The Senate

Select Committee on Agricultural and Related Industries

Pricing and supply arrangements in the Australian and global fertiliser market

Final report

August 2009

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Recommendations

Recommendation 1

3.34 The committee recommends that the states and territories should consider, as a matter of priority, adopting uniform description and labelling of fertiliser products to ensure consistency between jurisdictions.

Recommendation 2

3.35 The committee recommends that all state and territory agriculture departments should consider undertaking regular sample testing for specified ingredient levels, such as nitrogen/phosphorus/potassium (NPK) levels, in fertiliser products.

Recommendation 3

3.73 The committee recommends that the Commonwealth review Part IV of the *Trade Practices Act 1974* relating to restrictive trade practices with a view to amending these provisions of the Act so as to more effectively regulate anti-competitive practices and prevent abuse of market power.

Recommendation 4

3.84 The committee recommends that ABARE:

- **collect and publish international input price information on fertiliser products on a regular basis on its website; and**
- **disseminate this information widely to farmers through the ABARE website, farmers' organisations, the rural press and other appropriate avenues.**

Recommendation 5

3.102 The committee recommends that in the interests of transparency the industry improve its business practices to ensure that fertiliser companies:

- **publish general information, including arrival of shipments, detailing the amount of fertiliser available in stock; and**
- **provide greater certainty in the filling of orders, especially orders for fertiliser products placed earlier in the season.**

Recommendation 6

3.103 The committee recommends that, wherever possible, supply agreements between suppliers and customers be more structured and equitable, and, where appropriate, include standard contractual terms and conditions.

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 20 August 2009.

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 62 submissions – 51 public submissions and 11 confidential submissions. A list of individuals and organisations that made public submissions to the inquiry is at Appendix 1. The committee held eight public hearings: Canberra on 16 May 2008, Melbourne on 23 July 2008, Canberra on 11 November 2008, 14 November 2008, and 4 February 2009, Perth on 24 March 2009 and Canberra on 7 May 2009 and 10 August 2009. 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 first interim report

1.6 The committee tabled an interim report on 2 December 2008.

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

1.7 This report addressed parts of the terms of reference relating to fertiliser supply and pricing arrangements. The report outlined the structure of the fertiliser industry, including the main industry players and provided details of production and consumption of fertiliser in Australia. The report also discussed the nature and extent of a range of market distortions and reviewed a number of options to address these issues.

1.8 In this report the committee stated that it would further review issues relating to pricing and supply arrangements in the fertiliser and chemical markets. The committee subsequently tabled a second interim report on 30 June 2009, indicating that it would present its final report on 20 August 2009.

The committee's final report

1.9 In its final report, the committee's further addresses issues related to fertiliser supply and pricing as well as issues related to agricultural chemicals. Chapter 2 reviews the pricing and supply arrangements in the global and Australian fertiliser markets and the implications that increasing fertiliser prices have had on Australian farmers.

1.10 Chapter 3 discusses a range of regulatory and competition issues in relation to the fertiliser industry. The chapter reviews the adequacy of the current regulatory arrangements and the adequacy of the *Trade Practices Act 1974* in addressing anti-competitive practices and misuse of market power. In addition, the chapter discusses the adequacy of pricing and supply arrangements operating in the industry and the efficacy of industry codes of practice. Chapter 4 looks at future challenges facing the industry including options for improving fertiliser use efficiency, developing alternatives to chemical fertilisers and developing further domestic sources of supply.

1.11 Chapter 5 addresses the second part of the reference relating to pricing and supply arrangements in the Australian and global chemical market and discusses monopolistic behaviour in the sector.

Acknowledgement

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

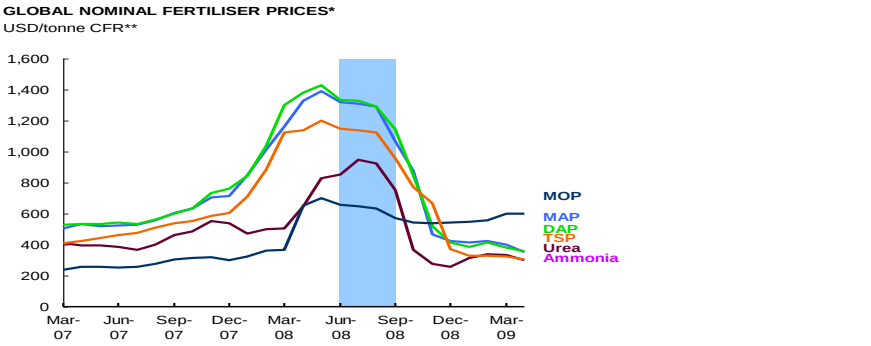
Chapter 2

Pricing and supply arrangements

2.1 This chapter reviews the pricing and supply arrangements in the global and Australian fertiliser markets and the implications that increasing fertiliser prices have had on Australian farmers. There was a dramatic increase in world fertiliser prices in 2007 and 2008. Domestic prices also increased substantially over this period. Global and domestic prices have subsequently fallen since late 2008.

Fertiliser prices

2.2 As indicated in the chart below, global fertiliser prices began to increase sharply from October 2007 and fell rapidly after the September 2008 global financial crisis.[1]



* MAP – Monoammonium phosphate, Black Sea Bulk FOB; DAP – Diammonium phosphate, US Gulf Bulk FOB; Urea – Prill Arab Gulf Bulk FOB; Ammonia – Arabian Gulf; MOP – Muriate of potash, Vancouver Standard Grade Bulk; TSP – Triple Super Phosphate, North Africa Bulk FOB

** Based on Baltic Capesize shipping rates and round-trip shipping distances to Sydney

2.3 The Australian Competition and Consumer Commission (ACCC) provided a range of information to the committee relating to di-ammonium phosphate (DAP) and urea world prices and domestic retail prices over the period from January 2007 to February 2009.[2]

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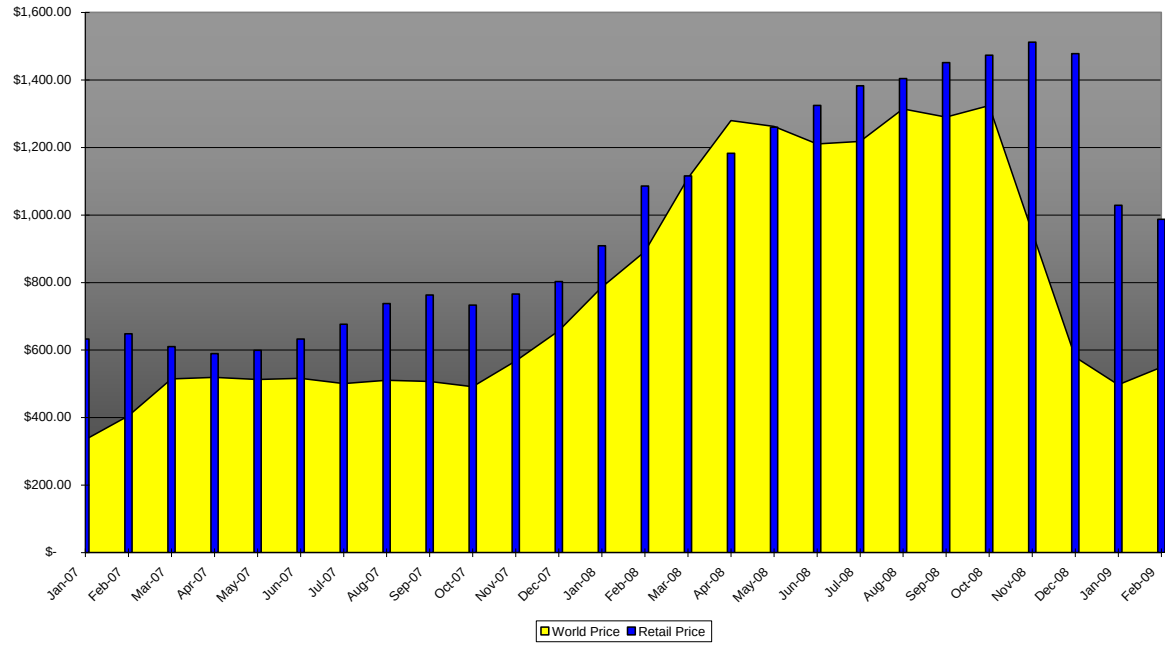
1 Mr Angus Taylor, Tabled Document, 7 May 2009, p. 4.

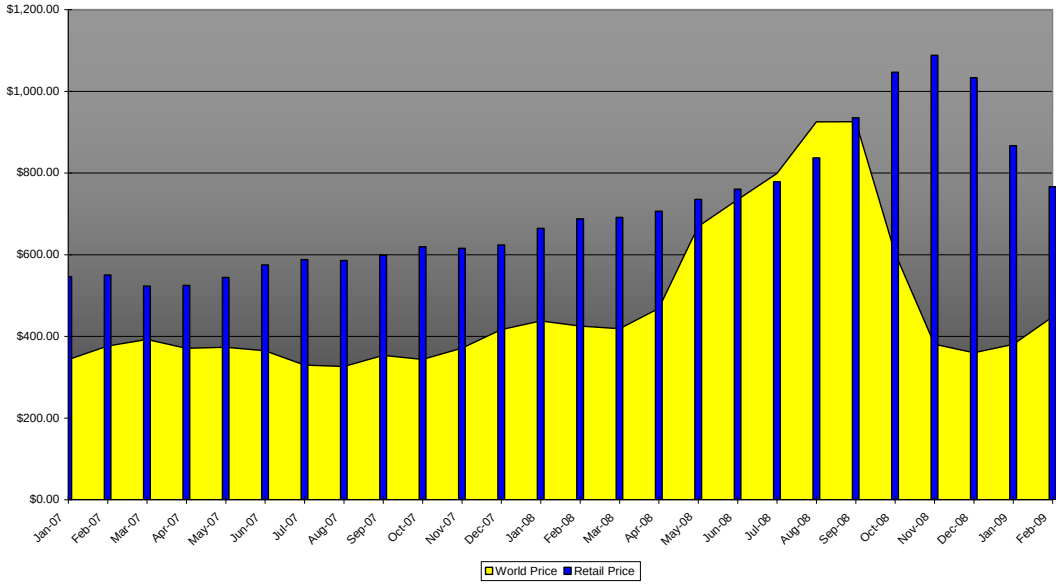
2 ACCC, Answers to questions on notice, dated 26 May 2009, p. 10.

CHART 2a: DAP world price v retail price, Jan-07 to Feb-09



2.4 Chart 2a shows that DAP world prices started to increase in late 2007 with steep increases from October 2007 until April 2008. The prices stabilised at this higher level until October 2008 and declined sharply over the period to January-February 2009. As the world price increased the retail price continued to increase. However, from October 2008, while the world price declined the retail price remained high until January 2009. The decline in retail prices since then has been attributed to the impact of new entrants in the market.

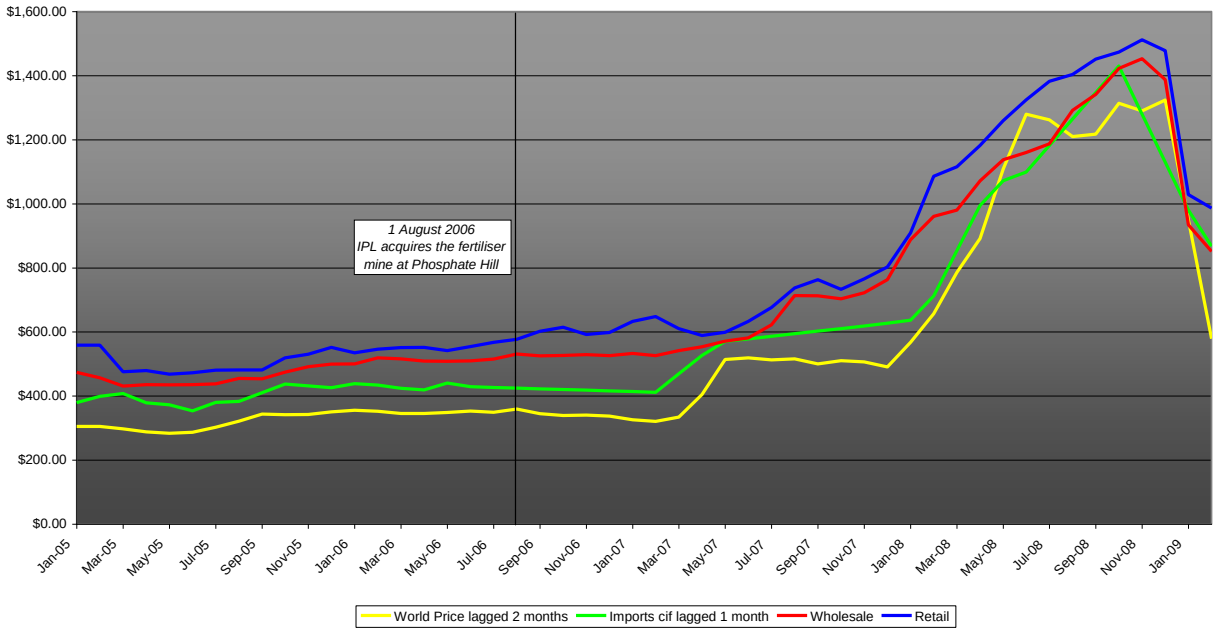
CHART 5a: Urea world price v retail price, Jan-07 to Feb-09



2.5 In relation to urea, world prices increased substantially from April 2008 until September 2008, followed by a steep decline. Retail prices increased in line with world prices over that period. However, from September 2008, while world prices

declined, retail prices increased until January 2009 when prices started to fall (see chart 5a).

CHART 1a: DAP world price (lagged), import value (lagged), wholesale price and retail price, Jan-05 to Feb-09



2.6 The chart above shows the world price, import value, wholesale price and retail price for DAP over the period from January 2005 to February 2009. The vertical line on the chart indicates the date from which Incitec Pivot Ltd (IPL) became the owner of the of the fertiliser mine at Phosphate Hill (1 August 2006), following its acquisition of Southern Cross Fertilisers.

2.7 The committee notes that the wholesale and retail prices for DAP increased substantially since IPL's acquisition of Southern Cross Fertilisers and these price increases were generally in excess of increases in world prices over the period.

Fertiliser price increases

2.8 The dramatic increase in domestic fertiliser prices in 2007 and 2008 was highlighted during the inquiry with increases in prices of 100 per cent or more reported. One study noted that in the period from mid 2007 to mid 2008, delivered Australian fertiliser prices increased by more than 100 per cent.[3] In some cases witnesses reported fertiliser prices trebling or increasing four-fold. One submission stated that:

> …some products have gone up 400% and the majority have gone up between 100 and 200% [in the past 12 months]. While it is accepted that increases are inevitable, this percentage is simply outrageous.[4]

3 Mr Angus Taylor, Tabled Document, 7 May 2009, p. 2.

4 *Submission* 1, K & SJ Henderson, p.1. See also Ms Elle Hall, *Committee Hansard*, 16 May 2008, p. 58.

2.9 Many other submissions and other evidence emphasised the dramatic nature of the price increases.

> It is nothing short of daylight robbery to increase our fertilizer costs from $550 per tonne last season (which we thought was far too high !!) to $1020 per tonne that we have had to pay up front this season. A $30,000 super bill up front is a lot of money to find.[5]

> Prices paid by dairy farmers for fertiliser and chemicals have approximately doubled over the past 12 months and in some cases final supply prices are not known and there is doubt over the timeliness of supply.[6]

> Our planting fertiliser DAP has increased 100% in 12 months, Urea has increased 40% in the last few months…These price increases make a joke of a 4% inflation rate.[7]

> In March 2007 we paid $555 plus GST for 37 tonnes of MAP delivered on farm. We thought at the time it was a rip off, being a huge increase on the year before. This year it was $1200 inc GST.[8]

> When compared to prices for fertiliser such as DAP, the fertiliser price has risen substantially from roughly $800 a tonne last year to $1,700 a tonne now, today, this year. Incitec price their fertiliser according to what they think the market will bear. The prices for grains over the last 12 months have been at all-time highs. We believe they set the fertiliser prices accordingly. Fertiliser prices have been allowed to skyrocket out of all proportion to any other commodity.[9]

2.10 The Department of Agriculture, Fisheries and Forestry (DAFF) reported smaller though not insignificant price increases. Over the period June 2006 to February 2008 increases in the prices of single super, DAP and mono-ammonium phosphate (MAP) of 40 per cent were recorded. The department stated however that the prices paid by farmers will be higher as they include the cost of transport from manufacturing works plus sellers margins.

2.11 Data by IBISWorld highlights the dramatic increase in fertiliser prices. The data, based on ABARE statistics, shows that the index of prices paid for fertilisers (where 1997-98 equals 100) increased over the period to 2007-08, except in 1999-2000 and 2001-02.

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5 *Submission* 15, Patricia and Bernard Heard, p. 1.

6 *Submission* 13, Murray Goulburn Co-Operative Co Ltd, p. 1.

7 *Submission* 50, Mr Jeff Leighton, p.1.

8 *Submission* 47, Mr Earnest Kitto, p. 1.

9 Mr Geoffrey McCarthy, Director, Canegrowers Isis Ltd, *Committee Hansard*, 23 July 2008, p. 62.

Table 2.1: Index of prices paid by farmers for fertilisers

	Units
1997-98	100
1998-99	102.7
1999-00	99.8
2000-01	106.4
2001-02	104.3
2002-03	106.9
2003-04	102.8
2004-05	108.8
2005-06	111.6
2006-07	114.3
2007-08	117.2

Source: IBISWorld, *Fertiliser Manufacturing in Australia*, November 2007, p. 39.

2.12 Farmers' organisations also commented on the large increases in fertiliser prices and the effect of these increases on farmers. The National Farmers' Federation (NFF) in response to this issue surveyed its members, finding that in just the past 12 months to May 2008, fertiliser prices increased, on average, by 107 per cent. Similar price increases for chemical prices have also been experienced during the same period. The NFF stated that:

> The higher fertiliser and chemical prices are eating into the margins of farmers and come on top of a growing list of additional input costs being faced by the farm sector. This is forcing farmers to adjust their production systems, often at the expense of productivity.[10]

2.13 The NSW Farmers Association illustrated the dramatic nature of recent price rises in recent years:

> …if you have a look at the figures they will show quite clearly that there has been far in excess of CPI on fertiliser price increases since about 1990. In actual fact over the last 12 months Single Super, a phosphate based fertiliser, has gone from about $240 a tonne to $365 a tonne. DAP fertiliser has gone from about $580 a tonne two years ago to $850 one year ago to $1,300—and I have heard quotes of up to $1,600. MAP fertiliser, a nitrogen

10 *Submission* 20, NFF, p. 3.

> based fertiliser, is the same as DAP. Six months ago the urea price was $600 and it is now looking at about $900 a tonne.[11]

2.14 WAFarmers stated that many farmers in that state who will need to spend in the order of $200 000-$300 000 extra to obtain the same amount of fertiliser as they bought in 2005, representing around a 25 per cent increase.[12]

2.15 AgForce Grains Ltd illustrated the gravity of the situation by noting that the rise in fertiliser and chemical input costs for Queensland grain farmers is 14 times the rate of inflation over the period 2004 to 2008.[13]

Causes of fertiliser price increases

2.16 A number of reasons have been advanced to explain the increase in fertiliser prices over recent years, including a range of global demand and supply factors.

