

Public hearing – Brisbane

3 April 2008

Time: 9am – 5pm

Address: Mercure Hotel

85-87 North Quay, Brisbane

Room: Flinders Room – Hotel Ibis

Witness	Submission	Summons
Paradise Foods Industries Pty Ltd Mr Russell Bartlett National Sales Manager	n/a	Summonsed & compelled to appear by ACCC
Parmalat Australia Ltd Mr Mike Coombier General Manager Mr Vince Houlihan	n/a	Summonsed & compelled to appear by ACCC
One Harvest Mr Rob Robson Chief Executive Officer	n/a	Summonsed & compelled to appear by ACCC
<i>Lunch 1-2pm</i>		
Brisbane Markets Limited Mr Andrew Young Chief Executive Officer	68	No
Avocados Australia Mr Anthony Allen Chief Executive Officer Mr Henry Kwaczynski Chairman	n/a	Summonsed & compelled to appear by ACCC
Queensland Citrus Growers Association Mr Kevin Parr Managing Director (also representing Sweetee Citrus Pty Ltd) Mr Chris Simpson Chief Executive Officer	49	Summonsed & compelled to appear by ACCC

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TRANSCRIPT OF PROCEEDINGS

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

MR GRAEME SAMUEL, Chairman
DR STEPHEN KING, Commissioner
MR JOHN MARTIN, Commissioner

GROCERY PRICE INQUIRY HEARING

CONDUCTED AT: HOTEL IBIS, BRISBANE

DATE: 9.00 AM, THURSDAY, 3 APRIL, 2008

THE CHAIRMAN: We will start. My apologies, but I probably had the same difficulty as many others, trying to find out where we were, so I regret that I'm a bit late.

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My name is Graeme Samuel, I'm the chairman of the Australian Competition and Consumer Commission and the chair of this public inquiry into the competitiveness of retail prices for standard groceries. As chair, I welcome you all and declare this hearing open. I am joined by Commissioner John Martin and Commissioner Stephen King, who are the other two presiding members for this inquiry.

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This hearing is convened under Part VIIA of the Trade Practices Act. It is held pursuant to a request from the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Minister Chris Bowen, which was received by the ACCC on 22 January 2008.

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Matters to be taken into consideration by the inquiry shall include but not be restricted to: the current structure of the grocery industry at the supply, wholesale and retail levels, including mergers and acquisitions by the national retailers; the nature of competition at the supply, wholesale and retail levels of the grocery industry; the competitive position of small and independent retailers; the pricing practices of the national grocery retailers and the representation of grocery prices to consumers; factors influencing the pricing of inputs along the supply chain for standard grocery items; any impediments to efficient pricing of inputs along the supply chain; and, finally, the effectiveness of the Horticulture Code of Conduct and whether the inclusion of other major buyers such as retailers would improve the effectiveness of the code.

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I note that the ACCC has so far received over 150 public submissions to the inquiry, as well as confidential submissions. The ACCC will endeavour to take into account all the information that has been provided and thanks industry participants for contributions that have been made. We understand that the competitiveness of retail grocery prices is of significant concerns to all Australians.

30

The purpose of these hearings is to give the ACCC an opportunity to investigate in detail the issues raised as part of the inquiry with industry participants. The ACCC is organising hearings throughout Australia during April, with several hearings occurring in Melbourne during May. I wish to emphasise the many witnesses at these hearings are not attending voluntarily and have been summonsed to appear under section 95S of the Trade Practices Act 1974. In particular, I note that in general the ACCC has summonsed all supplier companies, although not all those have not agreed to attend voluntarily; in other words, some supply companies have agreed to attend voluntarily. Therefore, no conclusions can be drawn regarding a company's willingness to participate in the inquiry from the fact that a company is appearing at the hearings.

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We have also used our information gathering powers to compel the provision of documents and information from many organisations. The ACCC did this to ensure that it had access to the most reliable information direct from industry participants. Much of the material covered in some hearing sessions will be confidential and
5 commercially sensitive, and therefore significant parts of the hearings will not be open to the public. In particular, where a supplier company has been summonsed, it's likely that much of the material that will be supplied by that supplier company will be commercially sensitive and therefore confidential. As such, media representatives and attendees should not expect all of the hearings to be public.
10 Where there are industry associations or representative organisations who are attending voluntarily, it's more likely that most of the hearing sessions will be public.

