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Global Forum on Competition

Competition in the Food Supply Chain – Contribution from Australia

- Session IV -

2-3 December 2024

This contribution is submitted by Australia under Session IV of the Global Forum on Competition to be held on 2-3 December 2024.

More documentation related to this discussion can be found at: oe.cd/gfc24.

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Competition in the Food Supply Chain

- Contribution from Australia -

1. Introduction

1. The purpose of this submission is to inform the upcoming roundtable on “Competition in the Food Supply Chain”, which will consider the different elements of a food supply chain and how government policy related to competition can play a role to limit market failures. This submission outlines how the Australian Competition and Consumer Commission (ACCC) is currently addressing these topics.

2. Background

2. The ACCC’s purpose is to make markets work for consumers, now and in the future. The ACCC focuses on taking action that most promotes the proper functioning of Australian markets, protects competition, improves consumer welfare and stops conduct that is anti-competitive or harmful to consumers.

3. In addition to our general economy-wide program to enforce competition and fair trading laws the ACCC has a number of roles that directly relate to competition in food supply chains.

2.1. Industry codes

4. We administer a number of industry codes that are prescribed under the Competition and Consumer Act 2010 (Cth) (the CCA). Being “prescribed” under the CCA means that these codes are legally binding and enforceable by the ACCC, as opposed to codes for which there is no legal sanction if a party does not comply. Prescribed codes can be mandatory or voluntary to participate in. Mandatory prescribed codes have criteria that determine who is subject to them. Voluntary prescribed codes allow a party to choose to be subject to them. Once a party chooses to be subject to a voluntary prescribed code, it is legally obliged to comply with it.

5. The key prescribed codes relevant to the food supply chain are:

- a Horticulture Code of Conduct and a Dairy Code of Conduct, both of which are mandatory codes.
- a Food and Grocery Code of Conduct (the Food and Grocery Code) that is currently a voluntary code. All Australia’s major supermarket chains have signed up to be bound by the Food and Grocery Code. In June 2024 the Australian Government announced that the Food and Grocery Code would become a mandatory code.

6. These codes set minimum standards of conduct on signatories and some codes set penalties for certain breaches.

7. Broadly, the government has prescribed these codes in recognition of market failures and imbalances in bargaining power between producers and buyers of these food products. These codes seek to address the harmful effects of bargaining power imbalances

and improve transparency in these markets. Codes are a unique regulatory tool as they offer industry participants an opportunity to become highly involved in the process.

2.2. Stakeholder consultation

8. The ACCC also operates an Agriculture Consultative Committee to provide advice and information on issues affecting the agriculture sector, within the scope of the CCA. The committee provides a forum where competition and consumer law concerns related to the agriculture sector can be considered and addressed collaboratively. Committee members are drawn from a range of backgrounds and industries within the agriculture sector including peak bodies, industry associations, and industry advisors.

2.3. Authorising competitor collaborations

9. The ACCC can grant an exemption for conduct that may breach competition law where it is satisfied that the conduct won't substantially lessen competition or is in the public interest. One type of exemption that we regularly grant is collective bargaining by small businesses, including farmers. In considering these types of arrangements the ACCC has long recognised that by working together, smaller businesses, including farmers, may be able to negotiate more efficiently with larger businesses, and achieve better terms and conditions, than they can on their own. The ACCC has granted authorisation for collective bargaining arrangements to groups including dairy farmers, vegetable growers and poultry farmers.

2.4. Assessing potential mergers in food supply chains

10. The ACCC closely considers many of the changes in food supply chains through its merger review process. Under the current informal merger process, merger parties can seek the ACCC's view on whether a proposed merger or acquisition is likely to substantially lessen competition (such mergers are prohibited under section 50 of the CCA).

11. There is no current legislation underpinning this process. It has developed over time to provide a way for merger parties to seek our view before a merger occurs.

12. If the ACCC reaches a view that a merger is likely to substantially lessen competition and the parties don't agree to modify or abandon the merger, we can take court action to prevent or unwind the merger.

13. At the time of writing, legislation to reform Australia's merger laws was before the Australian Parliament. If passed, Australia will move from a judicial enforcement model to a primarily administrative regime, with the ACCC as the first instance decision maker on each notified acquisition.

2.5. Government-directed inquiries

14. The Australian government has the power to direct the ACCC to conduct inquiries into specified markets.

15. In recent years the ACCC has undertaken 3 inquiries at the direction of the Australian Government that directly relate to competition in food supply chains:

- an inquiry into the competitiveness of prices, trading practices and the supply chain in the [Australian dairy industry](#)

- an inquiry into bargaining power imbalances in supply chains for [perishable agricultural products](#) in Australia, and
- an (ongoing) inquiry into markets for the supply of groceries (Supermarkets Inquiry) – see further below.