2.17 Specifically, studies and submissions to this inquiry have indicated that the increase in world fertiliser prices have been driven in part by a dramatic upturn in demand for agricultural fertiliser in both developing and developed countries. Price pressures have been compounded by a limited world supply of key fertiliser ingredients – nitrogen, phosphorus and potassium – with structural constraints on the speed at which the fertiliser industry can increase production.[14]

2.18 DAFF stated that:

> Current world indicator prices for fertiliser are high as a result of increased world demand for fertiliser, particularly in the United States, combined with a decrease in the United States' production capacity. Fertiliser production costs have also increased.[15]

2.19 The committee considers that there is also a need to investigate the extent to which fertiliser price rises are due to domestic or international structures or related market failure as opposed to international supply and demand factors. These issues are discussed in greater detail later in this chapter.

Global fertiliser demand

2.20 In relation to global fertiliser demand the International Fertilizer Industry Association (IFA) stated that:

- after a modest 1.5 per cent growth in 2005-6, aggregate world fertiliser consumption increased sharply by 5 per cent in 2006-07;

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11 Mr Jock Laurie, *Committee Hansard*, 16 May 2008, p. 13.

12 *Submission* 29, WAFarmers, p. 4.

13 *Submission* 24, AgForce Grains Ltd, p. 4.

14 I. Richardson, 'Fertiliser – a precious commodity', *Rabobank Global Focus*, Summer 2007, pp 1–7; L.M. Maene, 'International fertilizer supply and demand', Paper presented at the Australian Fertilizer Industry Conference, August 2007. See *Submission* 26, IPL, pp 1-7; *Submission* 6, Mosaic, pp 1-3.

15 *Submission* 35, DAFF, p. 4.

- consumption of nitrogen (N) fertilisers increased more rapidly (5.4 per cent) than that of phosphorus (P) –5.1 per cent – and K (potassium) – 3.5 per cent;
- by region, demand recovered strongly in North America and West Asia, after previous declines; more moderate but strong growth was recorded in parts of Asia, Africa, Eastern Europe and Latin America;
- consumption declined significantly on Oceania and modestly in Western and Central Europe;
- East Asia and North America accounted for two-thirds of the increase in world fertiliser consumption in 2006-07.[16]

2.21 The IFA argued that global economic and agricultural contexts are projected to remain favourable in 2008-09 as a result the 'upward trend' in world fertilizer demand will continue.[17] In the medium term, world fertiliser demand is projected to grow steadily. Compared to average consumption between 2004-05 and 2006-07, global demand in 2011-12 is expected to increase 2.6 per cent annually on average. The bulk of the increase in demand is expected to come from Asia and, to a lesser extent, from Latin America.[18]

2.22 DAFF also indicated that global fertiliser demand is expected 'to remain strong' in 2008.

> Partly reflecting increased demand from the biofuels sector, grain and oilseed have also increased significantly in 2007–08. Higher grain and oilseed prices expected to lead to an increase in the area sown to these crops in major producing countries in the 2008–09 season, resulting in higher demand for fertiliser.[19]

2.23 A paper by L.M. Maene, Director-General of the International Fertilizer Industry Association, concluded that all supply and demand situations 'will be tight to balanced until 2009' due to stronger than expected demand.[20] The paper noted that:

- there will be an ammonia surplus in some regions and a deficit in others except for 2009-10 when supply/demand will be in balance. Urea supply will grow at a faster rate than that of demand with a surplus likely in 2009.
- phosphate rock availability will increase but exports will grow only from a few countries. DAP supply/demand will remain in balance until 2010.

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16 IFA, *World Agriculture and Fertilizer Demand, Global Fertilizer Supply and Trade 2007-2008: Summary Report*, IFA, 2007, p. 2 cited in *Submission* 10, IFA.

17 IFA, *World Agriculture and Fertilizer Demand, Global Fertilizer Supply and Trade 2007-2008: Summary Report*, IFA, 2007, p. 3 cited in *Submission* 10, IFA.

18 IFA, *Medium-Term Outlook for Global Fertilizer Demand, Supply and Trade 2007-2011: Summary Report*, IFA, 2007, p. 3 cited in *Submission* 10, IFA. See also FAO, *Current World Fertilizer Trends and Outlook to 2011/12*, 2008, p. ix.

19 *Submission* 35, DAFF, p. 5.

20 L.M. Maene, 'International fertilizer supply and demand', Paper presented at the Australian Fertilizer Industry Conference, August 2007, p. 13.

- potash supply will increase in China and in most exporting countries. A marginal growth in surplus will develop only in 2011.[21]

Factors affecting global fertiliser demand

Growing world population

2.24 In recent decades the use of fertiliser globally has expanded significantly, driven by a combination of growing population and declining land available for agriculture. The economic need for increased yields in order to feed a growing population from limited arable land has driven this increased fertiliser consumption.[22] Fertiliser consumption has grown at a compound rate of two per cent between 1972 - 2005. On an individual basis, nitrogen consumption has grown at 2 per cent, phosphate at 1.3 per cent and potash at 1.1 per cent.[23]

2.25 The NFF commented that:

> It is anticipated that between 50 and 70 million people will be added annually to the world population until the mid 2030. The growing world population has resulted in an increase in production requirements from limited agricultural land. As a consequence of higher production, demand for fertilisers and chemicals has also risen accordingly.
>
> As the population increases, population dwelling centres also expand in size. This inturn places pressure on fertile agricultural land, forcing more marginal land to be utilised for food and fibre production and therefore a greater reliance on such agricultural inputs.[24]

2.26 Similarly, the IFA stated that:

> The need to boost agricultural production worldwide is stimulating fertilizer production in Asia and the Americas and leading global demand to new record levels.[25]

2.27 The majority of growth in fertiliser usage has been concentrated in developing regions. In the developed world, the long-term trends have shown steadier and more gradual growth in fertiliser consumption. This changed in 2007, with increased demand for fertiliser from both developed and developing countries, driven by high commodity prices and the biofuels boom.

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21 L.M. Maene, 'International fertilizer supply and demand', Paper presented at the Australian Fertilizer Industry Conference, August 2007, p. 13.

22 *Submission* 20, NFF, pp 5-6.

23 Rabobank study, p. 2.

24 *Submission* 20, NFF, p. 5. See also *Submission* 4, NSW Farmers Association, pp 10-11.

25 IFA, *World Agriculture and Fertilizer Demand, Global Fertilizer Supply and Trade 2007-2008: Summary Report*, IFA, 2007, p. 2 cited in *Submission* 10, IFA.

High agricultural commodity prices

2.28 Submissions noted that increased demand and high prices for grain and other agricultural commodities has led to an increased demand for fertiliser as farmers look to take advantage of the agricultural price boom.[26]

2.29 The Rabobank study also noted that the dramatic expansion in grain area in 2007 resulted in a demand for fertiliser that was beyond current fertiliser production capacity, which contributed to significant increases in input prices around the world. The study stated that:

> There tends to be a close relationship between high fertiliser prices and high commodity prices as a farmer's demand for inputs is driven by a desire to increase yields in a high commodity price environment.[27]

Biofuels

2.30 Increases in fertiliser consumption are also being driven by the biofuels boom. Biofuel crops include corn, sugar cane and palm oil. As a result of record oil prices and new legislative requirements overseas designed to address global warming concerns there has been a substantial increase in the demand for biofuels.[28]

2.31 In the United States, for example, increasing demand for corn for ethanol production resulted in farmers in 2007 planting the largest acreage to corn since 1944. Corn is a fertiliser intensive crop which translated into increased demand for fertiliser, particularly nitrogen-based products such as ammonia and urea. This is one of the factors that led to higher input prices globally.[29]

Shift in dietary patterns

2.32 Income growth, especially in developing countries, is resulting in a shift in global dietary patterns away from traditional staples such as cereals and roots towards more livestock, fruit and vegetables.

2.33 This shift in dietary habits affects the global demand for fertilisers in two ways. Increased demand for livestock in turn leads to increased demand for grain as a feedstock – which has a flow-on effect of increasing demand for fertiliser to produce that grain. Further, a shift in demand from grain to vegetable and fruit crops leads to increased fertiliser demand as these crops require greater fertiliser applications than grain crops.[30]

Reduced arable land

2.34 Increases in biofuel production has resulted in less arable land being available for other agricultural production, which in turn puts pressure on supply and prices for

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26 *Submission* 20, NFF, p. 6; *Submission* 26, IPL, p. 4.

27 Rabobank study, p. 3.

28 *Submission* 20, NFF, pp 7-8; *Submission* 26, IPL, p. 5.

29 Rabobank study, p. 3. See also *Submission* 26, IPL, p. 5.

30 *Submission* 26, IPL, p. 5.

food products. In addition, as the world population increases more land must be allocated to housing, therefore reducing the amount of land available for crops. The increased demand for agricultural products is being met by increasing productivity, primarily through the use of fertiliser.[31]

Global fertiliser supply

2.35 In relation to global fertiliser supply the International Fertilizer Industry Association (IFA) noted that 2007 was a record production year for most nutrients, but 'buoyant demand' stretched the industry's capacity to meet global requirements. The IFA summarised the position in the following terms:

- nitrogen – nitrogen supply and demand conditions remained 'very tight' in 2007 driven by strong nitrogen fertiliser consumption worldwide, particularly in the main consuming countries. Delays in commissioning of new capacity further tightened supply availability.
- phosphate – world demand for phosphate fertilisers grew by 3.8 per cent in 2007, pressuring the industry to operate at high rates during the year. Production of raw materials and processed phosphate fertilisers rose to near record levels, while input costs continued to expand, especially in the case of sulphur and ammonia.
- potash – world potash market conditions were very tight in 2007, due to stronger than anticipated demand for potassium nutrient. A surge in import demand stretched producers' ability to supply the customer base. [32]

2.36 In the medium term, the IFA stated that, in relation to the global nitrogen supply-demand balance, beginning in mid-2008, the rapid growth in capacity will ease the global supply-demand balance. The growth of the surplus will accelerate after 2009, as new large plants come on stream. With regard to phosphate, IFA estimates that world phosphate rock capacity is expected to increase at an annual growth rate of 4 per cent from 2007 to 2011. The overall phosphoric acid supply-demand situation will be tight from 2006 to 2010, however a surplus will emerge in 2010-11. In relation to potash, the IFA estimates that the global supply-demand balance will tighten in the short term. Starting in 2010, the addition of new capacity will reverse this trend.[33]

Factors affecting global fertiliser supply

2.37 The key fertiliser commodities, in particular, urea, MAP, DAP and potash are manufactured using a limited number of basic input sources which substantially influence the cost of the end product. Increases in demand for these basic inputs, combined in some cases with scarce global supply, has resulted in substantial increases in the cost of fertiliser production.

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31 *Submission* 26, IPL, p. 5.

32 IFA, *World Agriculture and Fertilizer Demand, Global Fertilizer Supply and Trade 2007-2008: Summary Report*, IFA, 2007, pp 3-6, cited in *Submission* 10, IFA.

33 IFA, *Medium-Term Outlook for Global Fertilizer Demand, Supply and Trade 2007-2011: Summary Report*, IFA, 2007, pp 4-7, cited in *Submission* 10, IFA. See also FAO study, p. ix.

2.38 Sourcing of raw materials has been identified as a major factor in fertiliser price increases.

Nitrogen fertiliser

2.39 The supply and pricing of natural gas has a significant impact of on the cost of nitrogen fertiliser. Natural gas is the basic feedstock (fertiliser ingredient) in the production of ammonia, and therefore nearly all nitrogen-based fertilisers. Natural gas accounts for up to 90 per cent of the cost of ammonia manufacture. The price of natural gas therefore substantially affects the price of nitrogen fertilisers.[34]

2.40 Despite its relative wide availability, the pricing of natural gas makes some regions more competitive suppliers than others. Over the past decade there has been a relocation of plant capacity from high-cost production regions, for example, the United States, to lower cost production regions such as the Middle East. However the industry is constrained in how quickly it can increase production to boost global supplies. The investment in plant and equipment required to produce fertiliser is significant. In addition, to plan and build new capacity can take several years.

2.41 The United States has traditionally been a significant producer of ammonia and urea. However, in 2001 the costs of natural gas in the US increased dramatically and US fertiliser producers responded by closing plants, thus significantly reducing US production and increasing imports. This placed pressure on global ammonia/urea capacity to supply a new regional demand.[35]

2.42 A longer term response to high natural gas prices in the US and the EU has been the relocation of substantial nitrogen production capacity to regions where natural gas can be purchased at lower prices, such as the Middle East and North East Africa. It has been estimated that between 2002 and 2008, world ammonia capacity will increase by eight per cent. As a result of relocating capacity, nitrogen fertiliser is increasingly traded internationally, rather than being domestically produced. The Rabobank study stated that:

> The long term structural change in nitrogen production has led to tightness in the market and ultimately this has been reflected in higher nitrogen fertiliser prices globally. Exacerbating this longer term trend has been the recent boom in ethanol production…The relocation of capacity is no small undertaking and, as a consequence, global nitrogen prices have remained high for several years.[36]

Natural gas is also increasingly in demand as a source of clean energy and, in the long-term, fertiliser producers will need to compete for this feedstock.

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34 *Submission* 6, Mosaic, p. 2; *Submission* 26, IPL, p. 6; *Submission* 20, NFF, p. 5; *Submission* 35, DAFF, p. 5.

35 Rabobank study, p. 4.

36 Rabobank study, p. 5.

Phosphate and potash fertilisers

2.43 The production of both phosphate and potash fertilisers are characterised by finite resources; high barriers to entry to produce P and K fertiliser feedstocks; significant capital investment requirements; a concentration of production due to natural geological constraints; and market concentration – a limited number of global suppliers. The Rabobank study argued that:

> Over time, it is reasonable to expect that the costs of P and K fertiliser will rise as ore accessibility and quality declines and extraction is more costly. The absolute availability of the ore is an important question, as this will affect the rate of price increase.[37]

2.44 IPL noted also noted that there are relatively few sources of phosphate rock in the world – 'the significant increase in world fertiliser demand has led to substantial increases in the price of phosphate rock'.[38] IPL stated that global potash supply is 'even more limited' than phosphate rock.

> The increase in demand for fertilisers has significantly increased the world price for potash, and projected growth in demand significantly exceeds announced industry greenfields capacity expansions. As a result, producers are looking to increase production capacity at existing mines or invest in new mines.[39]

2.45 The Rabobank study concluded that while 'fertiliser feedstocks have not yet become scarce', the continuing need for improving land productivity, growth in agriculture, and global demand for energy will ensure strong demand for these feedstocks well into the future.[40]

Supply disruptions in China

2.46 The Department of Foreign Affairs and Trade (DFAT) advised the committee that a number of factors have lead to disruptions in the supply of fertiliser and agricultural chemicals from China. The Chinese Government has imposed export duties on a wide range of fertiliser products effective from April to December 2008. DFAT stated that the Chinese Government indicated that the increases in export duties are of a temporary nature and are aimed at keeping domestic prices stable given increasing domestic demand. The 2008 earthquake in Sichuan province, which is a major production base for fertilisers and agricultural chemicals, has disrupted fertiliser production in that area, and is likely to lead to further disruptions in supply.[41]

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37 Rabobank study, p. 6.

38 *Submission* 26, IPL, p. 6.

39 *Submission* 26, IPL, p. 7.

40 Rabobank study, p. 7.

41 DFAT, Correspondence, dated 17 June 2008 and 30 September 2008.

Market manipulation

2.47 Other international and domestic factors have also contributed to high fertiliser prices, including the high level of market concentration in the industry. The global fertiliser industry comprises a small number of large suppliers of fertiliser products. The committee understands that between 80 and 85 per cent of the world's rock phosphate is controlled by five entities.[42]

2.48 One witness commented on this degree of industry concentration in the rock phosphate market and the ability of key market players to determine prices in this market. The industry was characterised as exhibiting cartel-like behaviour.

> Mr Bergin –As you are probably aware, the Moroccans control 50 per cent of the traded rock phosphate in the world, so they are the price setters. In terms of forecast supply and demand, the global long-term trend is about two to 2.5 per cent annual growth in demand, which is about the equivalent of a Wonarah every year. If you take all the known projects and stack them up in the time line in which they are currently forecast, there would be a surplus of supply over demand in about 2011. We believe that the reality is that many of those projects, whilst they will come to fruition, will not make it in the time frame that they are anticipating, and therefore the supply curve is going to flatten and, in our estimation, is unlikely to cross the demand curve. Therefore, we think the market is going to stay in deficit.
>
> Senator O'BRIEN—So prices will go up?
>
> Mr Bergin—Prices will go up or will be determined by whatever the Moroccans want to charge.
>
> Senator O'BRIEN—They will want the price to go up.
>
> Mr Bergin—I am sure they will. They have, I suppose, shown their OPEC-like position over the past year or so, in which they went from about US$50 or US$70 a tonne to US$400, US$450.[43]

2.49 The witness further noted that:

> It [the market] is certainly dominated by the Moroccans—and, I guess, the Jordanians as well. They certainly control the price that most people have to pay for their rock. There are a number of smaller producers that apparently are supplying at lower prices, but they may also be providing a lower quality of rock.[44]

Market manipulation – importation of phosphate rock from Nauru

2.50 Evidence of the manipulation of the market is illustrated in the case of the importation of phosphate rock from Nauru by IPL and other companies.

2.51 The committee received both public and confidential information that indicated that the price paid by a number of companies importing phosphate from

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

43 Mr Neville Bergin, Minemakers Ltd, *Committee Hansard*, 24 March 2009, p. 6.

44 Mr Neville Bergin, *Committee Hansard*, 24 March 2009, p. 8.

Nauru remained largely in the range of US$40-50 per tonne over a number of years from late 2005 to late 2008, even as world rock phosphate prices were increasing.[45] Nauru phosphate shipping schedules (reproduced at Appendix 3) illustrate this point. This evidence was particularly disturbing given that rock phosphate was trading at over US$200 per tonne in 2008. The evidence suggests that a number of companies were using cartel-like behaviour to fix prices well below world prices to the detriment of the government and people of Nauru.[46]

2.52 The Nauru Landowners Association indicated their concerns with regard to IPL, arguing that the company was importing phosphate rock from Nauru at well below market prices. The Association stated that:

> …the [IPL] submission makes a claim of purchasing phosphate rock prices commencing at USD200/mt. We are of course concerned when the information we have is that the same company – IPL – at the same time it made that submission to the select committee [April 2008], was purchasing Nauru rock (probably the highest grade phosphate rock in the world) at USD40/mt.[47]

2.53 The Association expressed concern that the Nauruan Government has been failing to secure proper prices for the phosphate rock it sells to Incitec Pivot Ltd (IPL) and other buyers. A particular concern is that Nauruan landowners are not receiving the proper rate of royalties that they should be entitled to as a result of rising global prices for phosphate.[48]

2.54 The committee questioned IPL concerning its imports from Nauru. The company confirmed that it imported phosphate rock from Nauru in 2008 but was not able to confirm the price paid.

> CHAIR—How much are you paying?
>
> ....
>
> CHAIR—Would it be $40 to $50 a tonne?
>
> Mr Whiteside—It used to be. It is not any longer.
>
> ….
>
> CHAIR—Is there rock phosphate coming out of Nauru at the present time for $40 or $50 a tonne?
>
> Mr Whiteside—That is not my belief.
>
> CHAIR—Who else imports out of Nauru—not necessarily to Australia?

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45 Mr Adam Cox, *Committee Hansard*, 10 August 2009, pp 14-16.

