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Agricultural Competitiveness Taskforce
Department of the Prime Minister and Cabinet
PO Box 6500
Canberra ACT 2600

www.agriculturalcompetitiveness.dpmc.gov.au

Property Rights Australia submission in response to the Green Paper on Agricultural Competitiveness.

Property Rights Australia (PRA) is a membership organisation formed to protect property rights of all descriptions. PRA's original brief was to defend landowners who were unfairly charged with vegetation management offences. We have members in all states but our major membership is in rural Queensland.

Competition Policy

Property Rights Australia appreciates and supports suggestions in the Green paper that it should be easier for primary producers to gain premiums from alternative marketing arrangements such as farmers markets and co-operatives and to be able to be involved further up the supply chain.

However we wish to be very clear that such alternative marketing arrangements should represent a premium on profit rather than being the only means of returning a profit.

Australia is a high volume producer of primary products of every grade which are in demand in both domestic and overseas markets. Australian primary products are not part of a sunset industry. But those products are the outputs of an industry where the profit centres have shifted so far away from the livestock producer that they have been unable to make a profit much less put any contingency funds aside. The continuous push to drive prices down in the name of efficiency eventually has a price to pay. One of those prices is an unwillingness to invest or reinvest in all aspects of the primary production sector of the industry. Distant observers who think that the answer is larger firms are failing to observe that our largest companies, sometimes listed, have been amongst our poorest performers.

The idea that farmers should make an off-farm income so that they can **afford** to keep farming is fatally flawed and is an occurrence that should have been identified and dealt with long before it became a crisis. This is a philosophy of shifting the profit centres off-farm and further up the supply chain and is a subsidisation of other participants in the supply chain by farmers. The disparities of power in the supply chain which are driving down returns at the farm gate are, ultimately, not in the interests of producers, consumers, or governments which in various ways must "pick up the tab."

The knowledge that cattle producers are subsidising the profits of processors and supermarkets is not new but answers are conflicted and no suitable strategies are in place. When a single sector of a supply chain is in crisis in an industry that supplies a product that is in demand at a profitable price there is something that is structurally and fundamentally wrong.

One of the factors contributing to this failure is a failure of competition policy which in very recent reviews still does not recognise problems faced by agriculture which is hardly surprising as it appears that few peak agricultural bodies

submitted. An “effects test” may be helpful. The fact that Coles is opposed to an “effects test” adds weight to that belief that it may have been effective.¹

PRA would contend that livestock producers need more protection from the Competition and Consumer Act not less. Some recommendations of the Harper Review are concerning.² We note and share the concerns of the Commonwealth Director of Public Prosecutions (CDPP) that the proposed simplification of cartel provisions and joint venture provisions particularly informal joint ventures may, in fact make them more difficult to prosecute. Similar concerns from the CDPP that the proposed changes to cartel provisions be limited to goods and services supplied from or into the Australian market could make a case more difficult to prosecute are shared.³

In spite of some high profile issues such as the bloodletting in the dairy industry due to the \$1 per litre milk and the well publicised treatment of supermarket suppliers the Harper Review philosophises that competition policy should protect competition not competitors. It has recommended that “misuse of market power” basically morph into something that is covered by “substantial lessening of competition.” Substantial lessening of competition has done nothing to help suppliers to our duopsony supermarkets and dominant processing facilities with further acquisitions still being flicked through when the “feet on the ground” suppliers to these businesses observe daily what they believe to be a substantial lack of competition.

The application of “substantial lessening of competition” has also not worked effectively for primary production. Many multinational firms who operate internationally on a large scale have been allowed to acquire huge chunks of an essentially price taking market with many a monopsony or duopsony situation. The usual justifications of being large enough to compete on international markets are flawed as they are already substantial international operators. Meat processing is one such area with substantial firms being allowed to acquire even more market share which by default allows control of price and volume. There is an observed lack of competition but as with the supermarkets, mergers are allowed and the lack of competition persists and is intensified.