Can I just elaborate on that for those members of the media that are present, because there is something of a misunderstanding. Much of what the ACCC is conducted
15 confidentially. We do that in relation to our investigations into misconduct in relation to the Trade Practices Act. Nearly 50 per cent of our merger clearances are conducted confidentially. The reason we do that is because it enables us to deal with industry participants, with those that may have engaged in misconduct, on the basis or on a basis that will enable us to gather as much information as we possibly can,
20 information that would not otherwise necessarily be made available in the public arena if investigations or matters relating to mergers were, for example, conducted in the public arena.

It will be, I would have thought, clear to all observers, and in particular I hope the
25 media, that much of the information that we will gather in relation to this inquiry will be very sensitive in commercial terms. I mean in that context, I'm talking about earnings rates, rates of supply, terms and conditions that are made to different suppliers, profit projections and profit performance. These are issues that are commercially sensitive and the confidentiality of that material needs to be respected.
30 It is for that reason that some of these hearings, as we did indeed in the Federal inquiry, will be conducted in private and in confidence, and no conclusions ought to be drawn from the fact that certain aspects of our hearings will be conducted in private. That's the nature of the way the ACCC operates. It's the nature of the way that we work to get the most rigorous and detailed examination of all relevant
35 matters.

In terms of procedural issues, all witnesses will have received a document that outlines how we intend to approach these hearings, so I won't go through the procedural points in detail. I just wish to emphasise that although we are not taking
40 evidence under oath at this hearing, it is a serious offence to give false or misleading evidence to the ACCC. A transcript of the proceedings, apart from any proceedings held in private at the inquiry, will be made available on the ACCC's website.

As I have indicated, some witnesses will be asked to give evidence that if disclosed
45 would damage their competitive position or which may for other reasons be confidential. If a witness believes that a particular question or a series of questions are likely to require him or her to disclose such information, the witness should

indicate an objection to answering the questions on that basis. I will then consider whether the inquiry should take evidence in private from that witness. I note that although the ACCC is not utilising external counsel at this hearing, witnesses will be questioned by the ACCC's internal lawyers.

5

That concludes my preliminary remarks. I thank all the witnesses who are attending these hearings, particularly those who have been summonsed to attend. We realise that you are busy people and attending these hearings can be a significant imposition upon you and your organisation. The first witness is Mr Russell Bartlett from Paradise Food Industries Pty Ltd. Mr Bartlett, could I ask you to state for the record your name and role in par dies?

10

MR BARTLETT: Russell Bartlett, National Sales Manager, Paradise Food Industries.

15

MR O'DONOVAN: You have present with you?

MR BARTLETT: Cheryl Toh.

20

MS TOH: Legal counsel, Goodman Fielder Limited. We recently acquired Paradise Foods, Mr Chairman.

25

THE CHAIRMAN: Thank you very much. I note again it is an offence under the Criminal Code to give evidence at this inquiry that a witness knows is false or misleading or omits any matter or thing without which the evidence is misleading. You accept that and understand that?

MR BARTLETT: Yes, I do.

30

THE CHAIRMAN: Could you perhaps spend a couple of minutes outlining your key concerns. I propose that we will start this hearing in public and then at a point of time at which it becomes clear that your evidence needs to go into private session, we will move into private hearing at that point of time.

35

MR BARTLETT: I am very comfortable with that, the sensitivities of the terms and that sort of thing in private.

THE CHAIRMAN: That is the sort of issue, as I indicated before, will be conducted in private, and we will respect that confidentiality.

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MR BARTLETT: Thank you.

MR O'DONOVAN: Briefly, could you just outline the business that Paradise Foods conduct?