46 See also *Committee Hansard*, 4 February 2009, pp 21-22.

47 Mr David Adeang, on behalf of Mr Kennan Adeang, Nauru Landowners Association, Correspondence, dated 4 August 2008. The IPL submission (dated April 2008) stated that 'high quality phosphate rock is now trading at over US$200/tonne, up from US$50/tonne at the beginning of 2007' (p. 6).

48 Mr David Adeang, Nauru Landowners Association, Correspondence, dated 4 August 2008.

Mr Whiteside—There is an Indian company called Deepak that is taking some rock from Nauru primarily to India, I believe.

CHAIR—Would it surprise you to know that that is at $40 a tonne?

Mr Whiteside—It would not surprise me if it used to be $40 a tonne, but I have no information on what price they may be paying now.

CHAIR—Are you paying many multiples of $40 a tonne now?

Mr Whiteside—I am happy to give you the information in camera, but it is not many multiples.

CHAIR—Is the Nauru phosphate cheaper than some of the other imports you have?

Mr Whiteside—Yes, it is.

…….

CHAIR—What would be a reasonable market price for rock phosphate, not what you are paying, out of Nauru?

Mr Whiteside—I would have to confer with my rock-buying expert. You have to look at the P level and the cadmium level. But it would probably be somewhere between $100 and $200.

CHAIR—If someone went up there and offered them between $100 and $200 and could not get supply—yet they are supplying someone else at $40—would that seem strange to you?

Mr Whiteside—I guess it would, yes.

CHAIR—Do you understand that the locals are pretty distressed about that?

Mr Whiteside—I imagine they would be, yes.

CHAIR—Would participating in that sort of trade be improper?

Mr Whiteside—Again, it depends on the circumstances. It would depend on the terms of the contract that the buyer and seller had negotiated—and this is not us, I might add, so we are talking hypothetically. I would expect that the buyer and seller would comply with the terms of their contract, and if in the meantime the market changed substantially it would be up to the buyer and seller to work out whether that contract should be renegotiated before its expiry.[49]

2.55 Incitec Pivot subsequently provided information to the committee, on a confidential basis, indicating that the contract price paid for phosphate rock had subsequently been increased from US$40.

2.56 The committee notes that IPL entered an agreement with the Nauruan Government in 2005 under which the company provided approximately $5 million in capital to refurbish infrastructure to facilitate export of phosphate rock. IPL was not required to pay for the phosphate rock until the company's investment was recouped. IPL stated that:

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49 Mr James Whiteside, *Committee Hansard*, 23 July 2008, pp 26-28.

> I think it was around $5 million to refurbish the plant and provide some equipment and machinery to allow them to export. In return we took rock which was valued at a price and we took that for free until we had recouped our $5 million.[50]

2.57 IPL further stated that:

> Mr Whiteside—…In the end we then terminated that agreement [with the Nauru Government] and renegotiated a new traditional supply agreement, which is a normal purchase agreement whereby we on an annual basis negotiate a price. We have done that again for the contract year which starts in July. It is a number substantially higher than $40—again, done on an arms-length basis to reflect—
>
> CHAIR—What is it now?
>
> Mr Whiteside—That is commercially confidential. It is substantially higher. It reflects the value of the rock.[51]

2.58 The shipping schedules at Appendix 3 would appear to be at odds with this evidence.

2.59 IPL indicated that when it was purchasing the phosphate rock at $40 a tonne the company did not bring it onto its books at $200. IPL stated that:

> CHAIR—So when you were buying it for $40 a tonne were you bringing it on to your books at $200? How did you bring it on to your books?
>
> Mr Whiteside—It would have come in at the price that we paid for it.
>
> CHAIR—Are you quite sure of that? You did not write it up into your books.
>
> Mr Whiteside—No, we would bring it onto the books at the price on the supplier's invoice.
>
> CHAIR—So your profit came further down the line from getting it well under the market?
>
> Mr Whiteside—Yes, it would be reflected in our manufacturing markets.[52]

2.60 The Nauru Landowners Association stated that it understood that the price had increased to US$120 per tonne, commencing in August 2008.

2.61 The committee also received confidential information from a variety of sources indicating grave concerns with the conduct of IPL and other companies in their contract relations with the Government of Nauru.

2.62 The committee believes that the example of the importation of phosphate rock from Nauru at prices well below world prices and below the cost of production

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50 Mr James Whiteside, *Committee Hansard*, 10 August 2009, p. 9.

51 Mr James Whiteside, *Committee Hansard*, 10 August 2009, p. 9.

52 Mr James Whiteside, *Committee Hansard*, 10 August 2009, p. 10.

illustrates the manipulation of the market and calls into question the claims of industry players that the market responds purely to supply and demand factors.

2.63 The committee notes the contribution of AusAID funding to Nauru which could be seen as subsidising the Nauru Government in lieu of monies that should have been derived from fertiliser companies if rock phosphate prices had been contracted at market prices.

2.64 The example of Nauru is illustrative of general trends in the industry. The committee also notes the reported comments of an industry observer that suggested major market players were able to increase fertiliser prices generally with impunity during 2007.

> He was describing what happened last year and he said, 'We got away with it.' They were his words. He did not name the grades, but he said, 'We were able to put up the price $100 a fortnight and we did that two or three times more than we thought the market would allow us to bear.'[53]

2.65 In addition, the committee also notes that the cartel-like behaviour in relation to MAP appears to be severely weakened by the behaviour of Russia in 2008 to increase production and reduce the price in defiance of the major players in the market who wanted to reduce production and maintain price levels.[54]

Committee view

2.66 While a range of international supply and demand factors have influenced the increase in fertiliser prices in recent years, the committee considers that it is also important to examine the role of key market players in influencing fertiliser prices. Evidence to the inquiry suggested that the high degree of industry concentration enables key market players to heavily influence prices in this market.

2.67 Evidence of the manipulation of the market is graphically illustrated in the case of the importation of phosphate rock from Nauru by IPL and other companies. The importation of phosphate at well below world prices provides just one example of the corruption of the market and calls into question the repeated claims of industry players that the market responds purely to supply and demand factors.

2.68 The committee believes that greater attention needs to be directed at the role of global fertiliser suppliers in influencing world prices, including the cartel-like behaviour operating in an international context.

Implications for Australia

2.69 The global supply and demand factors identified above have affected fertiliser prices in Australia. The committee notes, however, that domestic factors, including

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53 Cited by Chair, quoting Mr Andy Jung, an American researcher attending the Australian Fertiliser Outlook Conference, October 2008, *Committee Hansard*, 14 November 2008, p. 42.

54 For a discussion, see *Committee Hansard*, 14 November 2008, p. 42; 4 February 2009, p. 11; and 24 March 2009, p. 8.

industry concentration and market manipulation, also play a part in influencing domestic fertiliser prices.

2.70 DAFF noted that as Australia is a net importer of fertiliser and chemical products, movements in Australian prices generally track developments in world markets – 'because of limited substitution possibilities between these and other farm inputs, Australian farmers have little choice but to absorb increases in fertiliser and chemical costs'.[55]

2.71 The 2008 ACCC report into fertiliser prices also noted that the significant rises in fertiliser prices in Australia 'are mainly attributable to rapidly increasing global fertiliser prices'. The ACCC added that:

> These increases have been caused by a substantial increase in world demand for fertilisers associated with an expansion in agricultural production...and by rises in costs of production associated with the increasing cost of energy. This is occurring in a market where the global supply capacity is limited in the short-to-medium term.[56]

2.72 The committee considers that the report is flawed, especially in terms of providing a thoroughgoing analysis of the industry. The report itself noted that the Minister's request to the ACCC did not constitute a formal price inquiry under Part VIIA of the *Trade Practices Act 1974* (TPA) – accordingly, the ACCC had no formal information gathering powers and instead relied on the 'cooperation and assistance of interested bodies' in undertaking its inquiry. The report also noted that generally the Commission relied on the 'truth and accuracy' of submissions and statements from interested parties.[57]

2.73 As conceded by Mr Brian Cassidy, Chief Executive Officer of the ACCC, the Commission's inquiry was an 'inquiry into prices' and not into the competitive tensions in the market.[58]

> …we were asked by the minister to look at fertiliser prices, particularly in the context of the fairly sharp increase in fertiliser prices, starting from about March-April 2007. That letter [from the Minister] is, to some extent, about looking at the structure of the industry. That was as a spin-off from looking at prices. I agree the inquiry was not about looking at the structure of the industry per se. It was an inquiry that we were asked to do in relation to fertiliser prices.[59]

2.74 The report's emphasis on international factors to explain fertiliser price increases is difficult to sustain especially in the case of urea prices. In its report the

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55 *Submission* 35, DAFF, p. 4.

56 ACCC, *ACCC Examination of Fertiliser Prices*, July 2008, p. 28.

57 ACCC report, p. 1.

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

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

ACCC noted that urea retail prices increased substantially in Australia while world prices remained relatively stable.[60] The ACCC provided the following explanation:

> The overall conclusion of this examination was that in general world and retail prices [for DAP and urea] tracked each other reasonably closely. This conclusion described the general findings from the analysis over the entire time period, rather than attempting to suggest that the difference between the world price and the retail price is always locked at a single number. The difference in prices will fluctuate around the average over time due to a wide variety of factors.[61]

2.75 The ACCC stated that for urea, the average monthly difference between the world price and the retail price over eight years from March 2000 to May 2008 was approximately $190 per tonne –'however, the examination identified that there were periods during which the difference between world and domestic prices opened and closed'. The committee notes the Commission's explanation but still does not consider that the world price and retail price for urea could be described as tracking reasonably closely.

2.76 The committee also questioned the report's emphasis on analysis of DAP and urea, when the bulk of fertiliser used in Australia is MAP and single super.[62]

Domestic prices

2.77 Companies noted that the substantial global increases in 2007 and 2008 in fertiliser prices have translated directly into higher domestic prices. IPL stated that the increase in local prices 'reflects the fact fertilisers are freely traded commodity products and that Australian fertiliser prices are therefore inextricably linked with global prices'.[63] Australia only represents 1.4 per cent of global fertiliser consumption. Mosaic also noted that 'prices delivered to Australian farmers have escalated in line with the increases seen in the global fertilizer and freight markets over the past year'.[64]

2.78 Witnesses however questioned this interpretation arguing that prices reflect what the market will bear. One witness observed that:

> …the suppliers of fertiliser are charging what they know the market will bear, because demand is strong, so they can keep putting the prices up and continue selling as much product as they have available…They are going to maximise their profits like anybody else when they can take advantage of the situation.[65]

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60 ACCC report, p, 19. See also Mr Brian Cassidy, *Committee Hansard*, 14 November 2008, p. 22.

61 ACCC, Answers to questions on notice, dated 26 May 2009, p. 13.

62 *Committee Hansard*, 14 November 2008, pp 19-20.

63 *Submission* 26, IPL, p. 8.

64 *Submission* 6, Mosaic, p. 3.

65 Mr Michael Fels, *Committee Hansard*, 16 May 2008, p. 63.

2.79 Even Dr Terry Sheales of ABARE conceded that commodity prices are affected in this way:

> Dr Sheales—I understand that there were problems with keeping up the supply in the domestic US manufacturing sector and, of course, that spills into the global market in terms of increased demand.
>
> CHAIR—So it is what the market would bear?
>
> Dr Sheales—I would have to suggest, that probably for most commodities, that would be the case. With most manufactured commodities, at the end of the day, unless you can cover your costs whatever they are you cannot stay in business.[66]

2.80 One submission observed that:

> Through an apparent total disregard for others' rights or natural justice, one fertilizer executive stated in a media report that the price of fertilizer was dependent on the farmers 'ability to pay'.[67]

2.81 IPL offered an explanation of the relationship between international price increases and their effect on Australian prices:

> In short, Australian fertiliser manufacturers do not produce sufficient volumes of the key fertiliser types to satisfy domestic demand. This is a result of the seasonal nature of demand, which means that local manufacturing facilities cannot produce sufficient output during peak demand periods. A significant volume of fertiliser is ordered and delivered during a limited number of months of the year (in particular in the lead up to the winter cropping season in March – June). There is significantly less demand during other months. Demand is more cyclical in southern states in Australia than in Queensland.
>
> As a result, there is significant and sustained import of fertilisers into Australia, and prices are based on import parity. Overall, approximately 48% of Australia's total fertiliser consumption is imported.[68]

2.82 IPL explained that like many Australian industries where imports are required to meet domestic demand, fertiliser prices are set on an import parity basis.

> Domestic manufacturers such as IPL are price takers that is, the price they receive for locally manufactured product is determined on world markets, and their individual decisions make no impact on the world benchmark price. If a domestic manufacturer sought to raise local prices above import parity, then customers would simply purchase imported products instead.
>
> Like many agricultural markets, such as the grain and wool markets, in which there are global benchmark prices, it would not be rational for Australian fertiliser manufacturers to price below import parity since it would be more profitable to export the product instead. The fertiliser

66 Dr Terry Sheales, *Committee Hansard*, 16 May 2008, p. 71.

67 *Submission* 34, Ms Margaret Menzel, p. 1.

68 *Submission* 26, IPL, p. 8.

> industry is like any Australian industry which produces internationally traded commodity products - while domestic manufacturers do benefit from high global prices, they are also disadvantaged when prices fall.[69]

2.83 The committee questioned IPL concerning the efficacy of the competitive model in a practical sense, and in particular, as to how feasible it would be for farmers to purchase imported product if a local reseller decided to lift prices above import parity prices.

> Mr Whiteside—I think that comment refers to fertiliser importers. You would be aware that we also sell our ammonium phosphates from Townsville to our retail competitors…We sell to them on an import parity basis and this analogy was based at that level. If we were to try to sell to Hi Fert or Impact at a price above import parity, they presumably would go and import at import parity, which would be lower.
>
> ACTING CHAIR—So you are saying that out there in the market there would be competition because somebody else who is importing it would not be upping the price above parity?
>
> Mr Whiteside—Correct. Import parity is the price at which you can import fertiliser. That is why our retail competitors may choose to buy from us or they may—and do—choose to import in their own right.
>
> ACTING CHAIR—What if I am Joe Bloggs in Condo and I only have one agent and the nearest other agent is 200 kilometres away? How does that competitive model work if I cannot actually access it without an enormous freight and impost cost on it?
>
> Mr Rintel—Our business partners are free to choose who they purchase product from. Incitec Pivot is not the only supplier in the market. They are free to choose from other wholesalers in the market, whether they be Hi Fert or Impact; they can choose to purchase products from them.[70]

2.84 Submissions also questioned the above rationale put forward by IPL. In relation to import parity pricing one submission noted that:

> World parity pricing – this is the same excuse as is given for fuel prices…World parity pricing is a 'cop out' especially where Australia produces significant amounts of some fertilisers, phosphorus in particular, and government should intervene.[71]

2.85 One study that examined import parity pricing (IPP) stated that it could be argued that pricing at import parity simply involves pricing at 'what the market will bear' – 'to some this involves profiteering, if it allows domestic suppliers to cover their costs and make economic profits, because of the price "wedge" afforded by IPP'.[72]

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

70 Mr James Whiteside/Mr Jamie Rintel, *Committee Hansard*, 23 July 2008, p. 47.

71 *Submission* 22, Peter & Yvonne Abel, p. 1.

72 G. Parr, 'Import parity pricing; a competitive constraint or a source of market power?', Paper presented at the TIPS Forum, South Africa, 2005, p. 4.

2.86 Submissions also raised the issue of the appreciation of the Australian dollar which would have been expected to lead to lower fertiliser prices. The NFF stated that the increase in fertiliser prices are particularly perplexing for farmers considering that approximately 75 per cent of the key fertiliser ingredients of nitrogen, potash and phosphate are imported and that the Australian dollar has appreciated by almost 15 per cent against the US dollar since the beginning of 2007.[73]

2.87 Another submission similarly observed that:

> …we were told by the 'gurus' that when the value of the $AUD went down, they had to increase fertiliser prices, and we can understand that. But when the value of the $AUD went up they also increased prices, using the change in the $AUD as the reason for the price increases. We have experienced that truth in this industry is optional.[74]

2.88 Some submissions have noted that the increase in fertiliser prices have moved in line with grain price increases and speculated whether or not the increase is coincidental. One farmer asked rhetorically:

> Do you think that the price of fertiliser would have increased so much if the price of wheat had not doubled, and canola gone from $600 a tonne in December to $850 a tonne in February?[75]

2.89 The NSW Farmers Association noted that a similar situation was evident in Canada in 1995 and 1996 – as wheat prices rose, fertiliser prices tracked almost in line with the increases. Fertiliser companies raised prices 75 per cent eroding any marginal gains achieved by farmers as a result of increased prices.[76]

2.90 ABARE data based on indices of prices paid by Australian farmers for fertiliser and wheat show a strong correlation between increasing wheat prices and fertiliser prices, especially in the years 1997-98 to 2006-07. From 1997-98, the base year of the indices, the price received for wheat by farmers increased by 19.9 per cent to 2006-07 and the price paid for fertiliser increased by 21.4 per cent. In the years 2007-08 and 2008-09 there was a large growth in fertiliser prices and a lesser growth in wheat prices. In 2007-08, the price paid for fertiliser is estimated to have increased by 120.4 per cent from the base year, while the price paid for wheat increased by 90.7 per cent. In 2008-9, it is estimated that the price paid for fertiliser will have increased by 197.6 per cent from the base year while the price received for wheat will have increased by 68.2 per cent.[77]

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73 *Submission* 20, NFF, p. 3. See also *Submission* 48, Mr Roger Carrigan, p. 1.

74 *Submission* 22, Peter & Yvonne Abel, p. 1.

75 *Submission* 33, Mr Tony Hedges, p. 2.

76 *Submission* 4, NSW Farmers Association, p. 6. See also Mr Jock Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 15.

77 Calculations based on ABARE data.

Committee view

2.91 The committee notes that while global increases in fertiliser prices have influenced, to some degree, domestic price increases, it also believes that industry concentration in Australia and consequent market manipulation also play a part in explaining high fertiliser prices paid by Australian farmers.

2.92 The committee considers that high fertiliser prices in Australia over recent years largely reflect what the market will bear. Key industry players are able to manipulate the market. With strong demand, these players are able to increase prices at will, and thereby maximise profits in this advantageous market situation – and all to the detriment of Australian farmers. The role of domestic market competition issues in influencing the rise in fertiliser prices is further examined in chapter 3.

2.93 In this context, the committee notes the conclusions of a study by the Canadian Standing Senate Committee on Agriculture and Forestry into input prices in Canadian agriculture. The report concluded that while global supply and demand factors have contributed to pushing certain farm input prices to record levels in Canada, these factors 'should not distract attention from the potential role of domestic institutional factors in explaining high input prices'.[78]

Implications for Australian farmers

2.94 Evidence to the inquiry indicated that fertiliser price increases pose a serious threat to the continued viability of many farmers.

2.95 The committee received many individual accounts outlining the devastating effect that increases in fertiliser prices have had on farmers.

> I am a beef farmer on the far South Coast of NSW. I am stuffed. We have been travelling along pretty well until now but the three fold increase in the price of fertiliser and chemical has got us beat let alone the doubling of fuel! We have dryland and irrigation farming systems and we farm using the most modern best practice available. How can any business survive when its inputs treble.[79]
>
> We operate a mixed farm of 800 acres in the western district of Victoria. We have had to move more and more into cropping to make our enterprize viable, with the wool prices still not paying to be able to continue producing. We also produce fat lambs - so are still very heavily reliant on fertilizer for pasture management as well as cropping.
>
> It is nothing short of daylight robbery to increase our fertilizer costs…..We have gone off farm contracting to make a living - which has meant very long working hours for us both over the years.[80]

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78 Canadian Standing Senate Committee on Agriculture and Forestry, *"Growing" Costs for Canadian Farmers,* June 2008, p. 20.