It has always appeared that “substantial lessening of competition” has been interpreted to allow those firms at the coalface of exporting to get larger and larger in an attempt to have them “export ready” at the expense of the highly competitive production sector. It is therefore reassuring that the Review panel rejected exceptions in order to allow “Australian Champions” to consolidate.

In some industries it is also painfully obvious that powerful upstream interests in the supply chains have exerted undue influence both on “industry” policy and in the political arena.

Multinational companies who operate on multiple continents and who are already among the largest in their class do not need consolidation to achieve market access or any of the other so called benefits of consolidation. It is companies such as these which have often been instrumental in forcing prices for primary products down. These factors should be considered by the ACCC where their approval is required for mergers. So far mergers of large players have been evaluated at the local level for “substantial lessening of competition” with little consideration given to the potential for “misuse of market power” and “unconscionable conduct.”

It has not been recognised outside the primary production sector that all claims of increased efficiency forced on producers as a result of lower prices have long been surpassed. We are at a stage where low prices have created an unwillingness to continue to invest in the production sector and increased productivity measures which show low marginal or negative return. The sector has also had a history of innovation which has been a casualty of poor prices.

Increasing the ACCC budget without indication of what it is to be used for is not convincing.

Our observations of activity so far have been that small to medium enterprises are being targeted for what appear to us to be relatively minor instances of misdescription with significant fines incurred. Those instances of what we would like to describe as “misuse of market power” or “unconscionable conduct” have been perpetrated by very large companies and have resulted in multiple bankruptcies and fire sales of significant assets with no significant consequences. There are instances such as \$1 per litre milk, getting extra money from suppliers for functions which

¹ <http://competitionpolicyreview.gov.au/files/2014/12/Coles.pdf>

² <http://competitionpolicyreview.gov.au/draft-report/>

³ <http://competitionpolicyreview.gov.au/files/2014/12/CDPP.pdf>

are not part of contractual agreements and the alleged conspiracy of meat processors to stop the live export trade which directly benefited their business and helped send livestock producers to the wall.

Cattle Industry Example

The last two years have returned what many cattle industry commentators believe to be record low prices for cattle surpassing even the cattle slump of the 1970's. In the seventies there was an actual or reported surplus of beef on the world market.

While Australia was suffering record low livestock prices over the last two years prices in our major indicator markets were returning record highs which were often increasing month on month. None of this managed to trickle down to the producers

These should have been the years when producers should have been able to put aside some of the so-called "good year" capital to prepare for future challenges such as drought. Instead, many have had to destock at prices which were substantially below cost of production and have been broken by the process. Meat processors have been making extraordinary profits.

Much of the blame has been sheeted home to drought but the unnaturally low prices which have not covered costs of production and the super profits of the processors are also at least partially the result of the live export ban, an outcome which was predictable and predicted by informed industry commentators at the time.

Recommendation

Property Rights Australia is of the opinion that the ACCC should have a dedicated agricultural supplier desk which does forensic analysis of sale and export data which could point to price or volume manipulation. Investigatory powers would be available.

The Harper Review also recommended a new Australian Council for Competition Policy. Their responsibilities would include suggesting reform and overseeing its implementation. PRA would like to see a representative on that panel who had an in depth knowledge of the problems faced by agriculture and other small suppliers in a monopsony or duopsony situation of which there are many with power in this country. Those who must operate in such a system do not believe the system works for them or their markets.

Significant Other Issues

The livestock industry has been hit with wave after wave of challenges some of which are outside human control but some of which lay firmly at the feet of human decision making.

The effects of many of these laws is ongoing, stifling productivity and profitability, dampening confidence, creating an unwillingness to invest at the primary production level and creating human distress.

These include some States based responsibilities such as vegetation management laws which were nevertheless linked to some Federal funding but were poorly implemented, unduly oppressive and unfair in their prosecution. Effects are ongoing.

More recently State based resources legislation and the sheer volume of resource activity is stealing the intellectual application and factors of production of many primary producers.

The effects of the live cattle export ban to Indonesia are ongoing at many levels.

Regards

Joanne Rea

Joanne Rea
Treasurer
Property Rights Australia Inc