45

MR BARTLETT: We're a Queensland based manufacturer, recently acquired by Goodman Fielder on 10 March this year. We are a baking business predominantly,

We employ about 750 to 900 people, based a Carol Park just out near Goodna. We provide our banded biscuits under Paradise, the Cottage Cookies. We are also a co-manufacturer for a private label for large supermarkets, Woolworths, Coles. We provide Aldi brands, we manufacture there. We also co-manufacture biscuits for
5 companies like Kellogg's, Nestlé, as part of their other products, so it's a componentry manufacture. We also manufacture bars, some nutritional bars, and participate in that category but in a co-manufacturing capability. We export some of our brands overseas at this point in time.

10 MR O'DONOVAN: You supply both generic products and branded products?

MR BARTLETT: Correct.

MR O'DONOVAN: Into the retail supply chain?

15

MR BARTLETT: Yes.

MR O'DONOVAN: In terms of manufacturing, you purchase basic commodities like flour and milk and eggs externally and then - so it's just the straight
20 manufacturing of biscuits that your company is involved in?

MR BARTLETT: Yes.

MR O'DONOVAN: What's your role in the business?

25

MR BARTLETT: I'm the National Sales Manager. I'm responsible for all the sales for Paradise Food. I was. I'm actually finishing up with Paradise as a result of the acquisition, approximately 24 April.

30 MR O'DONOVAN: Prior to that, how long had you been in the business?

MR BARTLETT: Twelve months.

MR O'DONOVAN: In terms of your day-to-day responsibilities, did that involve
35 you dealing directly with retailers?

MR BARTLETT: Yes, it did.

MR O'DONOVAN: What sort of dealings were you involved with?

40

MR BARTLETT: Right across the spectrum. It was day-to-day operational supply issues, supplying orders from the supermarkets. It was ongoing relationships as far as product development goes to some of the supply and tendering of the private label business. There was promotional discounts from some of our brand, as we were
45 trying to drive our branded business. So that's the scope. Working with the stores, the stores personnel as well, from the supermarket business.

MR O'DONOVAN: Were you involved in, I suppose, the contractual side of the generic supply, as well as the supply of branded business?

MR BARTLETT: Yes, absolutely.

5

MR O'DONOVAN: In terms of your understanding of the input costs, I guess the costs side of the business, was that something that you had dealings with?

MR BARTLETT: I was very - I was involved in that. We've, over the last
10 12 months, with the drought flow-through, because one of our major components is flour, butter, et cetera, we have had raw material input pricing increases. So yes, I was involved in that, passing that on to the trades.

MR O'DONOVAN: If we can go to the start of the input side of the business, in
15 terms of the cost of the business in the 12 months that you have been there, have you seen a rise in the input costs?

MR BARTLETT: Yes, I have.

MR O'DONOVAN: Are there any particular commodities that you have noticed
20 there has been a significant increase in?

MR BARTLETT: Yes, I have. Flour, butter, shortening, palm oil. Those are the
25 three ones that - skim milk powder as well - which have been the ones that we have suffered price increases on.

MR O'DONOVAN: Are those commodities effectively bought week to week by
Paradise Foods or are they commodities which they have long-term supply contracts
30 for which, in a sense, protect the company from the fluctuations in commodity prices? Is that something you can talk about publicly?

MR BARTLETT: I would probably pull back on that one, if I can, and hold that one
back for the private session.

MR O'DONOVAN: All right. In terms of the immediate impact of increased
35 commodity prices, in terms of how you then seek to recover those costs, just in process terms what are the steps you had to go through as a company in order to pass on those increased commodity costs down the grocery chain?

MR BARTLETT: We obviously evaluate on the brands side of our business where
40 we think that our brands can still remain competitive with price increases to recover some of those costs, and then we would review those before we make a decision on whether we pass those on or not. That's the process that we would follow.

MR O'DONOVAN: Effectively, where it's an across the board increase in
45 manufacturing costs, do you look at just a change in wholesale price or are there other terms to your customers that you could adjust?

MS TOH: Chairman, could I request that this line of questioning is reserved for the private part of the hearing?

THE CHAIRMAN: I think that's right, yes.

5

MR BARTLETT: Thank you.

MR O'DONOVAN: In terms of your major customers, are you happy to name them publicly?

10

MR BARTLETT: Yes, sure. Coles, Woolworths, Aldi, Metcash.