79 *Submission* 43, Mr Peter Schwarz, p. 1.

80 *Submission* 15, Patricia & Bernard Heard, p. 1.

2.96 The NFF noted that fertiliser and chemical prices comprise between 11 and 14 per cent of total farm cash costs and the increases to date have the effect of significantly eroding margins for many farmers. Additional cost increases faced by agriculture include labour wage rates, fuel prices and official interest rates. Combined, these factors comprise over 56 per cent of total farm cash costs.[81]

2.97 The NFF also noted that on top of these input costs, the Australian dollar has appreciated by over 60 per cent since 2003. With 70 per cent of all Australian agricultural production destined for export markets, this has made it significantly more difficult for Australian farmers to compete on global markets.[82]

Effect on individual sectors

2.98 Fertiliser price increases are affecting many farm sectors. In relation to graingrowers, AgForce Grains Ltd stated that the rise in fertiliser and chemical input costs for Queensland grain farmers is 14 times the rate of inflation over a period from 2004 to 2008. For sorghum the cost of fertiliser and chemical inputs since 2004 has risen from $210/ha to $335/ha and for barley the cost has increased from $165/ha to $275/ha. These represent a 37 per cent (sorghum) and 40 per cent (barley) increase over 4 years.[83]

2.99 AgForce Grains stated that input cost increases with regards to chemicals and fertilisers are posing a 'real threat' to the financial viability of many grain farms in Queensland. The combined effect of drought, flood and other environmental conditions has reduced the cash on hand significantly. Added to rises in interest rates and recently exponential rises in chemical and fertiliser input costs has meant that profitability in 2008 is 'questionable' for many graingrowers.[84]

2.100 PGA Western Graingrowers also stated that input costs, including fertiliser prices are having a dramatic impact of the profitability of broad-acre farming in Western Australia.[85]

2.101 With regard to dairy farmers, the Murray Goulburn Co-operative Co Ltd (MGC) stated that expenditure on fertiliser and chemicals by Australian dairy farm businesses in 2005/06 was about $25 000 or 10 per cent of total farm expenditure. Given recent significant price rises it is therefore reasonable to estimate that collectively MGC suppliers will spend in excess of $100 million on fertiliser and chemicals in 2007/08. Consequently, access to these inputs at internationally competitive prices is critical for the ongoing success of dairy businesses. The MGC stated that:

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81 *Submission* 20, NFF, pp 10-11.

82 *Submission* 20, NFF, p. 11.

83 *Submission* 24, AgForce Grains Ltd, p. 4.

84 *Submission* 24, AgForce Grains Ltd, p. 14.

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

> These price increases will have a significant impact on farm profitability particularly if these effects are long-term or permanent and we see any relative softening of world dairy prices and therefore farm incomes.[86]

2.102 The committee received a large number of submissions from cane farmers and their representative organisations highlighting the severe strains that price increases are having on this industry. The Australian Cane Farmers Association stated that fertiliser price increases in recent years has placed 'considerable pressure' on farm profitability.

> For sugar cane production to continue in Australia and to hold any hope of profitability, a competitive supplier market is essential and sustained high input prices cannot be tolerated.[87]

2.103 Similarly, the Kalamia Cane Growers Organisation stated that:

> The significant price rises for fertiliser during 2007 has led to increased concern in the farming sector as to the future viability and long-term sustainability of their businesses if this sector is to continually absorb these kind of price increases.[88]

2.104 Canegrowers Isis Ltd stated that further fertiliser price increases will have a 'devastating impact on the amount of land that gets planted' and will threaten the viability of many in the industry in Queensland.[89]

2.105 The dramatic situation for cane farmers was illustrated in the case of the Herbert River District (Qld) where the local branch of the Australian Cane Farmers Association stated that at the end of 2007 farmers in the district owed one fertiliser reseller $3 million, and still owed $1.2 million in July 2008.[90]

2.106 The Association stated that 'farmers worked all of last year for no income…and in fact have put money into their farms to keep on going and we are totally sick of it'.[91] Mrs Carol Mackee of the Association further stated that:

> Escalating costs are forcing farmers out of business…The way things are going, it is forcing farmers to sell out to the managed investment schemes, because it is just too hard for them.[92]

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86 *Submission* 13, MGC, p. 1.

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

88 *Submission* 25, Kalamia Cane Growers Organisation, p. 1. See also Mr Geoffrey McCarthy, Director, Canegrowers Isis Ltd, *Committee Hansard*, 23 July 2008, p. 61.

89 Mr Geoffrey McCarthy, Director, Canegrowers Isis Ltd, *Committee Hansard*, 23 July 2008, pp 67- 68.

90 *Submission* 31, Australian Cane Farmers Association – Herbert River District, p. 1; Mrs Carol Mackee, Australian Canefarmers Association, *Committee Hansard,* 23 July 2008, pp 55-56.

91 *Submission* 31, Australian Cane Farmers Association – Herbert River District, p. 1; Mrs Carol Mackee, Australian Canefarmers Association, *Committee Hansard,* 23 July 2008, pp 55-56. See also *Submission* 12, Mr Sam Nucifora, pp 1-2; *Submission* 34, Ms Margaret Menzel, pp 1-3.

Other impacts

2.107 Evidence to the inquiry indicated that high input costs, including fertiliser costs, are having a detrimental effect on many farmers and farming communities. As well as severe economic stains imposed on farmers, submissions pointed to increasing levels of depression and other related illnesses and increasing rural suicide rates.[93] One submission noted that:

> Farmers cannot keep on working for little or no return. We have lost a generation of young farmers off the land. Young people are not going to struggle like their parents.[94]

2.108 Another submission pointed to 'the state of penury that most Australian farming enterprises have been driven to, with many hardly making interest payments let alone drawing a living wage for those family members working on farm'.[95]

2.109 Submissions emphasised that high input costs, including fertilisers will impact on consumers through higher food prices.[96] The Bookham Agricultural Bureau stated that:

> While this matter [fertiliser prices] is of immediate concern to farmers and graziers it should be of concern to the wider community. These price increases will eventually flow from grain growers to graziers, to lot feeders and eventually the supermarket checkout.[97]

Committee view

2.110 The committee notes the concerns raised during the inquiry in relation to high fertiliser prices. The committee is extremely concerned at the extent of the impact that fertiliser price increases have on individual farmers and the farming community generally.

2.111 Exorbitant and sustained fertiliser price rises threaten the viability of many farmers and cause suffering in countless farming communities. While fertiliser prices are of immediate concern to farmers, these price increases have a flow-on effect to production and to the wider community through increased food prices.

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92 Mrs Carol Mackee, Australian Canefarmers Association, *Committee Hansard,* 23 July 2008, p. 55.

93 *Submission* 34, Ms Margaret Menzel, p. 1; *Submission* 12, Mr Sam Nucifora, p. 1.

94 *Submission* 31, Australian Cane Farmers Association – Herbert River District, p. 2.

95 *Submission* 34, Ms Margaret Menzel, p. 1.

96 *Submission* 43, Mr Peter Schwarz, p. 1; *Submission* 15, Patricia & Bernard Heard, p.1.

97 *Submission* 9, Bookham Agricultural Bureau, p. 1.

Recent movements in fertiliser prices

2.112 There has been a dramatic fall in global fertiliser prices in recent months. In the period from late October 2008 to late December 2008, the world price of DAP fell by 60 per cent, and prices for urea fell by 55 per cent.[98]

2.113 In Australia, fertiliser prices, especially for MAP, DAP and urea have fallen in recent months. A recent ANZ study noted that a combination of weaker global fertiliser prices and a stronger Australian dollar has reduced the import price of DAP/MAP and urea by almost 20 per cent in March-April 2009.[99]

2.114 The ANZ study noted that in terms of the current retail price of fertiliser in South East Australia, prices have remained fairly static over the peak sales period. Between February to April 2009, the retail price of DAP/MAP in South East Australia was approximately A$840/tonne and A$610/tonne for urea. The study noted that, at these levels the price of high analysis phosphate fertilisers 'is still considerably lower for farmers than at the same time last year'. In South East Australia the average retail price for DAP/MAP between February and April last year was A$1200. In the urea market, current retail prices are similar to the same time last year.[100]

2.115 Concerns were however raised during the inquiry that recent falls in global fertiliser prices were not reflected in domestic fertiliser prices. The NFF provided statements from its Queensland-based members received in October-November 2008 illustrating this concern.

> We have evidence that there have been no decreases in Urea prices in Queensland despite the world price of urea falling from USD850 to USD350 FOB. In fact Urea prices in one of our regions have increased in the last three weeks to a new high of $1303/tonne.
>
> …the international market [indicates] prices are dropping…it is of concern that this trend is not yet flowing through to the domestic market...We are amazed that local fertiliser prices continue to rise against the global price which continues to fall significantly.[101]

2.116 One witness argued that Australian farmers (as at early 2009) ideally should have been paying about A$400 for DAP – the price paid by American farmers.

> …this winter cropping season, March-April, we are probably going to be paying 1,400 or 1,500 bucks a tonne minimum for DAP. I really cannot see it coming off that much in the Australian theatre at the moment. An Australian farmer should be paying for DAP what an American farmer pays for it [A$412.70]. If you went to a farm meeting in Fort Dodge, Iowa and you said, 'The DAP that is made 50 kilometres away is an internationally traded commodity, and you have to buy it pretending that you are

98 ANZ, *Fertiliser Market Update*, January 2009, p. 1.

99 ANZ, *Fertiliser Market Update*, May 2009, p. 2.

100 ANZ, *Fertiliser Market Update*, May 2009, p. 2.

101 NFF, Correspondence, dated 12 November 2008.

somewhere else,' you would probably be strung up from the big oak tree outside the building.[102]

2.117 Another issue raised was the continuing high price for single superphosphate. Witnesses and submissions pointed to the lack of competition in the single superphosphate market as a significant factor as to why prices are not declining.[103] One witness stated that single super should have been selling for $240 tonne (as at February 2009), yet its selling price was up to $700 per tonne in some areas.[104] One submission noted that IPL's price for single super peaked at about $540 per tonne and has only declined by about 30 per cent yet the world price for the product's major constituent – phosphate rock – is currently about a third of its peak price.[105]

2.118 The committee notes that a recent ANZ study of fertiliser prices points to the probability of lower fertiliser prices in Australia in 2009 compared with 2008. This was attributed to continuing low freight rates, static oil and energy prices and weak global fertiliser demand in 2009. Countervailing factors however include China's policy on fertiliser exports, which has increased the volatility of fertiliser prices in recent years. A weaker Australian dollar may also increase Australian fertiliser prices (as a falling dollar leads to more expensive imports). [106]

102 Mr Andrew Helps, *Committee Hansard*, 4 February 2009, pp 11-12.

103 Mr Andrew Helps, *Committee Hansard*, 4 February 2009, p. 13; *Submission* 55, Mr Greg Maslin, p. 2.

104 Mr Andrew Helps, *Committee Hansard*, 4 February 2009, p. 14.

105 *Submission* 57, Mr Graham Denton, p. 1.

106 ANZ, *Fertiliser Market Update*, January 2009, pp 3-4.

Chapter 3

Regulation and competition issues

3.1 This chapter reviews a range of regulatory and competition issues in relation to the fertiliser industry. The chapter discusses industry concentration and market dominance of key players. The chapter also reviews the adequacy of the current regulatory arrangements and the adequacy of the *Trade Practices Act 1974* in addressing anti-competitive practices and misuse of market power. In addition, the chapter reviews the adequacy of pricing and supply arrangements operating in the industry and the efficacy of industry codes of practice. The chapter highlights the need for effective competition in the industry and for greater transparency in relation to pricing and supply arrangements.

Industry concentration

3.2 The fertiliser industry is dominated by two major companies. Incitec Pivot Ltd (IPL) has a dominant market position in eastern Australia – with a 70 per cent market share at the wholesale level and 58.5 per cent market share at the distribution level.[1]

3.3 In Western Australia, CSBP 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.[2] 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.[3]

3.4 The first Interim Report detailed concerns that the market dominance of key players in the industry had led to distortions in the market and advantageous pricing structures for companies which have greatly disadvantaged farmers. Specific allegations relating to the stockpiling of product, price gouging, difficulties in relation to the availability and pricing of fertiliser and the failure to honour contracts were discussed extensively in that Report.[4]

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

2 Information provided by CSBP Ltd.

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

4 Senate Select Committee on Agricultural and Related Industries, *Pricing and Supply Arrangements in the Australian and Global Fertiliser Market: Interim Report*, December 2008, pp 26-35. Hereafter referred to as the Interim Report.

3.5 Since the tabling of its first Interim Report, a number of other allegations have been raised with the committee.

3.6 Mr Ron Greentree provided a telling example of the use of market power by fertiliser companies. He made specific allegations of price fixing in relation to IPL and Orica. As a large fertiliser user – particularly of anhydrous ammonia or NH3 – he was frustrated in his attempts to obtain fertiliser other than through the existing retail market.

3.7 Mr Greentree had attempted to get a price quote for NH3 from Orica, which has a plant at Newcastle, and IPL, which has a plant at Brisbane, but neither company would quote or sell fertiliser to him outside the retail market.

> In relation to the prices difference between the retail price delivered here on-farm to northwest New South Wales, which is nearly equal to the distance between Brisbane and Newcastle, the prices are always exactly the same from either plant, even though they have different owners. We do not have the opportunity from Newcastle to buy from Orica; we can only buy it through IPL, but IPL take a lot of product to the urea plant, which also is in Newcastle.
>
> …They have this arrangement at Newcastle that they will not sell to farmers; it has to come through IPL.[5]

3.8 IPL, in response to these allegations denied that there is any arrangement in place with Orica that Orica will not supply ammonia to agricultural customers.

> IPL sources ammonia from Orica's Kooragang Island facility pursuant to a commercial agreement. IPL also supplies ammonia to Orica from IPL's Gibson Island facility. However, there is no restriction on Orica supplying ammonia to agricultural customers.[6]

3.9 Mr Greentree also alleged that there was an arrangement between IPL and Orica which did not allow operators like him into the market.[7]

3.10 Mr Greentree noted that his attempts to import his own urea were extremely difficult with IPL allegedly putting several obstacles in his path. Eventually he was able to import urea which was more than A$300 a tonne cheaper than if it had of been purchased through IPL.

> We landed it here at that time, which was in March, at A$525 a tonne. They put every obstacle in the way. The shipment was late. It was loaded out of Libya. We brought in 10,000 tonnes. IPL got word of it and really slowed it down because there was not a full boatload and it was made up with some IPL urea as well. They slowed it right down. In fact, that fertiliser did not arrive in Australia until about the middle of April whereas it was supposed

5 Mr Ron Greentree, *Committee Hansard*, 7 May 2009, p. 3.

6 IPL, Correspondence, dated 21 May 2009.

7 Mr Ron Greentree, *Committee Hansard*, 7 May 2009, p. 3.

> to be here at the end of February when we had to do a stock swap, but they put everything in the way to ensure that we could not get it. But we won in the end and that saved us from in excess of A$300 a tonne on the retail price.[8]

3.11 IPL denied allegations that it deliberately obstructed or delayed a shipment of urea referred to above.

> The shipment was allegedly co-shipped with a volume of IPL urea. IPL has not coshipped urea with any other party since at least 2006.
>
> It was further alleged that this shipment was sourced from Libya. According to public information regarding imports of urea into Australia, IPL does not believe that any urea has been imported into Australia from Libya since at least 2003.[9]

3.12 Mr Greentree also alleged price fixing by IPL and Orica in relation to NH3 and urea prices.

> It has just got to be complete price fixing. Why is the NH3 price always completely fixed to their urea price when it has less of a process to go through.[10]

3.13 IPL denied any allegation of collusion on the pricing of ammonia. IPL offered the following explanation:

> The reason that there is no difference between the price that IPL charges for ammonia sourced from its own facility at Gibson Island compared to product IPL sources from Orica out of Kooragang Island is because, as noted above, the price of ammonia is referable to the price of urea which is the primary substitute for ammonia. The price of urea effectively determines the price of ammonia, regardless of the source of the ammonia.[11]

3.14 Other examples, in one case relating to predatory pricing, were provided to the committee on a confidential basis. In this instance a major fertiliser company proposed a joint venture with a family fertiliser business to distribute fertiliser in the local area. The local business declined the offer to participate. The company nevertheless indicated their desire to obtain a substantial proportion of the local market and were prepared to 'operate at a loss' to achieve this outcome. The local business subsequently lost a number of clients to the major company.

3.15 In the case of IPL, the committee notes that the possible closure of the company's Geelong plant will adversely impact on competition. The committee is

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8 Mr Ron Greentree, *Committee Hansard*, 7 May 2009, p. 4.

9 IPL, Correspondence, dated 21 May 2009.

10 Mr Ron Greentree, *Committee Hansard*, 7 May 2009, p. 7.

11 IPL, Correspondence, dated 21 May 2009.

concerned that this action, by reducing capacity in a market already largely dominated by one company, would lead to upward price pressures and consequently further adversely affect the ability of farmers to source fertiliser at reasonable prices.[12]

3.16 In the committee's Interim Report the dominant market position of key players in the industry and the possible implications this holds for competition, was commented upon extensively.[13] This was again highlighted since the tabling of the Interim Report, particularly with the entry of a new fertiliser company, Direct Farm Inputs (DFI) in December 2008.

3.17 When DFI released its price lists in December 2008 opposition fertiliser companies matched their prices, despite the fact that these same companies had indicated that fertiliser prices would continue to remain high into the foreseeable future.

3.18 Mr Leighton Huxtable, Chairman of DFI, recounted that:

> I started up the new company Direct Farm Inputs…That was born out of necessity. Being a farmer myself, I knew that the prices that were being spoken of at that stage of around $1,600 to $1,850 for MAP or DAP product was just not sustainable from a farmer's point of view. We started up Direct Farm Inputs to try and reduce prices. When we released our price on 12 December [2008] of $1,030 for MAP and DAP, with a further rebate to come, growers got right behind us and opposition companies immediately matched our price.[14]

3.19 Mr Huxtable stated that from January 2009 onwards other fertiliser companies further reduced their prices to match DFI prices.[15]

3.20 Mr Brian Cassidy, Chief Executive Officer of the ACCC, noted the importance of ensuring that impediments are reduced so that new players can enter the market.

> …with fertiliser being an internationally traded commodity and if domestic prices moved significantly out of line with world prices allowing for lags and so forth, you would get new entry and other competitors bringing in imports.
>
> Our point of view and our role or what is important to us is to make sure that that new entry can occur if the differential between international and domestic prices opens out beyond where it should be, which is the reason we are very interested in any suggestions and evidence about impediments

12 See, Mr Gary Brinkworth, *Committee Hansard*, 10 August 2009, pp 12-13.

13 Interim Report, pp 19-25.

14 Mr Leighton Huxtable, *Committee Hansard*, 4 February 2009, p. 1.

15 Mr Leighton Huxtable, *Committee Hansard*, 4 February 2009, pp 3-4.

being raised to new entrants to the market who want to do their own importing.[16]

Committee view

3.21 The committee concluded in its first Interim Report 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.[17] Evidence received since the tabling of the Interim Report has only reinforced the committee's view.

3.22 In the Interim Report, the committee noted 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.[18]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.

