Fruit Growers Victoria – Submission to ACCC supermarket inquiry

About FGV

Fruit Growers Victoria (FGV) is a member-based organisation representing apple, pear and stone fruit growers and packing sheds in Victoria. Our purpose is to maintain a strong, sustainable fruit growing industry.

Our industry grows around 90% of Australian pears, 50% of Australian apples and 75% of Australian stone fruit. FGV's members grow fruit in the Goulburn Valley, Murray Valley, Northeast, Gippsland, Yarra Valley, Bacchus Marsh, Mornington Peninsula and Harcourt districts of Victoria.

Current situation for growers

Our members are frequently required to sell fruit below the costs of production, due to increasing costs to growers and the inability to pass on these costs to buyers dominated by the Coles and Woolworths duopoly. Forcing growers to supply on unprofitable terms is an unsustainable situation that could undermine the long term supply of Australian grown fruit.

Due to the increasing cost of labour, fuel, electricity and fertiliser, for two of the past three seasons growers have supplied fruit below the cost of production. However, attempts by growers to negotiate higher prices with retailers have been to no avail; the response from supermarkets typically being that there are other growers willing to supply at lower prices, and a failure to match or better that price will mean the buyer sources from elsewhere.

Only large supply shocks from natural disasters or extreme weather events provide growers with any negotiating power on price.

The market failure here stems from the fact that there is no transparent source of information for growers about what prices are actually paid for produce, instead being reliant on the word of market dominant supermarket buyers. Under the current tendering arrangements, growers are unable to view weekly price data to verify what is being communicated about market price from the supermarkets.

Growers have little choice but to take the offered price, which is generally consistent across the retailers, as the perishable nature of fruit forces them into 'take-it-or-leave-it' decisions. Unlike other industries, growers cannot simply sit out of the market until prices rally as a consequence of withheld supply. Therefore, conventional supply and demand dynamics to restore equilibrium pricing are not functioning as they do in other markets.

The current race to the bottom on price - caused by an imbalance of market power, no price transparency, and a perishable product - is not sustainable.

Suppply chain participants

The industry contains growers that operate in the market in varying ways. These include:

- Growers selling fruit to packing sheds. These growers pick fruit into bins that are sent to packing sheds which store, pack, and sell directly to retailers, or an agent for a supplier.
- Growers with packing sheds that supply directly. They have orchards, storage facilities, and a fruit packing shed that directly market to supermarkets.
- Category managers for the supermarkets. These people oversee the relationships between supermarket buyers and suppliers.
- Wholesale buyers are agents in the market that may also supply to supermarkets. They participate in the weekly tender process and sell for commission charged to producers/suppliers on boxes sold to the supermarkets.

The fruit tender process

Woolworths: Each Tuesday prices are quoted by suppliers. On Wednesday prices are re-quoted by the suppliers back to supermarkets based on discussions and email correspondence re other supplier prices offered. Orders from the retailers are provided to suppliers on Thursday for delivery the following week. If a supplier does not agree to adjust his/her requoted price their order will be reduced. If the lower requoted price cannot meet supply the volume, other suppliers will have their orders increased at short notice.

Coles: On Monday morning an online tender is held where suppliers list their price and volume. On Monday afternoon suppliers receive an email with Coles' preferred price. The supplier can either agree to Coles' price, or no order is offered.

In this process, only the buyers have a clear sense of supply in the market and the price ranges at which fruit is being offered. As buyers, they will also be the only market participants with an understanding of demand during that period. Growers have no market information on which to determine whether the price being offered represents a true reflection of the median market price for the volume being sought, or is equivalent to the lowest tendered price, and is being purported to be 'market price'.

No long term contracts are available. This weekly tender process exacerbates a market power imbalance that already exists, and limits suppliers' ability to undertake any long term business or production planning.

Take the example of a stone fruit grower 'John' and direct supplier to Woolworths and Coles, and also exports stone fruit during the season. During the busiest period of the season his bins picked are building in up in storage that he can realistically only hold for 14 more days. With no export sales for smaller fruit in cold storage he needs to increase his sales into Woolworths and Coles so that he doesn't lose the perishable picked fruit to waste. The only way he can increase his market share is to decrease his tendered price on Tuesday for orders to be delivered to the supermarkets the following week.