MS TOH: Chairman, could we reserve this detail again for the private session?

15

MR O'DONOVAN: Do you want to go straight to the private session now?

MR BARTLETT: I think that that might be best, yes.

THE CHAIRMAN: I think we are probably moving into private, yes, as we are getting into details of commercially sensitive information.

20

MS TOH: Before we proceed, would I be able to add a comment? Given the recency of the acquisition and the fact that the vast majority of Russell's tenure has occurred outside Goodman Fielder ownership that his comments provided today do not necessarily reflect the views of Goodman Fielder Ltd?

25

THE CHAIRMAN: That's a bit of a pity, if I might say so. I would have hoped that the company would have recognised that this hearing is designed to provide contemporaneous or contemporary information. If what you are saying is that the information Mr Bartlett is going to provide is irrelevant then I'm not sure that you may not have been wasting the inquiry's time. Is that the indication you are giving?

30

MR TOH: No, Mr Chairman, it's just that we only acquired the business last March and we're actually still trying to get an understanding of all the inputs, we are not in biscuits as you know, and we have just entered this industry. I have confidence in the validity of the information that Russell will be providing. However, I cannot say that they would necessarily concur with all the views of our senior management.

35

THE CHAIRMAN: I think what we might do then is take evidence from Mr Bartlett, but then refer that to you and perhaps then summons a representative of Goodman Fielder to appear before us to either verify or to contradict, as the case may be, the evidence given by Mr Bartlett because we want to have accurate evidence put before us, as distinct from evidence that may or may not be materially relevant.

40

MS TOH: Agreed. Thank you.

45

THE CHAIRMAN: If those not connected then with Paradise could leave the room and we will resume in private session. For the media's benefit, looking at the witnesses, I think we would be likely to be in private session for the rest of the morning, then move into public session from 2.00 onwards. I think the whole of the afternoon is likely to be public session.

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CONTINUED FROM TRANSCRIPT-IN-CONFIDENCE

RESUMED

[10.48am]

5

THE CHAIRMAN: Let me welcome the witnesses from Parmalat Foods.

10 MR COOMBIER: My name is Mike Coombier. I'm the general manager for sales for Parmalat.

MR HOULIHAN: Vince Houlihan, general manager of commercial development, which covers farm supply and strategic matters.

15 MR ULRICH: Nigel Ulrich. I am the general manage, legal, for Parmalat.

MS EVANS: Sophie Evans, corporate solicitor for Parmalat.

20 THE CHAIRMAN: The procedure we are adopting here is to start in open session and to deal with matters that are not confidential, and then, as we find we that are moving into the confidential area, we will proceed accordingly and move into private session.

25 MR COOMBIER: Okay.

MR O'DONOVAN: Have you been summonsed to appear here today?

MR HOULIHAN: I have.

30 MR COOMBIER: Yes.

MR O'DONOVAN: Could you, firstly, describe briefly Parmalat, what its business is and the products that it sells?

35 MR HOULIHAN: I'll take that question. Parmalat last year had a turnover of about \$720 million, 1,500 staff, with six manufacturing locations, Darwin, Rockhampton, Nambour, Brisbane, Bendigo in Victoria and Melbourne. Seventy per cent of the company's turnover is actually in fresh packaged milk, be it both white milk, modified white milk or flavoured milk, with the remaining sales being in short shelf
40 life fresh dairy products, yoghurts, desserts, sour cream, pasteurised cream products, and also in UHT milk products, which are both sold domestically and exported.

Sixty per cent of our company's sales are actually via the major grocery channels. Although fresh milk sales through that channel is lower, it's about 53 per cent of our
45 sales through the grocery, with fresh dairy products about 90 per cent of our sales occur through grocery.

Parmalat is essentially the brand leader in two or three major states, Queensland, Victoria and the Northern Territory, with fairly well recognised brands, Paul's, PhysiCal, Trim in Victoria; Rev and Skinny in Queensland; and in Victoria the Ice Break and Breaka range of flavoured milks. And in the national market Paul's
5 custard and the Vaalia range of yoghurts.