3. The ACCC Supermarkets Inquiry 2024/25

16. A major piece of work that the ACCC is currently undertaking that involves direct consideration of competition in food supply chains is our inquiry into [Australia's supermarket sector](#) (the Supermarkets Inquiry). The Inquiry is being undertaken under a direction issued by the Australian Federal Treasurer on 1 February 2024.

17. The inquiry is examining the pricing practices of the supermarkets and the relationship between wholesale, including farmgate, and retail prices.

18. The referral from the Treasurer to conduct this inquiry contains broad terms of reference and confers powerful information gathering powers upon the ACCC.

19. These terms of reference directed the ACCC to take into consideration all of the following matters in holding the inquiry:

- the structure of the markets for the supply of groceries by suppliers, wholesalers and retailers, including:
 - the level and nature of competition at each of these levels of the markets; and
 - relationships between the parties at different levels of each of the markets (for example, relationships between wholesalers and retailers); and
 - the competitiveness of small and independent retailers, including those in regional and remote areas; and
 - the impact of technological change on each of the markets, including the impact of the growth of online shopping; and
- the approach of suppliers, wholesalers and retailers to setting prices for groceries, including the use of data analytics in setting prices;
- factors affecting the price of inputs along the supply chain for groceries, including:
 - any impediments to the efficient availability of inputs along the supply chain; and
 - any impediments to the efficient pricing of inputs along the supply chain; and
 - any difference between the prices paid, and prices charged, by suppliers, wholesalers and retailers for groceries; and
- non-price aspects of competition in the markets for groceries, including the impact of:
 - loyalty programs; and
 - discounts offered by retailers for future purchases of groceries or other goods or services.

20. Our key focus is on the role that supermarkets play in the multiple supply chains involved. In addition to our normal focus on competition and consumer issues, we are considering whether there is evidence of market failure in those supply chains.

21. The direction required the ACCC to provide an Interim Report to the Australian Government by 31 August 2024 with the final report due to be provided by 28 February 2025.

4. The Supermarkets Inquiry Interim Report

22. The ACCC's [Interim Report, published on 27 September 2024](#), outlined what the ACCC had heard at the halfway point of the Inquiry. This included detailed information gathered through stakeholder submissions, responses to an ACCC consumer survey, and feedback provided by suppliers at roundtable discussions held around Australia, including rural and regional areas.

23. The interim report focused on three main areas: retail competition, consumers' experiences and supplier concerns about their trading arrangements with the supermarkets.

24. In relation to retail competition and consumers' experiences, the Interim Report outlined the concerns that the ACCC has heard about:

- the concentrated nature of Australia's supermarket sector with our two largest supermarket chains, Coles and Woolworths, accounting for around two thirds of supermarket retail sales, and
- cost of living pressures and increasing grocery prices.

25. As part of the inquiry, we received over 21,000 responses to the consumer survey. Many respondents raised concerns about increasing grocery prices. Some said they are buying less food, skipping meals and experiencing emotional distress from grocery shopping. Many respondents also raised concerns about promotional practices.

26. In relation to food supply chains, many suppliers raised concerns about their reliance on major supermarkets as trading partners, reflecting the concentrated nature of Australia's supermarket sector. The main concerns we've heard, as reported in the Interim Report, are about:

- the prices suppliers receive, including in some cases prices which suppliers say are below their cost of production
- difficulties in seeking to pass on increases in costs of production
- the supermarkets' quality assessment and rejection processes for fresh produce
- trading terms that push disproportionate risk onto suppliers
- lack of transparency, particularly around weekly tender processes for fresh produce
- supermarkets contributing to, or taking advantage of, information asymmetries, leading to suppliers not having access to the information they need to make efficient business decisions, and
- payments that suppliers are required or pressured to make, such as rebates or using the supermarkets' nominated suppliers of ancillary services.

1. At this stage of the inquiry process the ACCC has not reached any conclusions about these issues.

5. Next steps in the Supermarkets Inquiry

27. Our Final Report will examine whether and how supermarkets or other buyers may be exercising market power through grocery supply chains, and the extent to which such practices, if they are occurring, may be impeding the efficient operation of grocery supply chains. To examine this, we are analysing the information and data received from supermarkets, stakeholders, suppliers, and consumers.

28. We also conducted hearings involving representatives of the major supermarkets and other relevant stakeholders in October and November 2024 to gain a more complete understanding of the key issues in the retail grocery sector and its associated supply chains.

29. Our Final Report will also draw on a series of case studies in 14 product categories. These product categories are: beef, chicken, pork, bananas, apples, strawberries, cucumbers, potatoes, eggs, milk, breakfast cereal, biscuits, pet food and dishwashing tablets. These case studies will analyse aspects such as the structure and competition at each level of the supply chain, participants at each level of the supply chain, trading terms, buyer power, and factors impeding or supporting efficient supply or pricing.