

Executive Summary

Senate inquiry into competition and pricing in the Australian dairy industry: milking it for all it's worth

This inquiry of the Senate Economics References Committee into competition and pricing in the Australian dairy industry follows a number of other investigations which the Committee has completed, which reflected on various aspects of Australian competition policy. Like those inquiries, the current examination of the dairy industry has raised issues concerning competition, including questions of market power, mergers and acquisitions, and the effectiveness of the Australian Competition and Consumer Commission. In light of these inquiries, and the experiences of the dairy industry brought to the Committee's awareness throughout this inquiry, the committee suggests that a broader review of national competition policy is currently warranted.

Recommendation 5

The Committee recommends that the Productivity Commission reviews and evaluates the effectiveness of the national competition policy and publish its report by 30 April 2011.

Since its deregulation in 1999 the Australian dairy industry has evolved from a protected and regulated industry with many small farms, to one based on fewer but larger farms competing both nationally and internationally. During this period significant consolidation has also been occurring at the retail and processor levels, which are now dominated by two supermarket chains and a handful of (now mostly foreign owned) processors, placing the farmers at a competitive disadvantage. These structural changes were masked in the boom years. Indeed in 2007-08 Australia's dairy farmers were receiving record high farmgate prices for their milk and confidence was high – there was overconfidence in some industry advisors. That changed more or less overnight with a fall in the international commodity price which was followed by processors announcing price step-downs.

The reduction in farmgate prices for Australia's dairy farmers led the Senate to refer the matter for inquiry, with terms of reference particularly focussed on the impact of consolidation that has occurred within the dairy supply chain since deregulation of the industry in 1999 and the effectiveness of the *Trade Practices Act 1974*. The inquiry commenced at a time when dairy farmers were appealing to government that the larger players within the processing and retail sectors were taking advantage of their market power to 'milk them for all they were worth' in what was a volatile period in the global marketplace.

Historically, the market for which a farmer's milk is destined has determined the price received at the farmgate. Evidence taken at this inquiry, however, suggests that the

farmgate price of milk is now determined more by the amount of competition (or lack thereof) between processors in the various dairying regions rather than the international commodity market. While it is hard to find precise data, it is evident that the retailers are making far more profit from the sale of drinking milk than are the farmers.

Recommendation 3

The Committee recommends that the Government requests the Australian Competition and Consumer Commission to use its information-gathering powers, and draw on its work for its recent report on grocery pricing, to provide more accurate estimates of the proportions of the retail price of milk that reflect (i) the costs and (ii) the profits, of farmers, processors and retailers and publish the results of that review by 30 September 2010.

Recommendation 2

The Committee recommends that contracts with farmers should offer a clear, consistent formula for milk pricing with unambiguous conditions.

The committee also heard that the use of collective bargaining during the negotiation process has had some success in helping farmers achieve a better return. The Committee therefore sees merit in bolstering existing collective bargaining laws to ensure that parties to negotiations are on equal footing and cannot simply 'walk away' from negotiations.

Recommendation 12

The Committee recommends that the Government reviews the collective bargaining provisions of the Trade Practices Act with a view to strengthening that framework to create a more equitable balance of power between the negotiating parties and report by 30 April 2011.

Recommendation 13

In reviewing the collective bargaining provisions the Committee requests that the Government considers the effectiveness of any existing alternative dispute resolution mechanisms and investigates:

- **allowing collective bargaining groups to merge to address imbalances in bargaining power;**
- **the introduction of a requirement that the ACCC facilitate the timely appointment of a mediator should a party to a negotiation require such assistance; and**
- **the introduction of a requirement that cooling off periods be mandatory in contracts between dairy farmers and processors.**

The Committee notes the success of farmer cooperatives in the past and the continuing strength of Murray Goulburn. The Committee questions the demise of these

organisations and recommends investigating the need for reform to facilitate their increased use.

Recommendation 11

The Committee recommends that the Federal Government commissions an independent report into the main impediments to the establishment of new processors owned by farmer cooperatives and how these impediments could best be overcome and requests that the report be tabled by 30 April 2011.