MR O'DONOVAN: When you say that 60 per cent of your products goes through the major supermarkets, you are talking exclusively about Coles and Woolworths there?
10

MR HOULIHAN: And independents.

MR O'DONOVAN: In addition to the independents?

15 MR HOULIHAN: Yes.

MR O'DONOVAN: Is that all supplied through Metcash or through dealing direct with the independents?

20 MR HOULIHAN: Both. So, the fresh milk in some cases will go directly to the independents.

MR COOMBIER: Mostly direct to the store, for fresh milk.

25 MR HOULIHAN: But for fresh dairy products, such as sour cream or yoghurt, it can go through the warehouse.

MR O'DONOVAN: In terms of your roles within the organisation, can you each briefly describe them, just so we understand what direct dealings you have in relation
30 to the dairy product market?

MR HOULIHAN: My role essentially is general manager, commercial, so I have a role looking after all the procurement of milk for Parmalat Australia, as well as procurement of other products. So, that's procurement of milk in mainly Queensland
35 and Victoria. In addition to that, I have a role in strategic projects for the company dealing in acquisitions and various other projects.

MR COOMBIER: My role is general manager for sales. I have a number of managers reporting to me who manage our customer base. That customer base
40 ranges across the major supermarket customers, including Franklins, Aldi, Coles, Woolworths, and then all of the independent banners. The export business is under my direct control as well. So, we also sell to customers across Asia. I don't have the direct contact with those customers, but through my management team I do. And food service customers managing supply contracts through hospitals, hotel chains,
45 et cetera. And then the field operations, managing the field operations for people that actually manage customers at retail level and dealing directly with the thousands of individual customers out in the marketplace.

MR O'DONOVAN: In terms of understanding the retail market in milk, who should I best direct questions to?

MR COOMBIER: You can direct that to me.

5

MR O'DONOVAN: I might show you a table, which is the Bureau of Statistics CPI table, broken up into individual food items. What we have done there is just break it up into five-year categories, from 1992. You can see that milk is one category represented at the top?

10

MR COOMBIER: Yes.

MR O'DONOVAN: The way in which the table is calculated is it just simply adds up the percentage price increase determined by the ABS to reach a total. If we take the 2002 to 2007 years, it indicates a 22 per cent total increase over those five years.

15

MR COOMBIER: Yes.

MR O'DONOVAN: That suggests that on the ABS figures the price of milk has steadily risen by about 4 per cent each year in the last five years. Okay?

20

MR COOMBIER: Okay.

MR O'DONOVAN: If I can take you down to the bottom, you will see the CPI has a total of 14 there, which suggests that the retail price of milk is going up faster than the CPI.

25

MR COOMBIER: Yes.

MR O'DONOVAN: The first question I want to ask you is: based on your experience and your knowledge of the industry, do you think that is right, that the retail price of milk has been going up at that kind of rate, 4 per cent a year?

30

MR COOMBIER: Clearly, it has escalated more recently, and that is correct; it has escalated. Are you looking for an explanation at this stage?

35

MR O'DONOVAN: No, just - - -

MR COOMBIER: Just confirmation?

40

MR O'DONOVAN: I suppose just confirmation that it has escalated, and by more than the CPI; would you agree with that?

MR COOMBIER: In recent times, yes.

45

MR O'DONOVAN: As far back as 2002?

MR COOMBIER: No.

MR O'DONOVAN: In terms of the pattern, what do you think has occurred over the last five years? Was the retail price static for a while?

5

MR COOMBIER: The retail price was static for a while. We had very little price movement occurring until last year. And then last year, and towards the end of the prior year, we started to have an escalation in farm gate prices, particularly the largest raw material that we use in our products, being milk. And primarily as a result of world commodity prices rising and the ability for suppliers to do something with milk other than to supply it to the local market at the low prices they were receiving.

10

MR O'DONOVAN: In terms of those jumps, could you give an indication of the order of magnitude of those jumps in terms of retail pricing?

15

MR COOMBIER: It would probably be more appropriate for Vince to answer that, in terms of the farm supply and the driving forces behind those increases.