3.23 The committee re-iterates the view it formed in its first Interim Report 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 where prices are, to a large extent, determined by major players with little reference to usual supply and demand factors.

3.24 In the Interim Report a range of regulatory and competition issues were addressed.[19] These issues are now discussed in greater detail.

Regulation of the industry

3.25 As discussed in the Interim Report, 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 fertiliser must be described and labelled, and the maximum permissible concentrations for certain impurities.[20]

16 Mr Brian Cassidy, *Committee Hansard*, 7 May 2009, pp 11-12.

17 Interim Report, pp 25-26.

18 Interim Report, p. 24.

19 Interim Report, pp 14-17, 26-39.

20 Interim Report, pp 14-15.

3.26 In relation to the testing of fertiliser products, the states generally, with the exception of Victoria, do not undertake regular testing of ingredients in these products, such as nitrogen (N), phosphorus (P) and potassium (K) 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.[21]

3.27 The committee's attention was drawn to isolated instances where the constituent elements in fertiliser products did not appear to reflect the specified ingredient levels.[22] This information was of concern to the committee. As a result, the committee conducted its own investigations. The committee is concerned that in the interests of certainty regular sample testing by the states should be undertaken to provide consumer confidence in the product.

3.28 As noted in the Interim Report, the state and territory acts regulating fertiliser products vary considerably in their scope and detail.[23]

Fertilizer Working Group

3.29 A Fertilizer Working Group (FWG), 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 environment and food safety standards for fertilisers are consistent across jurisdictions.[24]

3.30 The Working Group has succeeded in harmonising 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.[25]

3.31 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.[26] In August

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21 Advice from state agriculture departments.

22 Mr John Martin, Correspondence, dated 19 August 2009. The committee also received confidential material on this issue.

23 Interim Report, p. 15.

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

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

26 Advice from DAFF, 7 November 2008.

2008 the Working Group agreed that the states would review a draft code of practice for fertilizer description and labelling developed by the Fertilizer Industry Federation of Australia (FIFA) to determine any areas where it conflicts with current regulation.[27]

Committee view

3.32 As noted in the Interim Report, the committee was strongly of the view that the states and territories should have uniform standards relating to description, sale and use of fertiliser products. The committee notes that the Fertilizer Working Group has 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. The committee believes that this work should be concluded as a matter of priority.

3.33 The committee also believes 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.

Recommendation 1

3.34 The committee recommends that the states and territories should consider, as a matter of priority, adopting uniform description and labelling of fertiliser products to ensure consistency between jurisdictions.

Recommendation 2

3.35 The committee recommends that all state and territory agriculture departments should consider undertaking regular sample testing for specified ingredient levels, such as nitrogen/phosphorus/potassium (NPK) levels, in fertiliser products.

Role of the Trade Practices Act and the ACCC

3.36 As noted in the Interim Report, many of the allegations 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 1974* (TPA) and the ACCC.[28]

3.37 The TPA contains a number of provisions related to anti-competitive practices and misuse of market power. The relevant sections of the Act are discussed below.

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

28 Interim Report, p. 37.

Part IV – restrictive trade practices

Section 45 – Anti-competitive practices

3.38 Sections 45 to 45E of the TPA deal with a variety of prescribed agreements and anti-competitive arrangements between businesses, including:

- agreements which involve market sharing or which restrict the supply of goods. These are prohibited if they have the purpose or effect of substantially lessening competition in a market.
- agreements that contain an exclusionary provision. These are agreements between persons in competition with each other which exclude or limit dealings with a particular supplier or customer or a particular class of suppliers or customers.
- agreements that fix prices. These are agreements which purport to 'recommend' prices but which in reality fix prices by agreement.

This section applies to cartel behaviour, although the TPA does not specifically use that term.

Section 46 – Misuse of market power

3.39 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.

3.40 Whether a corporation is regarded as having a substantial degree of market power depends on the circumstances in each case. The Court will take into account the extent to which the activities of the corporation in its market are constrained by the conduct of its competitors or potential competitors, or by the behaviour of those to whom it supplies or those who supply it. Section 46 will only be breached if the corporation in question has used its market power for one of the purposes listed above.

Section 47 – Exclusive dealing

3.41 Section 47 of the TPA prohibits anti-competitive exclusive dealing which has the purpose of substantially lessening competition in a relevant market. One form of exclusive dealing prohibited outright by the Act is third line forcing, which involves either:

- the supply of goods or services on condition that the purchaser also acquire goods or services from a nominated third party; or
- a refusal to supply because the purchaser will not agree to that condition.

3.42 Where a company considers there is some risk of breaching the provision, they can seek authorisation from the ACCC in accordance with the provisions of section 88 of the Act.

Section 48 – Resale price maintenance

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

3.44 Suppliers may try to impose a resale price to maintain brand positioning or to give resellers attractive profit margins. Any arrangement between a supplier and a reseller that means the reseller will not advertise, display or sell the goods the supplier supplies below a specified price is illegal.

3.45 It is also illegal for a supplier to cut off, or threaten to cut off supply to a reseller (wholesale or retail) because they have been discounting goods or advertising discounts below prices set by the supplier.

3.46 A supplier may recommend an appropriate price for particular goods but may not stop retailers charging or advertising below that price. In most cases, a supplier may specify a maximum price for resale.

Section 50 – Mergers and acquisitions

3.47 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

3.48 The concept of unconscionable conduct generally involves a stronger party exploiting an evident special disability or disadvantage suffered by another party. Three sections in Part IVA of the TPA address unconscionable conduct. They are:

- Section 51AA, which is a broad prohibition on unconscionable conduct as determined through the decisions of the courts over time.
- Section 51AB, which applies to transactions between businesses and consumers for goods ordinarily bought for household use.
- Section 51AC, which also sets out a range of matters that the court may take into account when determining if conduct is unconscionable – it applies to dealings between businesses in relation to the supply of goods or services where the value of the transaction does not exceed $10 million.

Effectiveness of the Trade Practices Act

3.49 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.[29] Some witnesses argued for a review of the TPA.[30]

3.50 The limitations of the TPA in addressing anti-competitive behaviour were illustrated in evidence from the ACCC. Mr Cassidy of the ACCC 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.[31]

3.51 The ACCC in its report on fertiliser prices further 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'.[32]

Misuse of market power

3.52 The ACCC conceded that section 46 of the Act, which relates to misuse of market power, presents difficulties in securing prosecutions because of the requirement to distinguish between anti-competitive conduct and conduct that may have a genuine commercial purpose. Mr Cassidy noted that:

> Section 46 cases are very difficult because we have to find or gather evidence that there was either an anti-competitive purpose or an anti-competitive effect…that is difficult. We have done it. Indeed we have a couple of section 46 cases in the courts at the moment.[33]

3.53 Mr Cassidy stated that the ACCC has had a number of successful prosecutions under s.46 'although not all that many'.[34]

3.54 Predatory pricing, where a corporation prices a product below cost with the intention of driving a competitor out the market and the corporation raises the price again in an attempt to recoup previous losses, is difficult to establish. The difficulty

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

30 Mr Dean Brown, *Committee Hansard*, 16 May 2008, p. 9.

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

32 ACCC report, p. 26.

33 Mr Brian Cassidy, *Committee Hansard*, 7 May 2009, p. 17.

34 Mr Brian Cassidy, *Committee Hansard*, 7 May 2009, p. 21.

with predatory pricing is that in some instances, it appears like legitimate competitive behaviour, because an indicator of competition is price wars.

3.55 In cases where there is an exercise of market power for anti-competitive purposes there are currently no divestiture powers under s.46. The committee pursued this issue with the ACCC.

> Senator JOYCE—…. At this point in time, with Incitec Pivot, is there any power of divestiture?
>
> Mr Pearson—No.
>
> Senator JOYCE—Thank you. So there is really no recourse once they have got a monopoly position. You cannot do anything about it.
>
> Mr Pearson—If they are abusing it or misusing it, there is. We have two cases in court right now on section 46 misuse of market power, so to say that we cannot do anything about it—there are massive fines and injunctions and court orders—
>
> Senator JOYCE—But there are no divestiture powers, are there?
>
> Mr Pearson—No, there is no divestiture power.[35]

3.56 The committee questioned the ACCC as to whether the existence of divestiture powers would provide some constraint on a company's potential to exploit its market position. Mr Cassidy of the ACCC noted that:

> It may. On the other hand, in the US, where they have divestiture powers, they have been very rarely used. The famous break-up of Bell Telephone is one of the few instances where they have been used. So you then have to question: if you have a power which is very rarely used, how much does that concentrate the mind?[36]

Unconscionable conduct

3.57 The committee questioned the ACCC concerning the effectiveness of the unconscionable conduct provisions (s.51AC) of the Act. Mr Mark Pearson of the ACCC conceded that prosecutions under s.51AC are 'very tough, really hard fights'.[37]

3.58 The ACCC subsequently provided information to the committee that indicated that Commission has had 12 successful cases under s.51AC of the TPA. Of these, two were fully contested court cases. The remaining 10 cases were settled by consent with court orders. There are four cases that are the subject of current litigation.[38]

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35 Mr Mark Pearson, *Committee Hansard*, 14 November 2008, p. 32.

36 Mr Brian Cassidy, *Committee Hansard*, 14 November 2008, p. 51.

37 Mr Mark Pearson, *Committee Hansard*, 14 November 2008, p. 33.

38 ACCC, Answers to questions on notice, dated 19 February 2009.

3.59 The committee sought advice from the ACCC as to whether a strengthening of the unconscionable conduct provisions of the TPA would be the most effective way to regulate anti-competitive practices in the industry.

3.60 The ACCC argued that while section 51AC may, in some circumstances, be capable of coincidentally addressing some of the issues arising from anti-competitive conduct, it is not its focus or underlying rationale.

> Issues of possible anti-competitive conduct are best addressed by provisions specifically tailored to identify and remedy such behaviour. Part IV of the Act prohibits a broad range of anti-competitive conduct.[39]

3.61 The ACCC noted that the unconscionable conduct prohibition set out in section 51AC of the Act is designed to address harsh and oppressive conduct in business transactions. Generally defined, it is conduct which is so unreasonable that it goes against good conscience.

Failure to honour contracts

3.62 The ACCC noted that commercial disputes, such as a failure to honour contracts, are generally not within the ambit of the TPA.[40] The committee sought advice as to how these issues should best be addressed.

3.63 The ACCC stated that the provisions of the Act may in some circumstances assist parties in relation to matters involving contracts between businesses. In some circumstances, issues of false or misleading representations may arise or allegations of unconscionable conduct may be present. The ACCC will have regard to factors set out in its Compliance and Enforcement policy in determining whether it would become involved in such matters.[41]

3.64 The ACCC noted, however that generally speaking, commercial disputes as to the honouring of contractual terms and conditions between businesses are best dealt with between the parties, through mediation, or ultimately in the appropriate court – 'by their very nature, contracts set up agreed rights and obligations between the parties to the contract and it is generally up to those parties to enforce'.[42]

Price monitoring role

3.65 A formal price monitoring role is also available under the TPA. 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:

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39 ACCC, Answers to questions on notice, dated 26 May 2009.

40 ACCC report, p 27.

41 ACCC, Answers to questions on notice, dated 26 May 2009.

42 ACCC, Answers to questions on notice, dated 26 May 2009.

- 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.

3.66 The ACCC, in response to the committee's queries on this issue, questioned the effectiveness of a potential monitoring role for the Commission in relation to fertiliser prices.

> …on the basis of the report that we did, domestic fertiliser prices are basically moving in line with international fertiliser prices. I am not quite sure what formal monitoring would actually achieve in that situation.[43]

3.67 The ACCC further advised the committee that while formal price monitoring can sometimes play a useful role in industries where lack of transparency around price levels may be serving as an impediment to competition, this appeared not to be the case in relation to fertilisers.

> The decision to adopt a monitoring regime in favour of other policy measures needs to involve a clear identification of the problem that the monitoring task seeks to address. Price monitoring does not enable the ACCC to directly intervene in an industry by setting prices.[44]

Committee view

3.68 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 by fertiliser companies. While the committee notes that provisions exist under the TPA to address anti-competitive practices, consideration needs to be given to the extent to which these provisions offer practical remedies to the concerns raised during the inquiry. Evidence presented during this inquiry raised similar concerns to other related-committee inquiries as to the effectiveness of the TPA in this regard.[45]

3.69 The committee believes that the powers of the ACCC need to be strengthened so that it can more effectively fulfil its role in promoting competition and fair trading and in providing for effective consumer protection.

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43 Mr Brian Cassidy, *Committee Hansard*, 14 November 2008, p. 36.

44 ACCC, Answers to questions on notice, dated 26 May 2009.

45 See, for example, Senate Rural and Regional Affairs and Transport, *Exposure drafts of the Wheat Export Marketing Bill 2008 and the Wheat Export Marketing (Repeal and Consequential Amendments) Bill 2008*, April 2008, pp 50-51.

3.70 The committee notes that the TPA, as it currently stands, has limitations in addressing anti-competitive behaviour. In relation to section 46 of the Act, which relates to misuse of market power, the ACCC noted difficulties in securing prosecutions because of the requirement to distinguish between anti-competitive conduct and conduct that may have a genuine commercial purpose. A limitation of this section of the Act is that there are no divestiture powers available. Such powers could potentially provide a constraint on a company's potential to exploit its market position.

3.71 The committee notes the advice provided by the ACCC suggesting that a strengthening of the unconscionable conduct provisions of the TPA would not be the most effective way to regulate anti-competitive practices in the industry. The committee notes the Commission's argument that Part IV of the Act, which prohibits a broad range of anti-competitive conduct, is the most appropriate vehicle to address anti-competitive conduct. The ACCC advised the committee that issues of possible anti-competitive conduct are best addressed by provisions specifically tailored to identify and remedy such behaviour.

3.72 The committee believes that there needs to be a strengthening of the provisions of the TPA relating to anti-competitive practices and abuse of market power. The committee considers that Part IV of the Act should be reviewed with a view to amending these provisions.

Recommendation 3

3.73 The committee recommends that the Commonwealth review Part IV of the *Trade Practices Act 1974* relating to restrictive trade practices with a view to amending these provisions of the Act so as to more effectively regulate anti-competitive practices and prevent abuse of market power.

Transparency in pricing and supply arrangements

3.74 Evidence to the inquiry indicated the need for greater transparency in pricing and supply arrangements across the whole fertiliser supply chain.

Pricing arrangements

3.75 Various arrangements exist with respect to pricing among wholesalers. Wholesale prices are generally set either in reference to international fertiliser prices (being formula-based) or after consideration is given to the prevailing cost of importing fertilisers. Some suppliers release recommended retail price lists. In addition, volume discounts or other benefits may be provided to customers.[46] The Australian Fertiliser Services Association (AFSA) stated that maximum retail prices

46 ACCC report, p. 12.

are virtually set by the manufacturers and importers leaving little scope in the other market sectors to have any real impact on pricing.[47]

3.76 The Australian Bureau of Agricultural and Resource Economics (ABARE) monitors and publishes annual statistics on Australian fertiliser prices, sales and trade in raw nutrient materials and manufactured fertilisers, as well world fertiliser prices. Fertiliser data collected by ABARE are published each December in *Australian Commodity Statistics*.[48]

3.77 Submissions noted that timely information on fertiliser prices is crucial to farmers' business decision-making.

> In recent years farm input and output markets have become increasingly volatile and farmers' exposure to 'raw' prices has increased (e.g. through deregulation). Access to timely information has become critical to farmers' commercial decision making.[49]

3.78 Mr Angus Taylor noted that most farmers currently rely on information gained from suppliers and distributors – few farmers have access to the underlying international prices and freight costs which influence domestic prices. Currently, fertiliser information is available through major market information providers, such as Bloomberg, although at a considerable cost which is beyond the means of most farmers. Access to the relevant Bloomberg information costs upwards of $20 000 per year.[50] Moreover, interpretation of this data requires a certain level of technical expertise.[51]

3.79 Mr Taylor argued that the issue of access to relevant information needs to be addressed through some leadership from government and/or farmers' organisations to ensure that this information is available to farmers in a readily accessible form.[52]

> There are two options to avoid a situation like this in the future. The first is that we expect the fertiliser suppliers to be forthcoming with that kind of information. Given the nature of the relationship between farmers and service providers and how that has evolved over recent years, I think that is unlikely as a practical outcome. I suspect that the more practical outcome to avoid a situation like this in the future is that farmers' organisations, government or others…should publish the international input price

47 *Submission* 5, AFSA, p. 2.

48 *Submission* 35, DAFF, p. 2.

49 Mr Angus Taylor, Tabled Document, 7 May 2009, p. 7.

50 Mr Angus Taylor, *Committee Hansard*, 7 May 2009, pp 31,33. Mr Taylor appeared in a private capacity. He is a director of Port Jackson Partners, a management consulting firm.

51 Mr Angus Taylor, Tabled Document, 7 May 2009, p. 7; Mr Angus Taylor, *Committee Hansard*, 7 May 2009, pp 28-31.

52 Mr Angus Taylor, Tabled Document, 7 May 2009, p. 7.

> information, delivered and properly calculated which in itself would take some work.
>
> That information should be distributed to farmers on a real-time basis and in a way that is accessible to them.[53]

3.80 Mr Taylor explained that the international price input information would be a FOB (free on board) price from relevant ports added to shipping costs to create a CFR (delivered at port) benchmark price. This then becomes an international price benchmark for the input – 'any retail margin will be additional, but it allows farmers to compare the international benchmark with their retail prices. Retail gross margins then become transparent'.[54] The committee understands that the price information would be a new type of data set that ABARE or other relevant body would need to collect from a variety of, and, in some cases, specialised sources. The raw data would then require fairly complex analysis to derive the relevant price information.

3.81 IPL indicated that it would support farmers' access to global fertiliser price information. Mr Gary Brinkworth, General Manager, Australian Fertilisers, IPL stated that:

> …would farmers benefit from being able to access global information or good information about what is happening in the global fertiliser market? I think we would agree the answer to that is yes. So, in terms of your first question, any approach or initiative that helps and informs farmers is something we would support.[55]

Committee view

3.82 The committee believes that there needs to be greater transparency with respect to pricing arrangements in the fertiliser industry. The committee considers that the Commonwealth through ABARE should collect and publish international input price information on fertiliser products on a regular basis and that this information should be widely disseminated to farmers. The committee believes that ABARE would be well placed to undertake this collection and analysis given that it already monitors and publishes a range of data related to fertilisers.

3.83 The committee considers that ensuring farmers have access to accurate, timely and accessible international prices and delivery costs for major inputs will ensure that they are well positioned to make judgements about the timing and quantity of their purchases.

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53 Mr Angus Taylor, *Committee Hansard*, 7 May 2009, p. 29.

54 CFR refers to Cost and Freight – basically, the price delivered at port. See Mr Angus Taylor, Correspondence, dated 10 June 2009.

55 Mr Gary Brinkworth, *Committee Hansard*, 10 August 2009, p. 4.

Recommendation 4

3.84 The committee recommends that ABARE:

- **collect and publish international input price information on fertiliser products on a regular basis on its website; and**
- **disseminate this information widely to farmers through the ABARE website, farmers' organisations, the rural press and other appropriate avenues.**

Supply arrangements

3.85 A variety of arrangements exist for the supply of fertilisers, with variations across functional levels and individual suppliers. Fertilisers can be supplied on the basis of formal contractual arrangements or less formal oral or written agreements.

