural Bureau Inc. NSW

10. International Fertilizer Industry Association FRANCE

11 **CONFIDENTIAL**

12. Mr Sam Nucifora QLD

13. Murray Goulburn Co-Operative Co Ltd VIC

14. PGA Western Graingrowers WA

15. Patricia and Bernard Heard

16. TLC Pastoral Santa Gertrudis Stud NT

17. **CONFIDENTIAL**

18. CANEGROWERS Isis Limited QLD

19. Australian Pesticides and Veterinary Medicines Authority ACT

20. National Farmers' Federation ACT

21. TFGA – Flinders Is Branch TAS

22. Peter and Yvonne Abel VIC

23. CropLife Australia ACT

24. AgForce Grains Ltd QLD

25. Kalamia Cane Growers Organisation Ltd QLD

26. Incitec Pivot Limited VIC

27. Australian Cane Farmers Association Limited QLD

28. Ron and Jan Collier

29. The Western Australian Farmers Federation (Inc.) WA

30. Australia Western Sahara Association VIC

31. Australian Cane Farmers Association – Herbert River District QLD

31A Australian Cane Farmers Association – Herbert River District QLD

32. Victorian Farmers Federation VIC

33. Mr Tony Hedges

34. Ms Margaret Menzel QLD

35. Department of Agriculture, Fisheries and Forestry ACT

36. The Hon Dean Brown AO, Premier's Special Advisor on the Drought, SA Government SA

37. Mr Andrew Pettingill VIC

38. **CONFIDENTIAL**

39. North East District Council of the Victorian Farmers Federation VIC

40. Mr Greg Barison

41. Mr Terry Fishpool NSW

42. Bio-Organics Group Pty Ltd QLD

43. Mr Peter Schwarz NSW

44. WakJak QLD

45. **CONFIDENTIAL**

46. Ms Carol Mackee QLD

47. Mr Ernest Kitto NSW

48. Mr Roger Carrigan NSW

49. Hall Farms Pty Ltd WA

50. Mr Jeff Leighton

51. Liddles Aerial Spraying Pty Ltd QLD

52. **CONFIDENTIAL**

53. The Mulgrave Central Mill Co Ltd QLD

54. **CONFIDENTIAL**

Appendix 2

Witnesses who appeared before the Committee at the Public Hearings

Friday, 16 May 2008
Parliament House
CANBERRA

South Australian Government
The Hon. Dean Craig, Premier's Special Adviser on the Drought

NSW Farmers' Association
Mr Alexander Jock Laurie, President

Australian Fertiliser Services Association
Mr Rodney Abbott, National President

Climate Friendly Fertiliser Pty Ltd
Mr Andrew Helps, Managing Director

Mr Terence Fishpool, Private capacity

Ms Elle Hall, Private capacity

Western Australian Farmers Federation
Mr Trevor De Landgrafft
Mr Julian Breheny, Executive Officer, Farm Business
Mr Michael Fels, Grains Council Delegate

Department of Agriculture, Fisheries and Forestry
Ms Jennifer Ritchie, Executive Officer, Product Safety and Integrity Branch
Dr Terry Sheales, Manager, Agriculture and Trade Branch, ABARE

Australian Pesticides and Veterinary Medicines Authority
Dr John Paul, Manager, Reform

National Farmers' Federation
Mr Ben Fargher, Chief Executive Officer
Mr Charles McElhone, Economist

Wednesday, 23 July 2008
Yarra Room, Melbourne Town Hall
MELBOURNE

Australian Energy Company Ltd
Mr Paul Duckett, General Manager, Operational Development, Latrobe Urea Project
Mr Francesco Ceravolo, Project Engineer, Latrobe Urea Project

Hall Farms Pty Ltd
Mr John Hall

Incitec Pivot Ltd
Mr James Whiteside, General Manager, Supply Chain and Trading
Mr Jamie Rintel, General Manager, Strategy and Business Development

Australian Cane Farmers Association – Herbert Branch
Mrs Carol Mackee, Director

CANEGROWERS Isis Ltd
Mr Mark Mammino, Director and Deputy Chairman
Mr Geoffrey McCarthy, Director
Mr Wayne Stanley, Manager/Company Secretary

Tuesday, 11 November 2008
Parliament House
CANBERRA

The Hon. Bob Katter, Member for Kennedy, Commonwealth Parliament

Dr Maarten Stapper, Private capacity

Friday, 14 November 2008
Parliament House
CANBERRA

National Farmers' Federation
Mr Ben Fargher, Chief Executive Officer
Mr Charles McElhone, Manager, Economics

Australian Competition and Consumer Commission
Mr Brian Cassidy, Chief Executive Officer
Mr Tim Grimwade, General Manager, Mergers and Assets Sales Branch
Ms Teresa Nowak, Assistant Director, Enforcement and Compliance Division
Mr Mark Pearson, Executive General Manager, Enforcement and Compliance Division