In investigating the issue of farmgate price, the Committee considered the price being received at all points throughout the supply chain. The Committee notes with concern that the Australian retail grocery sector is dominated by the two major supermarket chains of Woolworths and Coles who, between them, have captured up to 80 per cent of the grocery market. This, together with the growth in the sale of generic milk (and generic products in general) led the Committee to investigate the relationship between the few large processors and these two supermarkets. The Committee also heard evidence suggesting that the supermarkets' increasing share of the milk market through the sale of generics is putting pressure on processors who are increasingly in the position of having to compete with their own branded goods.

What has been identified should, in the eyes of the Committee, be of concern to all Australians. The evidence suggests that section 46 of the Trade Practices Act is not operating effectively. Larger players are allowed to dictate terms to the weaker parties in the chain (ie the dairy farmers).

In light of this evidence, the Committee has recommended a raft of changes that are designed to enhance the effectiveness of the Trade Practices Act, particularly those provisions relating to misuse of market power, predatory pricing, mergers and creeping acquisitions and the need for anti-price discrimination legislation.

Recommendation 1

The Committee recommends that the Government requests that the National Competition Tribunal reviews the effectiveness of section 46 of the Trade Practices Act in preventing price discrimination and considers reinstating anti-price discrimination provisions, particularly to protect those parties participating in industries dominated by multinational corporations.

Recommendation 4

The Committee recommends that the Government requests the ACCC to undertake monitoring of the pricing practices within the dairy chain with a view to establishing whether predatory pricing or misuse of market power is occurring.

Recommendation 6

The Committee recommends a moratorium on further takeovers and mergers in the milk processing industry until the Productivity Commission has published its report on the effectiveness of the national competition policy.

Recommendation 7

The Committee recommends that the Trade Practices Act be amended to reinstate specific anti-price discrimination provisions and inhibit firms achieving market power through takeovers or abusing market power and that 'market power' be expressly defined so that it is less than market dominance and does not require a firm to have unfettered power to set prices. A specific market share, such as, for example, one third (set based on international practice), could be presumed to confer market power unless there is strong evidence to the contrary.

Recommendation 8

The Committee recommends that the ACCC conducts further study into the implications of increasing shares of the grocery market being taken by the generic products of the major supermarket chains. The Committee recommends that the terms of reference of any such inquiry include not just the current and future impact on prices paid by consumers but also the needs of Australia in terms of food security and economic and environmental sustainability, as well as the economic viability of farmers and processors. The Committee requests that the findings of these reviews be reported by 30 April 2011.

Recommendation 9

The Committee recommends the Productivity Commission considers, in its review of national competition policy, the appropriateness of separating the functions and powers of the ACCC with the effect that separate agencies are responsible for the approval of mergers and the assessment of whether concentration is subsequently excessive.

Recommendation 10

The Committee recommends that the topic of competition and pricing in the dairy industry be again referred to the Senate Economics References Committee in May 2012 to assess whether progress has been made or whether tougher and more interventionist measures need to be adopted.

In recommending these changes the Committee also highlights the issue of food labelling. In the interests of consumer education and choice, the Committee strongly believes that, particularly where fresh products are involved, matters of provenance, additives and production should be made clear and urges the Australian and New Zealand Food Regulation Ministerial Council to consider these matters in its existing review.

Recommendation 16

The Committee recommends that the Australia and New Zealand Food Regulation Ministerial Council acts to ensure that labelling on dairy products adequately and accurately informs consumers about the provenance, manufacturer and contents of the product.

The evidence heard throughout the inquiry has identified the interrelated nature of the issues and problems within the Australian dairy industry. It is the view of the Committee that reform at each level within the chain is required and that such reform must be driven by government at a federal level. The Committee acknowledges that these issues are complex and will take time to address but urges the Government to address these matters at a federal level to ensure national consistency and commitment. It is only by a 'top-down' approach which addresses the problems evident at all levels of the chain that the future of the Australian dairy industry will be secured.

Recommendation 14

The Committee recommends that the Government addresses the issues of food security and the future sustainability of the dairy industry at a federal level. The Committee suggests to the Government that this review be facilitated through the Primary Industries Ministerial Council to ensure it receives the commitment and attention required. The Committee recommends that any review include the role of the ACCC and federal, state and territory agricultural departments in ensuring Australia's food security.

Recommendation 15

In the light of the Tasmanian experience the Committee recommends that where industry bodies are encouraging increased production, all agencies involved in those bodies have regard to issues of long term sustainability in the context of long term trends. They should identify the source of increased demand, adopt cautious language and indicate the degree of uncertainty around any projections.