3.86 Supply arrangements at the wholesale level (that is, arrangements between manufacturers, distributors and retailers) are typically made under long-term contractual arrangements. Due to the seasonal nature of demand and timeframes required for importation, suppliers often estimate their requirements on the basis of historical and seasonal forecasts and customers' preliminary indications of tonnage and product type before committed orders are taken. To accommodate ongoing variations in demand, contractual arrangements may be generally framed without specific obligations for supply or purchase.

3.87 Supply at the retail level (that is, supply to the end user) may be by written or oral arrangements. Farmers typically indicate their requirements immediately before or during a season. Supply to end users is often flexible and informal to accommodate unexpected seasonal variations affecting demand.[56] The ACCC noted that 'arrangements between the parties can be quite loose, with end users generally providing only an indication of future fertiliser requirements without intending to take on any legal obligations'.[57]

3.88 Concerns were however raised during the inquiry indicating that when farmers attempted to order fertiliser, especially from late 2007 and in 2008, they were unable to receive any certainty regarding price and/or supply. The NSW Farmers Association also reported that when farmers had managed to purchase fertiliser, the price had suddenly increased when the product arrived. [58]

3.89 The Association stated that:

> This year [2008] 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

56 ACCC report, p. 12.

57 ACCC report, p. 27.

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

> 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.

3.90 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.[59]

3.91 The ACCC also indicated that it received complaints from farmers' organisations about the lack of willingness of suppliers to commit to prices for the supply of fertilisers at the time of accepting orders.[60]

3.92 IPL indicated that it is improving its communications and business arrangements with customers. Mr Brinkworth of IPL stated that the company has introduced new ways of doing business to address concerns about fertiliser price uncertainty. This includes providing pricing options to give greater price certainty in a rising market, as well as deferred payment options. Mr Brinkworth further stated that:

> …we have continued to listen to what our customers are telling us. We have increased and improved our communications through an ongoing program, which includes face-to-face presentations to farmers and seasonal agronomic publications. I have personally met with many of our customers and farmers and I have presented at a number of industry conferences and events.[61]

3.93 The committee questioned IPL as to whether the company would be prepared to offer fertiliser at a premium in an effort to stabilise prices. IPL indicated that:

> Ultimately…we do price on an import parity basis, so whether the product is imported or comes from Phosphate Hill should make no difference to the farmer in terms of the price he pays.
>
> If farmers were willing to pay and there was a commercial proposition for farmers and for ourselves, then absolutely we would be keen to explore that. As I have been going around, I have not heard any of our customers indicate that they would be willing to pay a premium or to pay for that expense.[62]

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59 Mr Jock Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 14.

60 ACCC report, p. 27.

61 Mr Gary Brinkworth, *Committee Hansard*, 10 August 2009, p. 2.

62 Mr James Whiteside/Mr Gary Brinkworth, *Committee Hansard*, 10 August 2009, p. 7.

3.94 The committee also questioned IPL as to whether permitting farmers to access fertiliser directly from the Phosphate Hill facility was a viable option. IPL stated however that:

> There is no simple solution. It was never built as a distribution centre. Significant capital investment would be required—
>
> …We would not allow a product to leave unless it met our quality standards, which would require screening and other, as I said, capital investment. There are some commercial challenges because it is a long way from many of the markets it would be supporting. Given the scale and the basis of the existing infrastructure, we do obviously have a rail contract where product is moved to Townsville. It is not simply a matter of loading up a truck and arriving at our Phosphate Hill facility, but we are open. We are looking at whether it is doable but I would have to say that there are a lot of challenges in making this happen.[63]

3.95 The NSW Farmers Association argued that information should be provided on the level of supply available. The Association noted that the amount of fertiliser available for purchase is unknown to consumers at present. While the Association recognised that companies have legitimate commercial-in-confidence considerations, the Association argued that general details of supply availability, including fertiliser shipments, would be useful to customers in being able to place forward orders and arrange finance in a timely fashion. This would allow farmers to structure their purchasing habits. Similarly, the Association suggested that if farmers were assured supply at agreed prices it would be beneficial for the industry to implement a more structured purchasing system where orders can be placed earlier in the season to prevent spikes in demand. The Association noted that, to a certain extent this is available, but the system could be improved to prevent uncertainty in the case of product orders not being fully met. The Association noted that farmers sometimes place orders but find that only a proportion of the order is eventually filled.[64]

3.96 Incitec Pivot noted that historically, the majority of Australian farmers have ordered fertiliser from distributors on a just-in-time basis, and have not placed firm orders until immediately prior to or during a season.[65]

3.97 The inquiry also received numerous allegations of suppliers failing to honour contracts and agreements. The farmers in question were then compelled to renegotiate contracts but at a higher price. The Hon Dean Brown, the SA Premier's Special Adviser on the Drought, in particular, provided a number of statements of concern in relation to trading practices from farmers on the Eyre Peninsula in South Australia. These, and other examples, are discussed in detail in the Interim Report.[66]

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63 Mr Gary Brinkworth, *Committee Hansard*, 10 August 2009, p. 8.

64 *Submission* 4, NSW Farmers Association, p. 6; personal communication, 23 June 2009.

65 *Submission* 26, IPL, p. 11.

66 Interim Report, pp 32-35.

Committee view

3.98 The committee believes that the industry should improve the level of information available to consumers on fertiliser prices and supply to provide for greater consumer certainty. Farmers, especially in 2007 and 2008, faced many difficulties and challenges due to rising fertiliser prices and issues of access and supply. Farmers have also become more aware of global prices, nutrient options and import alternatives and therefore need to be assured that suppliers deal with them fairly and that the industry operates in a transparent manner. The committee welcomes the initiatives by IPL to improve communications and business practices with customers as useful first steps towards improving transparency.

3.99 In the previous section, the committee recommended that international price input information should be published to address the issue of price transparency. The committee believes that, based on the evidence it received during the inquiry, it is unrealistic to expect that fertiliser suppliers would be forthcoming in this regard.

3.100 The committee also considers that there should be greater transparency in supply arrangements. The committee is of the view that fertiliser companies should publish general information detailing the amount of product in stock. This information would be useful for customers placing forward orders and in arranging appropriate finance. In addition, the committee believes that companies should provide greater certainty in the filling of product orders so that customers can be assured that their requirements are met.

3.101 The committee further considers that supply agreements between suppliers and customers should be on a more structured basis to address concerns in relation to suppliers failing to honour prior agreements with farmers for the supply of fertilisers. In situations where demand and prices are relatively stable, relatively loose arrangements between suppliers and end users may work satisfactorily, but where this is not the case, as was evident in late 2007 and 2008, the committee believes that more structured arrangements are needed.

Recommendation 5

3.102 The committee recommends that in the interests of transparency the industry improve its business practices to ensure that fertiliser companies:

- **publish general information, including arrival of shipments, detailing the amount of fertiliser available in stock; and**
- **provide greater certainty in the filling of orders, especially orders for fertiliser products placed earlier in the season.**

Recommendation 6

3.103 The committee recommends that, wherever possible, supply agreements between suppliers and customers be more structured and equitable, and, where appropriate, include standard contractual terms and conditions.

Industry codes of conduct

3.104 As noted in the Interim Report, industry codes of practice provide a mechanism for greater transparency in relation to pricing and supply issues for certain industries.[67] The TPA provides for the establishment of industry codes of practice.

3.105 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.

3.106 A non-prescribed voluntary industry code of conduct is administered by the industry itself and sets standards that are voluntarily administered by the industry. 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. 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.[68]

3.107 The operation of two such mandatory codes of conduct are described below for illustrative purposes.

Oilcode

3.108 The Oilcode came into effect in March 2007 as a prescribed industry code of conduct under the TPA. The purpose of the Oilcode is to regulate the conduct of suppliers, distributors and retailers in the petroleum marketing industry. The Oilcode aims to:

- improve transparency in wholesale pricing and provide better access to petroleum products at a published terminal gate price (TGP); [69]
- assist industry participants to make informed decisions when entering, renewing or transferring a fuel re-selling agreement by requiring disclosure of specific information; and
- improve the operating environment for all industry participants by providing access to a cost-effective and timely dispute resolution scheme.

3.109 The Oilcode establishes minimum standards for fuel re-selling agreements between retailers and their suppliers and introduces a nationally consistent approach to terminal gate pricing arrangements. The Code requires suppliers to post a TGP for

67 Interim Report, pp 38-39.

68 www.accc.gov.au

69 The TGP is the price for a wholesale sale of a petroleum product that is calculated on a temperature-corrected basis and expressed in cents per litre.

petroleum products and allows access for all customers, including small businesses, to petroleum products at TGP.

3.110 The Code also provides for a dispute resolution scheme, where disputes cannot be resolved in-house. The key objective of this scheme is to provide the industry with an effective and relatively inexpensive way of resolving disputes.

3.111 The role of the ACCC is to ensure compliance with the Oilcode and the TPA, including informing industry participants of their rights and obligations under law. Failure to comply with the Oilcode is a breach of s.51AD of the TPA. The ACCC can institute legal proceedings against parties in breach of the Oilcode and/or the Act.[70]

Horticulture Code of Conduct

3.112 The Horticulture Code of Conduct was introduced in May 2007. Prior to the introduction of the Code concerns were raised surrounding the relationship between growers and buyers of their produce, including the lack of transparency and clarity in relation to price and contract terms and the lack of an effective dispute resolution mechanism.

3.113 The Code aims to provide a set of basic minimum trading provisions that are enforceable through the TPA. Specifically, the Code aims to provide transparency and clarity with respect to price, contract terms, status of the buyer as well as access to an expedient dispute resolution mechanism.

3.114 The key requirements of the code are that traders (merchants) publish their preferred 'terms of trade' – that is, basic information on how they intend to do business with growers. The 'terms of trade' document outlines the minimum legal contract requirements under the Code. Under the Code, growers and traders use written agreements; traders are required to provide written transaction information to growers; and independent assessment is available on transactions.[71]

Effectiveness of mandatory codes of conduct

3.115 The committee sought advice from the ACCC as to the operation and effectiveness of mandatory codes of conduct.

3.116 The ACCC stated that these codes each promote a greater transparency in business dealings between contracting parties within the relevant industries. They also provide a low cost dispute resolution mechanism.[72]

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70 www.accc.gov.au. See also Issues Paper, *Trade Practices (Industry Codes – Oilcode) Regulations 2006 Review*, pp 1-7.

71 NFF/Horticulture Australia Council, *Horticulture Code of Conduct,* pp 1-8*;* NSW Farmers Association, *Horticulture Code of Conduct,* February 2006.

72 ACCC, Answers to questions on notice, dated 26 May 2009.

3.117 The ACCC also advised that the identification of benefits and disadvantages that might flow from the imposition of mandatory industry code obligations on a particular industry 'requires careful consideration of the harm sought to be addressed and the idiosyncrasies of the industry in question'. The Commission stated that:

> In the ACCC's experience, some care should be taken in this process to minimise the prospect of unintended consequences that might flow from such regulatory intervention.[73]

3.118 The ACCC noted that the extent to which any code would improve the level of transparency would depend on the current level of transparency; the mechanism proposed to deliver transparency; and the practical application of such requirements in the context of the specific industry in question.

3.119 In relation to contractual arrangements, the ACCC stated that an industry code can provide for some standardisation of contract terms though current industry codes do not specify the use of particular terms.

> Consideration of the advantages and disadvantages associated with some standardisation in contracts should involve careful consideration of the harm sought to be addressed and the specific characteristics of the industry in question. Any assessment would be influenced by the mechanism proposed to be used to deliver standardisation and the impact that mechanism would have on current industry practice.[74]

3.120 In respect to transparency in relation to pricing, the ACCC noted that price transparency can be described in terms of the costs in time and money for market participants to determine market prices, for transactions that will occur or have occurred.

> Where these costs are lower, the market has greater price transparency. In general increased price transparency has benefits for consumers unless it significantly increases the risks of anti-competitive practices among sellers. Where there is a concern that a market has a tendency to anti-competitive coordination, the nature of any proposed increase in price transparency needs to be carefully considered.[75]

3.121 In relation to the Oilcode, which requires wholesalers to publish daily a terminal gate price, the Commission noted that it concluded in its 2007 petrol inquiry that by requiring the posting of a TGP led to an increase in transparency, compared with a situation where prices were not published. However, the report also noted that the posted TGPs may reflect, only at the margin, the actual price paid by anyone in the market and therefore should be regarded as benchmark or reference prices, rather than 'actual' market prices.

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73 ACCC, Answers to questions on notice, dated 26 May 2009.

74 ACCC, Answers to questions on notice, dated 26 May 2009.

75 ACCC, Answers to questions on notice, dated 26 May 2009.

Committee view

3.122 The committee considers that some features of the mandatory codes of conduct described above could be applied to the fertiliser industry and may provide the basis for increased transparency in business dealings between contracting parties.

3.123 In terms of contractual arrangements, the committee notes that the Oilcode provides for standard contractual terms and conditions to be in place. The Horticulture Code also provides for a basic set of minimum trading conditions that are enforceable through the TPA. These features could potentially address several of the concerns expressed by farmers in relation to the need for improved transparency in respect of contractual arrangements.

3.124 In terms of pricing, a code of conduct may be less effective. The committee notes that the Oilcode provides that wholesale prices must be posted daily. Posting of fertiliser prices may be more problematic given the different suppliers, multiple sources of supply, and different types of fertiliser products involved.

3.125 The codes also provide for the establishment of an independent dispute resolution scheme. Such a scheme may not be as effective in relation to the fertiliser industry given the need for a very speedy resolution of disputes between farmers and suppliers. In the case of the fertiliser industry, the appointment of an arbiter may be a more effective option, given the need for an expeditious resolution of disputes in many cases.

3.126 The committee believes that, while the introduction of a mandatory code of conduct for the fertiliser industry would have some advantages, given the nature and structure of the industry, it may not be the best option to achieve transparency in pricing and supply of fertiliser products. The committee, therefore, does not recommend that a mandatory code of conduct for the fertiliser industry should be introduced.

Chapter 4

Future challenges

4.1 As noted in previous chapters, with high fertiliser prices in 2007 and 2008 and the prospect of further price increases in the future, evidence to the inquiry emphasised the importance of meeting the challenges this poses for the farming community in pro-active ways. Responses to these challenges include improving fertiliser use efficiency, developing alternatives to chemical fertilisers and developing further domestic sources of supply. These issues are discussed below.

Improving fertiliser use efficiency

4.2 Submissions and other evidence noted that there is a need to encourage greater efficiency in the use of fertiliser. WAFarmers noted that:

> The majority of fertiliser used around the world is wasted. Due to climatic and soil conditions plants do not take up the nutrients that the fertiliser is meant to deliver.[1]

4.3 The Rabobank study noted that as farm input costs have increased to represent a greater proportion of farm costs, agricultural practices which improve productivity but reduce costs are important. The uptake of techniques such as no-till or minimum till is widespread in broadacre cropping. Increasingly, precision application methods are becoming common across all sectors of agriculture as producers seek to maximise yields through better techniques rather than higher input application rates.

4.4 The study noted that to date, improvements in fertiliser use efficiency have come about through some of the farm management techniques referred to above. The study suggested that there is an untapped potential for using the abilities of plants themselves to better absorb and use fertiliser through genetic modification. There is also scope for investigation into the use of more 'traditional' fertilisers, such as animal manures and composted material in conventional agricultural systems, which is discussed later in this chapter.[2]

4.5 Mr Michael Fels, representing WAFarmers, noted that more research could be employed in improving the use of fertiliser using existing technology.

> …now is the time to put a strong focus, research wise, from a governmental point of view, on improving the efficiency of the use of fertilisers. I think the quickest-fix way of doing it is using technology that is already out here,

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1 *Submission* 29, WAFarmers, p. 6.

2 I. Richardson, 'Fertiliser – a precious commodity', *Rabobank Global Focus*, Summer 2007, p. 7.

> which is variable rate technology, using satellite systems and precision agriculture, basically, where you are farming to each individual square metre of the farm, not to the whole paddock. The technology is already out here, but what is not out here is a knowledge of exactly what fertiliser rates you should be using on what soil types and in what environments and all that sort of stuff. There are a handful of us doing a lot of trial work and things on that at the moment, but that is pretty slow and it is not going to lead to a wide uptake of the technology. I think there is a pretty strong role for the government at the moment to step in and accelerate that R&D aspect.[3]

4.6 WAFarmers pointed to genetic modification of crops as a possible pathway for many advances in plant science that will lessen the need for a range of inputs, including fertiliser. There are also a number of supplementary and alternative technologies being examined to increase nutrient use efficiency. WAFarmers stated that widespread education of farmers in relation to a range of different options is needed.[4]

> Farmers themselves are very keen to learn new ways to decrease their use of fertiliser, and are always looking at new technology to adopt. However there is always a bit of the 'snake oil' tag attached to new technologies, whether from fear of change or as a result of 'patch protection' by existing industry players.[5]

4.7 The NSW Farmers Association stated that, despite farmers' preparedness to adapt to new practices, 'a lot of work' needs to be done to change the way farmers look at their fertiliser use.

> In the grazing industry, they are probably moving further away from manual applications of single super, for instance, to looking at being very specific about fertiliser use in some paddocks where they want to get higher production and looking at different grazing systems in order to be able to let the natural environment build fertility in the soil instead of using introduced fertilisers. In the farming sector, they are very clear about fertiliser use. Whereas traditionally it was just whacking on, say, a hundredweight to the acre, now they do lot of soil tests and they are very clear about their fertiliser use. All of this is being done obviously to try and make sure they are increasing their profitability and not wasting nutrients that could go back into any of the production systems they have in place.[6]

4.8 The Association added that increases in fertiliser prices will drive the research to ensure that farmers remain competitive – 'the industry is being forced to seriously

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3 Mr Michael Fels, WAFarmers, *Committee Hansard*, 16 May 2008, p. 62.

4 *Submission* 29, WAFarmers, p. 7.

5 *Submission* 29, WAFarmers, p. 7.

6 Mr Jock Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 19.

consider all other options in relation to management of soil and crop production simply because they have to'.[7]

4.9 Australian farmers have access to extensive and diverse information with regard to fertilisers and fertiliser use. These include sales advisers/agronomists – employed by product manufacturers or sellers – they tend to have a technical and input focus and deal with 'in-paddock, here and now' issues; and independent advisers, including private consultants and government advisers. One study noted that the diversity in sources of information – and sometimes conflicting advice – can lead to confusion for some farmers.

> Farmers cautiously assess the advice they receive. Judgements are based mostly on personal relationships – that is the adviser's rapport and trust with the farmer. Advisers need to be locally based for accessibility and accountability, but they must have the local knowledge and experience to deliver specific, rather than generic, advice.[8]

4.10 A range of agricultural extension programs to promote best environmental management on farms exist. In relation to fertilisers, these include the Fertcare program developed by the Fertilizer Industry Federation of Australia (FIFA) and the Australian Fertiliser Services Association (AFSA).[9] Extension programs are, however, facing a number of challenges including reduced government funding; questionable effectiveness due to the failure of farmers to adopt many recommended practices; lack of faith in the validity of many extension services; and a lack of a cohesive or widely accepted alternative to the traditional extension model. State agriculture departments are also facing challenges with regard to the nature of the services they are prepared to provide and the ways that those services are delivered.[10]

4.11 Some state-based initiatives were cited during the inquiry. In Western Australia there are currently two plans being developed to manage the use of fertiliser. The WA Department of Environment and Conservation (DEC) is developing a Fertiliser Action Plan which aims to phase out the use of water soluable fertilisers in the Swan Coastal Plan by 2011. The other is the Draft Water Quality Improvement Plan for the Rivers and Estuary of the Peel-Harvey System, being prepared by DEC and the Environmental Protection Authority.[11]

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7 Mr Jock Laurie, NSW Farmers Association, *Committee Hansard*, 16 May 2008, p. 19.