MR O'DONOVAN: If we could just keep on the retail price question. When those input prices hit, what sort of effect did it have on retail pricing?

20

MR COOMBIER: It was very different between the manufacturers' branded products and the retailers' brands. The ability to put through price increases on retailer brands were governed by contracts, and retailers' reluctance in a competitive environment to accept cost increases in a competitive set, where they would accept the cost increase and possibly have a competitor not accepting a cost increase, and then that putting them in an uncompetitive position in the marketplace.

25

In our experience we were finding it very difficult to get cost increases through on retailer brands. We were locked into contracts. To recover those cost increases we then were only left with our own branded products to put those through, and we were forced to do that. In many cases, we would have led the market, certainly on the first two occasions during 2007, taking those cost increases and putting them through, which widened the gap between retailers' brands and the manufacturers' own brands.

30

35

So it's very difficult for me to answer the question across-the-board. The magnitude of the increase was very different between retailer brands and manufacturer brands. I haven't come prepared today. I believe those numbers are to be supplied as part of the deadline that we have for 15 April.

40

MR O'DONOVAN: Sure.

MR COOMBIER: So I think those numbers are being worked on, to provide that.

45

MR O'DONOVAN: Just focusing on the branded products that your company produces, in the last five years do you think that the figure that the ABS has reached of a total of 22 per cent increase in the last five years is about right?

5 MR COOMBIER: Yes.

MR O'DONOVAN: In relation to the generic product, do you think it has been - - -

10 MR COOMBIER: It won't have risen as much. There will be a gap between the retailers' and the manufacturers' products.

MR O'DONOVAN: Has the retailers' product risen much?

15 MR COOMBIER: No, it hasn't risen much. Once again, not in the five-year period. But in the last 12 months it has escalated, by necessity. Contracts have been renewed with major customers in the last 12 months, and contracts have changed hands in the last 12 months.

20 MR O'DONOVAN: Presumably, if this price differential is opening up, that's had a market share effect as well between the branded product and the generic?

MR COOMBIER: The house brands/retailers' brands are growing at a much faster rate, driven by that gap in pricing.

25 MR O'DONOVAN: Is the actual size of the market growing very much?

MR COOMBIER: In a dollar sense, obviously, with inflationary pressures at a greater rate than the volume, volume is growing slightly ahead of population growth.

30 MR O'DONOVAN: In terms of the farm gate pricing, which I want to ask you about now, are there questions that you can answer in public about the farm gate prices, or are those matters confidential within the company?

35 MR HOULIHAN: I suppose if we stuck to principle, perhaps they could be talked about in general. But if we do get into specific pricing in regions, I think that would be confidential.

40 MR O'DONOVAN: We will start at the level of generality. On the information we have had, the indications were that farm gate prices fell following deregulation; is that fair to say?

MR HOULIHAN: Yes.

45 MR O'DONOVAN: And they continued to fall at least until July 2003?

MR HOULIHAN: That's roughly right. I think you have to understand the Australian diary industry, though, and take it in its context. Deregulation was not a

factor in the Victorian milk pricing. So if the pricing you are talking about is Queensland pricing, then I would say that those propositions were reasonable. In the context of Victoria, deregulation was irrelevant. Seventy per cent of the state's milk or 80 per cent is exported, and if global prices were falling in 2001/02, 2002/03, that's actually the underlying cause of the Victorian price fall. But in the context of Queensland, certainly there was a fall in the average price of milk to farms through the period of that first three years after deregulation.

MR O'DONOVAN: In that same period when farm gate prices were falling, was there an equivalent fall in retail prices to reflect the cheaper price of the commodity?

MR HOULIHAN: There was. My recollection is there was, not in branded prices. In fact, in the case of Queensland we saw the introduction of generics for the first time in only the year before deregulation. So in fact we had the introduction of a lower priced milk for the first time ever.

MR O'DONOVAN: In a sense, is it true to say that the lower farm gate price flowed through to cheaper prices for consumers?