Unbeknown to the other suppliers of both retailers their tendered prices are higher and their orders will be significantly reduced. Even though John has supplied below cost (maybe recouping as little as 50%) he has gained market share in both Coles and Woolworths and salvaged his product from total waste. The retail ticket price over the two weeks has not changed, even though the retailers were supplied at a lower price.

This example demonstrates that a small adjustment in supply can cause value within the category to be significantly decreased for growers. All suppliers will find it very difficult to lift this price in the following weeks' tender processes, as the temporary discounted price 'sticks'.

Supply chain margins

The industry has very little information about margins being captured along the supply chain.

Detailed cost of production analysis is uncommon at industry level, with the last outdated analysis undertaken by FGV in 2019, when cost of production was significantly lower than today.

There is little to no transparency about transactions and profit margins further along the supply chain.

Market failures

As highlighted above, there has been significant market failure in the provision of fresh fruit for the Australian retail sector. This has been due to the following systemic factors:

1. There is an enormous power imbalance between the many sellers of fresh fruit and a concentrated number of buyers, two of which completely dominate the sales and purchasing process.

2. There is unequal market knowledge between buyers and sellers, due to a lack of transparency about pricing outcomes from the supermarket tender processes. FGV provides some information about final retail pricing to growers so they can correlate retail pricing patterns with supplier prices, but this is insufficient information on which to make informed decisions about tender pricing.

3. These factors have enabled supermarkets to engage in unethical conduct when engaging with suppliers. This frequently manifests in supermarket buyers referencing a low, small volume supplier price offer to manipulate other large scale suppliers into selling at that example price. Sellers have no clear picture of the true distribution of tendered prices, and cannot tell if it is a valid representation of market pricing.

4. There is poor enforcement of existing codes designed to prevent unethical conduct from supermarkets. Where a potentially applicable code of conduct is not mandatory, or lacks breadth to apply to all circumstances, this prevents effective enforcement on behalf of growers.

5. Growers are unwilling to report breaches for fear of retribution by supermarket buyers and the closing off of limited sales options. The fear of retribution is very real, given that it already occurs for the more minor ‘infraction’ of not quoting prices the supermarkets want. In these instances, supermarkets do reduce orders for particular suppliers as punishment, and this ruthlessness is openly flouted by staff from the supermarkets. The consequences for a supplier reporting a breach of the code are clear.

Suggested reforms

Our members want to build a strong and sustainable relationship with the retailers. They recognise supermarkets as their primary route to consumers - over 70% of Australia’s apples and pears are sold via the major supermarkets. It is therefore essential industry and supply chains work together to ensure consistent and fair priced supply, preventing fruit growers from needing to sustain businesses from an unprofitable position.

In an effectively functioning and sustainable market, produce category managers would consider farm gate factors and whether the price a supplier accepts may impact the grower that supplies a packer or marketer of his/her produce. Industry and supermarkets can work collectively to be proactive in assisting growers in seasons of oversupply, via increased promotion, and without dumping prices.

However, the conduct of supermarkets demonstrates that trust and goodwill on an ad hoc basis are no longer viable as a long term solution. FGV does not consider that sustainable relationship can be maintained in the absence of a strong regulatory framework to prevent supermarkets abusing their market power. We therefore recommend the following policy reform measures:

1. The ACCC is the conduit to the price transparency necessary to ensure compliance with existing arrangements, and inform future policy measures.

2. Introduce mandatory price reporting from the two major supermarkets to the ACCC, outlining supply chain costs and margins. While this represents an imposition on the supermarkets, their social licence has been compromised to the extent this is now a necessary measure.

3. Increase the capacity of the ACCC to undertake compliance on existing market power and unfair contract terms, with the resources needed to capture and analyse data.

4. Strengthening current regulatory arrangements covering unfair contract terms, and enabling options for collective bargaining to redress power imbalances.

Further consultation

FGV has extensive access to suppliers that could provide the ACCC with detailed information about real world, commercial market interactions in this retail category, on a confidential basis. We would be willing to facilitate private discussions between growers and ACCC staff in the Goulburn Valley and other growing regions, to ensure that ACCC is able to collect as much information as possible to inform your deliberations.

To arrange these meetings, please contact Michael Crisera on [redacted]

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