8 Tim Cummins & Associates, *An Evaluation of the Fertcare Program*, December 2007, p. 75.

9 The Fertcare program provides training, quality assurance and certification for industry staff to enable them to meet their responsibilities for food safety and environmental risk management, especially the ability to advise customers on environmental risk management issues.

10 Cummins study, pp 75-77.

11 *Submission* 29, WAFarmers, p. 8.

Committee view

4.12 The committee considers that the Commonwealth, in conjunction with state and territory governments, should encourage greater efficiency in the use of fertiliser through greater education and dissemination of information to farmers on fertiliser use on farms.

Research funding

4.13 Some evidence suggested a redirection in research away from research into organic fertilisers towards funding of research into chemical fertilisers over recent years. Mr Andrew Helps, Managing Director, Climate Friendly Fertiliser Pty Ltd, stated that CSIRO has gradually dispensed with organic fertiliser research to focus on 'revenue streams' from chemical fertiliser companies.[12]

4.14 Dr Maarten Stapper, a former employee of CSIRO, also alleged a research funding bias by CSIRO towards research into chemical fertilisers arguing that research into organic alternatives was not perceived by the organisation as a 'priority'.[13] Dr Stapper also alleged that the bias in funding towards chemical fertiliser research was due to the influence of certain corporate funding sources. Dr Stapper was however unable to provide documentary proof of these allegations.

> Dr Stapper—People advised me that it is the companies that tell CSIRO to stop all this alternative business because it affects them.
>
> Senator STERLE—What companies?
>
> Dr Stapper—The fertiliser companies and the chemical companies. There are only two or three big ones—
>
> Senator STERLE—Who tells you that?
>
> Dr Stapper—That is what people have been telling me: farmers, consultants, other researchers from outside CSIRO.[14]

4.15 The committee sought a response from CSIRO to these allegations. In respect of funding of organic fertilisers, CSIRO stated that while it does not conduct research specifically on these types of fertilisers it has 'a long standing research objective to improve the efficiency of plant use of applied nutrients to reduce the need for fertilisers and to minimise the environmental impacts'.[15]

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12 *Submission* 8A, Climate Friendly Fertiliser Pty Ltd, p. 31. See also Mr Andrew Helps, *Committee Hansard,* 16 May 2008, pp 41, 46-47.

13 Dr Maarten Stapper, *Committee Hansard*, 11 November 2008, pp 4-5.

14 Dr Maarten Stapper, *Committee Hansard*, 11 November 2008, p. 9. See also Dr Maarten Stapper, *Committee Hansard*, 11 November 2008, p.14.

15 CSIRO, Correspondence, dated 18 June 2009.

4.16 In relation to its research priorities, the CSIRO stated that it has a significant research commitment into a broad range of the biological aspects of soils and plant growth – 'while the immediate focus of that work is largely broad-acre cropping, the principles uncovered have broad applicability to both conventional and organic/biological systems of production'.[16]

4.17 As to the alleged influence of corporate funding sources, the CSIRO stated that its 'research agenda is not set by companies who invest with us'. The organisation noted that CSIRO Plant Industry – the area in which Dr Stapper worked – does not receive financial support for research into the use of fertilisers that has been conducted for any major national or international company. While there may have been 'some informal discussions' there has been 'no contact between Plant Industry and companies that make fertilisers related to project funding'. In relation to other areas of CSIRO, the organisation stated that 'there has been some project funding but it is very small'.[17]

Committee view

4.18 The committee recognises the importance of research into fertiliser use and application for the future sustainability of the agricultural sector. The committee believes that, given the importance of developing viable alternatives to chemical fertilisers and noting the CSIRO's general research expertise in the area, the CSIRO should consider conducting some research specifically on organic fertiliser use in agriculture.

Alternatives to chemical fertilisers

4.19 A number of submissions argued that greater emphasis needs to be given to the adoption of alternatives to chemical fertilisers.

4.20 Climate Friendly Fertiliser Pty Ltd stated that:

> For broad acre dryland farmers in Australia there is currently no alternate to chemical fertilisers and therefore no way that they can manage the risks inherent in high energy prices, high international freight rates, commodity price fluctuations, potential emission taxes and the value of the $A.[18]

4.21 Several examples of the development of organic fertilisers were discussed during the inquiry. Climate Friendly Fertiliser Pty Ltd has proposed the development of granulated organic fertiliser out of organic waste streams, both from intensively raised animals and from waste organics, such as food and garden waste and animal and industrial wastes. Mr Andrew Helps explained the product in the following terms:

> This is an organic product, but you can bulk handle it. It is tough enough to be dropped on a concrete floor and picked up with a front-end loader

16 CSIRO, Correspondence, dated 18 June 2009.

17 CSIRO, Correspondence, dated 18 June 2009.

18 *Submission* 8A, Climate Friendly Fertiliser Pty Ltd, p. 4.

> without falling to bits. It is in a format where it has effectively the same specific gravity as DAP and MAP so that you can coblend it—
>
> CHAIR—Put it in an air seeder.
>
> Mr Helps—and put it in an air seeder or a conventional Connor Shea disc plough. If you are into no-till farming, it will go straight through the air seeder. That has come out of an anaerobic digester in America that takes municipal green waste and municipal food waste, plus a bit of animal mortality—dead pussycats, dogs and things. It is all nutrients. It is heat treated. It is pathogen-and antibiotic-free. It is nearly 10 per cent nitrogen. It has three per cent phosphorous in it.[19]

4.22 Mr Helps stated that the technology has been trialled and is effective in growing pasture and grain. Mr Helps added that:

> It is providing a full range of nutrients, plus carbon. The product is on average about 30 per cent carbon. If you study the science that is coming out of especially the American research organisations at the moment, the key to processing nutrients in the soil is actually soil carbon. There is extensive research out now which is saying the widespread use of chemical nitrogen fertilisers is basically destroying soil carbon.[20]

4.23 The company proposes building a facility at Leeton (NSW) producing 200 000 tonnes of fertiliser a year. The plant would be the first of its type constructed outside the United States and only the fifth plant of its type in the world.[21]

4.24 Mr Helps noted problems in establishing the enterprise, including debt funding from the banks and resistance from Incitec Pivot.

> I did not want to create another fertiliser distribution system in Australia, so I have been trying to talk to Incitec Pivot about access to the distributor network and they just will not return the phone calls or emails.[22]

4.25 The committee sought comment from witnesses on the Climate Friendly Fertiliser proposal. Both positive and negative responses were received. A representative of WAFarmers noted that the proposal was weak on detail and did not provide any scientifically replicated trial results. However the representative stated that the proposal did include some good ideas in relation to recycling nutrients, but this requires substantial public investment and often the processes produce substantial greenhouse gases. It was also noted that the proposal represented a long term strategic investment project, rather than a solution to pricing issues in the short term.[23] Another

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19 Mr Andrew Helps, *Committee Hansard*, 16 May 2008, p. 44.

20 Mr Andrew Helps, *Committee Hansard*, 16 May 2008, p. 41.

21 *Submission* 8A, Climate Friendly Fertiliser Pty Ltd, pp 6, 49-50.

22 Mr Andrew Helps, *Committee Hansard*, 16 May 2008, p. 42.

23 Ms Belinda Eastough, Correspondence, dated 26 May 2008.

representative of WAFarmers also noted that the claims put forward needed to be substantiated by solid data.[24]

4.26 Another example of an organic fertiliser product was provided by the Bio - Organics Group Pty Ltd. The company stated that it has developed a new, patented, low-cost process which transforms animal manures and sewerage sludge into an effective fertiliser. The company argued that the process solves manure stockpile issues and is capable of application and use with existing practices, plant and equipment. Sludge and trade or grease trap wastes that were previously disposed of to landfill, waterways or incineration can now be recycled as soil fertilisers.

4.27 The process does not rely on composting, temperature or pressure and is not related to the price of natural gas. The company noted that the end fertiliser products also contain good levels of carbon (20-30 per cent) which contribute significantly to enhanced moisture retention at the root level.

4.28 The company is developing customer bases in China, Thailand, the Middle East and the EU, The company stated that 'the market here appears to be closed to us' although it is constructing a small plant in Queensland.[25]

4.29 Some evidence cautioned against the claims sometimes made in relation to the supposed benefits of alternative types of fertiliser.

> ….of the many organic, rock phosphate and 'natural' type products that have been tried over the years, and reported in trial data by agriculture departments and other independent bodies, there really has not been anything that has given anything like the responses of inorganic fertilisers at a cost-effective price. [26]

4.30 Evidence also pointed to the importance of rigorous scientific testing of alternative products. Some witnesses suggested the introduction of a registration-type system for these new products.

> When we look at some of the alternatives, the additives and other things that are about…there is always a bit of snake oil. What we have lacked and still do lack is some sort of authority or scientific backing to many of the products that are out there. I imagine those products are going to proliferate as the cost of fertiliser goes up. Farmers are going to be bombarded with products that claim to reduce fertiliser use, and I really think there is a role for government in insisting that these products are registered and that the claims made for them are true, because farmers are going to be led well and truly up the garden path with many of those products.[27]

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24 Mr Michael Fels, Correspondence, dated 26 May 2008.

25 *Submission* 42, Bio-Organics Group, p. 1.

26 Mr Michel Fels, WA Farmers, *Committee Hansard*, 16 May 2008, p. 60.

27 Mr Trevor De Landgrafft, WAFarmers, *Committee Hansard*, 16 May 2008, p. 60.

4.31 The committee considers that with the cost burden of chemical fertilisers on the farming sector, the development of alternatives to these types of fertilisers needs to be encouraged. The committee also believes that alternative fertiliser products need to be thoroughly trialled and tested prior to their release on the market.

Development of domestic sources

4.32 Submissions pointed to the need to further develop domestic sources of fertiliser supply. The Australian Energy Company (AEC) noted that the provision of local supply of fertiliser is crucial for managing security of supply as well as assisting in the stability of prices for Australian farmers.[28] The AEC stated that Australia's supply of nitrogen fertiliser is vulnerable – 'global trends create severe uncertainties for Australian farmers who rely on an annual supply of imported urea for their agricultural production'.[29]

4.33 PGA Western Graingrowers noted that a recently announced phosphate project in the WA interior, other projects in the Northern Territory, and the expected continuation of development associated with the North-West shelf gas reserves, give some hope that the increase in fertiliser prices has sparked a new wave of investment in the local production.[30]

4.34 Examples of local initiatives were provided during the inquiry, including Minemakers Ltd proposed rock phosphate mine in the Northern Territory and the Australian Energy Company's and Perdaman Chemicals and Fertilisers urea fertiliser plants.

Minemakers Ltd

4.35 Minemakers Ltd proposes to mine rock phosphate at the company's Wonarah phosphate deposit in the Northern Territory. The company aims to transport the product to Darwin for export to fertiliser factories in Asia and to fertiliser plants in southern Australia and Western Australia.[31]

> At this stage we have estimated our operating costs at about A$150 per tonne, of which about $100 per tonne, in round figures, is the logistics part. Had there been an east-west railway from Mount Isa to Tennant Creek, we think the cost of logistics could be reduced by between $30 to $50 per tonne, which is a significant saving.[32]

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28 *Submission* 2, AEC, p.5. See also *Submission* 29, WAFarmers, p. 4.

29 *Submission* 2, AEC, p.1.

30 *Submission* 14, PGA Western Graingrowers, p. 2.

31 *Submission* 62, Minemakers Ltd, pp 1-4.

32 Mr Neville Bergin, *Committee Hansard*, 24 March 2009, p. 3.

4.36 The company argued that Australia could be a major player in the world rock phosphate and phosphate fertiliser industry and the project would introduce effective competition in the marketplace.

> Introducing our product and rock phosphate from the other Georgina Basin producers would open up a vast phosphate resource for Australia and would provide alternative sources for buyers to purchase their rock from. Some people are certainly unhappy with the behaviour of the Moroccans over the past year or so and, although the price has come back somewhat to US$250 to US$290 a tonne, as a matter of principle people are looking for alternative sources of rock just to try and break the Moroccan monopoly on pricing.[33]

4.37 The company argued that effective transport infrastructure is however needed to overcome the very significant costs associated with moving bulk freight. The company estimates that the trucking and logistics part of its operation will account for about two-thirds of its operating costs. The infrastructure requirements would include the construction of a rail link between Mt Isa and Darwin, and a rail link between Tennant Creek and Wonarah; upgrading of the north-south Ghan railway and an extension to Mt Isa; and expansion of the Port of Darwin.[34] Minemakers indicated that it had forwarded a proposal to Infrastructure Australia on these projects:

> We made a submission to Infrastructure Australia on both the upgrade of the Port of Darwin, because there are some capacity limitations in Darwin, and also on the construction of the railway between Mount Isa and Tennant Creek. Since we made that submission, we have been approached by the Australian Transport and Energy Corridor—ATEC—to conduct a feasibility study on a rail link between Wonarah and Tennant Creek.[35]

4.38 The committee questioned the company as to whether the infrastructure upgrades could be seen as providing a form of Commonwealth 'subsidy' to the company. Mr Neville Bergin, General Manager, Projects Development noted however that:

> Our submission to Infrastructure Australia was with regard to the Mount Isa to Tennant Creek link, which we would see as part of a major national infrastructure project. That would provide benefit to many other potential producers and existing producers in that catchment area. Our feasibility study is specifically with regard to the link from Wonarah to Tennant Creek. We are co-funding the feasibility study, and ATEC have indicated that they would go out and build the railway.[36]

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33 Mr Neville Bergin, *Committee Hansard*, 24 March 2009, pp 7-8.

34 *Submission* 62, Minemakers Ltd, pp 7-8.

35 Mr Neville Bergin, *Committee Hansard*, 24 March 2009, p. 3.

36 Mr Neville Bergin, *Committee Hansard*, 24 March 2009, p. 5.

4.39 Minemakers argued that a rail link from Wonarah to Tennant Creek is important to the project's success and would enable a $50 per tonne saving on costs. This saving could either allow a cheaper product to be available to Australian fertiliser plants; make Wonarah more competitive against traditional Moroccan suppliers; or assist in the viability of the company should there be a future period of sustained low rock phosphate prices.[37]

Australian Energy Company

4.40 The Australian Energy Company (AEC) is currently in the development phase of a $2 billion urea fertiliser plant in the Latrobe Valley (Victoria). The plant will use the latest carbon capture and storage technology to produce 1.33 million tonnes of urea fertiliser per annum, providing a greater security of supply for Australia.

4.41 This facility will use Victoria's significant lignite/brown coal reserves as feedstock as opposed to natural gas, which is the primary feedstock for other urea plants around the world. This facility, when fully operational by 2012, will use coal gasification to produce 3200 tonnes of urea per day replacing approximately $300 million of current urea imports and generate approximately $150 million of exports per annum. The plant will incorporate cutting edge technology to capture the carbon (and other byproducts) resulting from the process. The reserves and supply arrangements for the brown coal have been secured in a cooperative arrangement with Great Energy Alliance Corp (GEAC), the owners of the Loy Yang power station, who will provide the supply of coal to the urea plant. Victoria's Latrobe Valley has 53 billion tonnes of economic brown coal. The company argued that the assured supply of brown coal provides a level of certainty and ongoing viability.[38]

4.42 The AEC stated that it would supply 60 per cent of the market's requirements while 30 to 40 per cent of the urea will be exported to avoid long periods of storage due to seasonal demand. The company argued the benefits to farmers of the proposed arrangement. The committee however questioned the extent to which the benefits would flow to farmers if the company was only potentially supplying 60 per cent of the market.[39]

4.43 The committee also questioned the company as to why farmers would choose their product rather than an imported product. Mr Paul Duckett, General Manager, Operational Development, AEC explained that:

> The parity price may be the same but then there is freight. The added cost of freight from the Middle East at the moment is in excess of US$100 per tonne.[40]

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37 *Submission* 62, Minemakers Ltd, p. 5.

38 *Submission* 2, AEC, pp 2-3; Mr Paul Duckett, AEC, *Committee Hansard*, 23 July 2008, pp 2-5.

39 Mr Paul Duckett, AEC, *Committee Hansard*, 23 July 2008, pp 5-6.

40 Mr Paul Duckett, AEC, *Committee Hansard*, 23 July 2008, p. 6.

4.44 The committee also questioned the company about its relationship to international pricing structures and consequent potential returns.

> CHAIR—But you are admitting that you are going to be part of a world cartel.
>
> Mr Duckett—No, we will be part of a—
>
> CHAIR—That is in polite language.
>
> Mr Duckett—In terms of parity pricing, yes.
>
> CHAIR—It will give you a 50 per cent return on your profit if everything stays even.
>
> Mr Duckett—If everything stays even. At this stage it is about a 40 per cent return.[41]

4.45 The AEC stated that there is strong market potential but that the ammonia/urea project will rely on public infrastructure to access the national and international markets. The AEC argued that government support is needed to facilitate the increased capacity and modernisation of the existing transport infrastructure.[42] PGA Western Graingrowers also noted that governments need to facilitate the entry of new suppliers into the Australian market, by ensuring the infrastructure and other business conditions are suitable for such entrants.[43]

Perdaman Chemicals & Fertilisers

4.46 Perdaman Chemicals and Fertilisers is developing a coal-to-urea fertiliser project in Collie, WA. Production is planned to begin in 2013. The expected capital expenditure for the project is US$2.6 billion.[44]

4.47 The company proposes to set aside between 100 000 and 150 000 tonnes per annum for Australian consumption. Perdaman noted that Australia is currently importing most of its urea and Australian farmers have to absorb considerable transport and distribution costs which make urea prices in Australia considerably higher than comparable international market prices.

4.48 The company indicated that it is prepared to pass on any freight cost advantage it has over imported urea to Australian farmers. Perdaman noted the potential for its project and the AEC project to supply local markets at reduced costs. The company also noted that once the viability of its project has been demonstrated, additional urea could be produced to meet an expanded local market.[45]

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41 Mr Paul Duckett, AEC, *Committee Hansard*, 23 July 2008, p. 6.

42 *Submission* 2, AEC, p. 3.

43 *Submission* 14, PGA Western Graingrowers, p. 2.

44 *Submission* 60, Perdaman Chemicals and Fertilisers, p. 2.

45 *Submission* 60, Perdaman Chemicals and Fertilisers, p. 2.

Committee view

4.49 The committee supports the further development of domestic sources of fertiliser to supply the Australian market in a genuinely competitive market situation. The committee believes that it is in the national interest and the interests of our sovereignty to secure, as far as possible, adequate supplies of fertiliser for Australian farmers. It considers that governments at all levels should encourage and support developments in this area. The committee believes that the provisions of the Foreign Investment Review Board (FIRB) in relation to proposals by foreign interests to undertake direct investment in Australia should be reviewed so as to take into account issues of national sovereignty, including interests of food security. The committee will seek a briefing from the FIRB in relation to these matters.

Chapter 5

Agricultural chemicals

5.1 This chapter discusses the structure of the agricultural chemicals industry in Australia. The chapter also reviews the reasons for the recent increases in agricultural chemical prices and discusses monopolistic behaviour in the sector.

Features of the industry

5.2 The Australian agricultural and veterinary (agvet) chemical industry is diverse comprising importers, manufacturers, packagers, wholesalers and retailers of a variety of products. The size of companies ranges from large international companies to small businesses.

5.3 Some of the major agricultural chemical companies operating in Australia include Bayer CropScience, Nufarm Ltd, Farmoz, Crop Care Australasia and Syngenta.[1] Bayer CropScience was established in Australia in 2002, after Bayer Crop Protection acquired Aventis CropScience, one of the world's leading crop protection companies. The company states on its website that it provides arguably 'the most comprehensive list of crop protection and production products in Australia'.[2] Nufarm Ltd is one of the world's leading crop protection companies, with extensive manufacturing and marketing operations in Australia, Europe and the Americas. Nufarm is now ranked the ninth largest crop protection company in the world with 'a clear leadership position in Australia'.[3] Farmoz supplies a wide range of crop protection products in Australia. The company was acquired in 2004 by Makhteshim-Agan Industries Ltd, the world's leading generic manufacturer and distributor of crop protection products. Crop Care Australasia is a leading crop protection and seed company in Australia, which manufactures and markets over 100 herbicides and other agricultural chemicals.[4] Syngenta was formed in 2000 from the merger of Novartis Agribusiness and Zeneca Agrochemicals, both major global crop protection companies.[5]

5.4 The Australian agvet market is relatively small on a world scale, comprising less than two per cent of the global distribution of agricultural and veterinary chemicals. The importation of chemical products and active constituents is significant to the Australian agvet chemicals industry with sources such as China and India featuring strongly in terms of active constituent manufacturing. For this reason,

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1 This list of companies is based on total number of agricultural chemical products registered.

2 www.bayercropscience.com.au

3 www.nufarm.com

4 www.cropcare.com.au

5 www.syngenta.com.au

movements in global chemical pricing can have a significant effect on the retail price of chemicals in Australia.[6]

5.5 The major chemical used in Australia is Glyphosate. Glyphosate is the main ingredient in many knockdown herbicides, used to kill the majority of annual and perennial plants.

5.6 Australia's consumption of herbicides and other chemicals has been growing steadily over the last 30 years. In particular, herbicide sales have experienced significant growth with total sales doubling in the last 12 years.[7]

Regulation of the industry

5.7 The Australian Pesticides and Veterinary Medicines Authority (APVMA) regulates all agvet chemicals and products up to the point of retail sale. Each state and territory government then regulates the use of agvet chemicals in its respective jurisdiction. The APVMA processes incorporate assessment and registration of pesticides and veterinary chemicals and products, development of conditions of use and product quality monitoring.

5.8 The regulatory arrangements were established through the National Registration Scheme (NRS) which was established in 1995 by a conferral of power to assess and register agvet chemicals by state and territory governments to the Commonwealth, and of the adoption of a template Agricultural and Veterinary Chemicals Code by all jurisdictions. As part of the registration process, APVMA may put conditions on the manufacture and supply of a product and usually specifies conditions of use on the product label. Products are registered if the APVMA considers that they are safe and effective, and the label contains adequate instructions.[8]

Price increases for agricultural chemicals

5.9 Agricultural chemicals, along with fertilisers, have experienced significant price increases in 2007 and 2008. The National Farmers' Federation (NFF), in a survey of its members, found that chemical prices increased by over 100 per cent in the 12 months to May 2008.[9] One submission, reflecting much of the evidence, stated that:

> Our members are concerned at the substantial increases in the price of agricultural chemicals and fertilisers, particularly as these increases come at a time when the industry is least able to afford them. The increases in

6 *Submission* 19, APVMA, p. 2.

7 *Submission* 4, NSW Farmers Association, pp 13-14.

8 *Submission* 19, APVMA, p. 1; Productivity Commission, *Chemicals and Plastics Regulation*, Draft Research Report, March 2008, p. 263.

9 *Submission* 20, NFF, p. 3.

> fertiliser prices this year [2008] are in the order of one hundred percent and some chemicals have risen as much as three hundred percent.[10]

5.10 The Australian Cane Farmers Association also stated that '…the cost of agricultural chemicals has also risen substantially and is predicted to continue. The cost of glyphosate, in particular, has more than doubled in the past year'. [11]

5.11 AgForce Grains provided examples of price rises for two commonly used chemicals used in grain farming in Queensland and the effects of price increases on farmers. In relation to Glyphosate, AgForce stated that:

> With the price of glyphosate now reaching almost $15/litre [March 2008] farmers are seriously considering resorting to the old farming practice of ploughing. If glyphosate prices rise by any significant amount from their current level there will not only be major consequences for our farmers from loss of future income with destruction of soil structure and organic matter levels, but the local and wider environment will also suffer.[12]

5.12 With respect to Atrazine (or the product trade named Gesaprim), AgForce noted that:

> The price of atrazine is difficult to determine at the moment...Currently [March 2008] the price quoted, but by no means assured, is $12/kg a large increase from $8/kg last year and $6/kg only two years ago. What we do know is that the big wholesalers are putting up their prices month by month and we therefore expect another major price rise of at least 8% on April 1st [2008].[13]

5.13 As with fertilisers, agricultural chemical prices have recently declined. AgForce Qld noted that Glyphosate has fallen from highs of $15/litre to approximately $5-6/litre in recent months.[14]

Factors influencing price increases

5.14 A number of factors have been identified to explain the rise in agricultural chemical prices in 2007 and 2008. Several of these factors have also been identified as affecting fertiliser prices and are discussed in greater detail in chapter 2.

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10 *Submission* 9, Bookham Agricultural Bureau, p. 1. See also *Submission* 13, Murray Goulburn Co-Operative Co, Ltd, p. 1; *Submission* 24, Agforce Grains Ltd, p. 4.

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

12 *Submission* 24, AgForce Grains Ltd, p. 7.

13 *Submission* 24, AgForce Grains Ltd, p. 7. Altrazine is a residual herbicide for use on summer grasses such as sorghum, maize and sugar cane.

14 AgForce Qld, Correspondence, dated 11 June 2009.

Demand factors

5.15 CropLife Australia noted global demand factors including:

- farm management practices are dynamic and constantly changing in response to new technologies, for example, GM crops, new pesticides and new equipment;
- increased adoption of low/no till agricultural practices has also increased the use of herbicides;
- the move to biofuels in North America, Latin America and Europe for environmental and fuel security reasons has been driven by farmer subsidies and has resulted in increasing land capacity being devoted to crops for fuel, as well as food and feed.
- the populations of China and India are changing their dietary preferences, especially adding meat to their diets. The animals grown to supply that meat are usually grain fed – with a consequent increased demand for chemicals.[15]

5.16 Submissions also identified a number of local factors influencing demand, including:

- Increased rain in Australia over Christmas 2007 resulted in farmers having to apply more herbicides. This unexpected increase caused a shortage in supply.
- Farmers concerned about key product availability and potential cost increases associated with growing global demand appear to have brought forward purchasing to ensure they have sufficient crop protection products to capitalise on favourable market conditions for agricultural produce. This has resulted in a spike in demand.[16]

Supply factors

5.17 China is a major producer of agricultural chemicals and therefore has a significant impact on price and supply. China is the largest producer of Glyphosate, accounting for more than one-third of global production. Some 80 per cent of China's total production of Glyphosate is exported to over 90 countries.[17]

5.18 Several submissions noted that China is experiencing several factors affecting manufacturers' supply availability.

- New environmental regulations introduced by the Chinese Government are increasing compliance costs for Chinese manufacturers and reducing their capacity.

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15 *Submission* 23, CropLife Australia, p. 3.

16 *Submission* 23, CropLife Australia, p. 3; *Submission* 4, NSW Farmers Association, pp 15-16.

17 *Submission* 4, NSW Farmers Association, p. 13.

- The Chinese VAT subsidy to manufacturers for several export products, including glyphosate, has been reduced from 11 per cent to 5 per cent, which has increased export prices of those products.

- There is considerable volatility in the price and supply of raw materials such as phosphorus.

- Chinese manufacturers are increasingly gaining access to European and North American markets. These markets have traditionally been higher priced markets than the Australian market. As a result, Australian buyers are forced to pay higher prices to secure the supply of product.[18]

5.19 As noted in chapter 2, the Department of Foreign Affairs and Trade advised the committee that the recent imposition of a range of export duties and the 2008 earthquake in Sichuan province have affected the supply of fertiliser and agricultural chemicals from China.[19]

Price fixing/price collusion

5.20 As discussed in previous chapters in relation to fertilisers, evidence received by the committee indicates a degree of market manipulation with respect to the agricultural chemicals industry.

5.21 The committee received confidential information indicating that price fixing and price collusion is widespread in the agricultural chemical industry in Australia and these practices have been operating for several decades. These practices, it was argued, play a significant role in manipulating the prices paid for agricultural chemicals in Australia. As margins on agricultural chemicals have always been relatively poor, price fixing and price collusion, it was alleged, has been widely used as a means of maintaining profits for key retail businesses, often at the expense of farmers.

5.22 Details were provided to the committee of price collusion; price fixing – where local businesses fix retail prices to minimise competition; and 'price bullying' – to ensure price stability of key products in the agricultural chemicals industry.

Importation of Roundup

5.23 The committee also received confidential information concerning the importation of Roundup which is landed in Australia at FOB price of $1.82 a litre – the product is allegedly imported in bulk and then repackaged. Importation at this price bears no relation to the prices paid for the product by Australian farmers. The witness stated that:

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18 *Submission* 4, NSW Farmers Association, Appendix 2; *Submission* 20, NFF. p. 8; *Submission* 23, CropLife Australia, p. 4.

19 DFAT, Correspondence, dated 17 June 2008.

> I think it is quite astounding that it is landed here for about $1.82 and we are all out there buying full-spec product whether or not we need it…The other day [a family member] bought what we would have called a 13-gallon drum from his local stock and station agent...and I think he paid about $18.90 a litre for it.

Committee view

5.24 The committee received some allegations of price fixing and price collusion in the agricultural chemicals industry, albeit from a very limited number of sources. These allegations raise concerns, especially as they suggest that these practices may have been a feature of the industry over several decades.

5.25 The committee, while it did not receive extensive evidence in relation to anti-competitive behaviour in the industry and acknowledges that it cannot fully substantiate the claims made to the inquiry, considers that the Australian Competition and Consumer Commission (ACCC) should conduct an investigation of any anti-competitive practices within the industry. Serious allegations have been raised and this fact, when taken in conjunction with evidence of significant price movements in the sector especially in 2007 and 2008 warrant an investigation by the ACCC. Such an investigation would serve to allay any continuing concerns of anti-competitive practices in the industry.

5.26 The committee is keen to ensure that Australian farmers are not forced to pay high, uncompetitive prices for key agricultural chemicals because of any anti-competitive practices in the industry.

Senator the Hon Bill Heffernan
Chair

Additional Comments by Government Senators

Government Senators Sterle and O'Brien, while generally happy with the report are not prepared to give their approval to every aspect of it and disagree with some of the passages in the report. However they do not disagree with any of the recommendations contained in the report.

Senator Kerry O'Brien
Deputy Chair
(ALP, TAS)

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

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 Adviser on the Drought, SA Government

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

52. CONFIDENTIAL

53. The Mulgrave Central Mill Co Ltd QLD

54. CONFIDENTIAL

55. CONFIDENTIAL

56. Mr Greg Maslin

57. Mr Graham Denton

58. CONFIDENTIAL

59. CONFIDENTIAL

60. Perdaman Chemicals and Fertilisers WA

61. Professor Julian Gribb ACT

62. Minemakers Ltd WA

63. Santos Limited

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 Brown AO, Premier's Special Adviser on the Drought

NSW Farmers' Association
Mr 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, President
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

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
Mr Mark Pearson, Executive General Manager, Enforcement and Compliance Division
Ms Teresa Nowak, Assistant Director, Enforcement and Compliance Division

Wednesday, 4 February 2009
Parliament House
CANBERRA

Climate Friendly Fertiliser Pty Ltd
Mr Andrew Helps, Managing Director

Airpasture
Mr Gregory Maslin, Manager

Mr Leighton Huxtable, Private capacity

Tuesday, 24 March 2009
Legislative Council Committee Room
PERTH

Minemakers Ltd
Mr Neville Bergin, General Manager, Projects Development

Thursday, 7 May 2009
Parliament House
CANBERRA

Australian Competition and Consumer Commission
Mr Brian Cassidy, Chief Executive Officer
Mr George Kamencak, General Manager, Enforcement and Compliance Division
Mr Anthony Wing, General Manager, Transport and General Prices Oversight
Ms Teresa Nowak, Assistant Director, Enforcement and Compliance Division

Mr Graham Denton, Private capacity

Mr Ron Greentree, Private capacity

Mr Angus Taylor, Private capacity

Monday, 10 August 2009
Parliament House
CANBERRA

Incitec Pivot Ltd

Mr Gary Brinkworth, General Manager, Australian Fertilisers
Mr James Whiteside, General Manager, Supply Chain and Trading

Mr Adam Cox, Private capacity

Appendix 3

Nauru Phosphate Shipments Data

Date shipped from Nauru	Vessel	Consignee	Tonnage	Actual selling price (USD$/mt)	Actual Sales (AUD) (US$0.935=AUD$1)	World Average Selling Price (USD$/mt)	Sales using World Average Selling price (AUD) (US$0.935=AUD$1)	Variance in Sales between Actual and World Average Selling Price
23/10/06	Darya Yog	Getax	12,460	40.50	$539,711.23	44.20	$589,018.18	-$49,306.95
06/05/07	Al Jaber 18	Getax	18,000	40.50	$779,679.14	59.90	$1,153,155.08	-$373,475.94
16/08/07	Ormiston	Getax	16,150	43.00	$742,727.27	80.00	$1,381,818.18	-$639,090.91
18/10/07	New Success	Getax	20,900	43.00	$961,176.47	98.30	$2,197,294.12	-$1,236,117.65
14/11/07	Free Goddess	Getax	21,300	43.00	$979,572.19	98.30	$2,239,347.59	-$1,259,775.40
06/12/07	New Success	Getax	21,000	43.00	$965,775.40	98.30	$2,207,807.49	-$1,242,032.09
31/12/07	Jobst Oldendorff	Getax	22,000	43.00	$1,011,764.71	98.30	$2,312,941.18	-$1,301,176.47
20/01/08	Tien Hau	Getax	17,450	43.00	$802,513.37	234.40	$4,374,631.02	-$3,572,117.65
24/01/08	ID Harmony	Getax	22,770	43.00	$1,047,176.47	234.40	$5,708,329.41	-$4,661,152.94
09/03/08	Bonnie M	Getax	21,600	45.00	$1,039,572.19	234.40	$5,415,016.04	-$4,375,443.85
25/03/08	D.S Splendour	Getax	19,250	70.00	$1,441,176.47	234.40	$4,825,882.35	-$3,384,705.88
05/04/08	Gretke Oldendorff	Getax	21,500	43.00	$988,770.05	367.50	$8,450,534.76	-$7,461,764.71
30/04/08	New Success	Getax	21,080	45.00	$1,014,545.45	367.50	$8,285,454.55	-$7,270,909.09
22/05/08	Rosella	Getax	28,781	43.00	$1,323,618.18	367.50	$11,312,318.18	-$9,988,700.00
10/06/08	Cherkassy	Getax	21,846	45.00	$1,051,411.76	367.50	$8,586,529.41	-$7,535,117.65
15/07/08	Nayana Naree	Getax	22,850	45.00	$1,099,732.62	367.50	$8,981,149.73	-$7,881,417.11
12/08/08	New Success	Getax	21,100	120.00	$2,708,021.39	430.00	$9,703,743.32	-$6,995,721.93
13/09/08	Milos	Getax	23,650	120.00	$3,035,294.12	430.00	$10,876,470.59	-$7,841,176.47
26/09/08	Pacific Skipper	Getax	23,500	120.00	$3,016,042.78	430.00	$10,807,486.63	-$7,791,443.85
24/10/08	Siam Topaz	Getax	25,150	120.00	$3,227,807.49	414.00	$11,135,935.83	-$7,908,128.34
04/11/08	Tran Friendship	Getax	23,157	120.00	$2,972,021.39	350.00	$8,668,395.72	-$5,696,374.33
30/12/08	Please Please me	Getax	15,700	120.00	$2,014,973.26	350.00	$5,877,005.35	-$3,862,032.09
		Getax Result	***461,194***		***$32,763,083.42***		***$135,090,264.71***	***-$102,327,181.28***
21/04/07	TPC Auckland	IPL	27,030	40.00	$1,156,363.64	59.90	$1,731,654.55	-$575,290.91
24/08/07	TPC Tauranga	IPL	27,200	40.00	$1,163,636.36	80.00	$2,327,272.73	-$1,163,636.36

Date shipped from Nauru	Vessel	Consignee	Tonnage	Actual selling price (USD$/mt)	Actual Sales (AUD) (US$0.935=AUD$1)	World Average Selling Price (USD$/mt)	Sales using World Average Selling price (AUD) (US$0.935=AUD$1)	Variance in Sales between Actual and World Average Selling Price
08/11/07	IVS Kittiwake	IPL	26,985	40.00	$1,154,438.50	98.30	$2,837,032.62	-$1,682,594.12
24/02/08	Great Summit	IPL	30,500	40.00	$1,304,812.83	234.40	$7,646,203.21	-$6,341,390.37
03/06/08	Lake Dany	IPL	27,300	40.00	$1,167,914.44	367.50	$10,730,213.90	-$9,562,299.47
06/08/08	Lake Dany	IPL	27,300	40.00	$1,167,914.44	367.50	$10,730,213.90	-$9,562,299.47
20/08/08	Phorso SW	IPL	30,800	110.00	$3,623,529.41	430.00	$14,164,705.88	-$10,541,176.47
12/11/08	Pos Bravo	IPL	27,300	110.00	$3,211,764.71	350.00	$10,219,251.34	-$7,007,486.63
		IPL Result	***224,415***		***$13,950,374.33***		***$60,386,548.13***	***-$46,436,173.80***
24/11/05	Hikawa	Samsung	8,100	50.50	$437,486.63	44.20	$382,909.09	$54,577.54
12/06/06	Mercury III	Samsung	4,600	50.50	$248,449.20	44.20	$217,454.55	$30,994.65
26/06/06	Unibless	Samsung	4,500	50.50	$243,048.13	44.20	$212,727.27	$30,320.86
09/05/07	Ky Penates	Samsung	6,200	50.50	$334,866.31	59.90	$397,197.86	-$62,331.55
04/09/07	Sun East	Samsung	7,200	50.50	$388,877.01	80.00	$616,042.78	-$227,165.78
06/01/08	Win Honey	Samsung	7,550	50.50	$407,780.75	234.40	$1,892,748.66	-$1,484,967.91
16/05/08	Taydo Star	Samsung	6,300	70.00	$471,657.75	367.50	$2,476,203.21	-$2,004,545.45
03/07/08	Gaia Truimph	Samsung	11,160	80.00	$954,866.31	367.50	$4,386,417.11	-$3,431,550.80
		Samsung Result	***55,610***		***$3,487,032.09***		***$10,581,700.53***	***-$7,094,668.45***
		Grand Total	***741,219***		***$50,200,489.84***		***$206,058,513.37***	***-$155,858,023.53***

Notes:

1. For simplicity reasons, I have used a constant conversion rate of US$0.935 to AUD$1. This is based on a variation of US$0.85 and US$0.97.
2. The world average selling price is based on commodity price data from the world bank which is located in the "Commodity price data" table in this document.

Source: Mr Tony Joy, Correspondence, dated 12 August 2009.