MR HOULIHAN: I'm not sure if that's quite it. The lower farm gate price was more to do with, in my context, a rebalancing. In coming out of a regulated system, there were many producers who were focusing exclusively on the packaged milk supply, and the balance of supply was focusing on producing milk for cheese and dairy products in the major factories. So, what happened in deregulation was one group of farmers' income actually fell, but other farmers' income increased, on average.

MR O'DONOVAN: Depending on what the end use for the milk was?

MR HOULIHAN: Yes, depending on what the end use for the milk was. And on average, yes, there was a general decline. That decline was partially offset, by the way, with the restructuring program, which in turn was funded through the 11c levy on milk. My recollection is that, although it fell 6c or 7c a litre, very little of that ended up on the shelf price, at least in brands, although some of it probably was traded off in processors securing generic brand contracts, you know, in that first wave of contracts.

MR O'DONOVAN: Since July 2003, in broad terms what has happened to the farm gate price?

MR HOULIHAN: Essentially it has risen consistently over a number of years, to the point where here in Queensland it's on average well above the regulation averages, and in fact virtually every litre of milk in Queensland is almost at the regulated price, as it was nine years ago, eight years ago.

MR O'DONOVAN: Have there been any spikes in that or has it been a gradual, steady increase?

MR HOULIHAN: There have been spikes in the last two years, driven heavily by drought related issues. We have some internal analysis which looks particularly at feed costs and variable costs production for dairy farmers. If you assume that 2000 is an index of 1, well, in 2006/07 that index read 1.53, almost all of which is the grain crops - wheat, sorghum. And the 2007/08 year is 1.77 on the index. So, in fact, the cost of farm production has risen staggeringly, and most of that index movement has occurred in that two years, 2006/07, 2007/08.

MR O'DONOVAN: In terms of the relationship between those increases in farm gate pricing, has it been reflected largely and completely in retail pricing?

MR HOULIHAN: I'll leave that one to Mike.

MR COOMBIER: Once again, it's the ability to recover it consistently across every product in the same manner. We were not able to do that, so there is an imbalance.

I guess part of what Vince was speaking about there, just by way of further explanation - at the time of deregulation there was significant excess capacity in the industry, and there was, as a result of that, a number of processors wanting to utilise their capacity. So, there was good, strong competitive tension. To the point where the processors were prepared to tender for that business at very low pricing in order to utilise that capacity. I think all of us, looking back, look at that and believe that the pricing for the retailers' own brands was driven down as a result of that excess capacity at that time, and the gap was created then between the branded product and the manufacturers' brands and the retailers' brands. So, the gap was created at that point, and then the gap has been perpetuated and expanded since then.

So, my answer to the question is that it hasn't arisen consistently the same for both manufacturers' and the retailers' brands, and that's largely as a result of contracts being in effect and the retailers not accepting the cost increases whilst those contracts are in place.

MR O'DONOVAN: But over time, once those historical factors start to wash out, would you expect that there will be a closer correlation between increases in farm gate prices and increases at the retail level?

MR COOMBIER: I think the relative scales will ensure that occurs. At the time when the manufacturers' brands were the majority of milk sold, then manufacturers were able to extract a margin in order to satisfy their shareholders from those brands. As the retailers' brands grow to the point where they are the only brands on the market, as you see in the UK market, then they have to stand on their own two feet to be able to satisfy the demands of the shareholders of the various processors and marketers of milk products.

So, over time, but certainly we haven't seen that occur. House brands still continue to grow at a greater rate than the branded product, and now represent, I think on the latest market share numbers I looked at this morning, 62 per cent within the Coles

and Woolworths business; 62 per cent of whole milk sales are now house branded, their own brands.

5 MR O'DONOVAN: Do you see that there's going to be a point in time where the prices have to converge between branded products and the retailers' own milk or are there advantages that the brands have which will always attract the price premium at which they are currently sold?

10 MR COOMBIER: I think on the specialty milks there will be advantage for the branded product, there will continue to be. But that is a minor part of the market. So, the answer to the question is, yes, I do see that converging eventually, as the retailers brands grow to a scale where they have to stand on their own two feet.

15 MR O'DONOVAN: I was going to move to more specific discussion about your supply terms with specific farmers - - -

MR HOULIHAN: Which we would consider to be confidential.

20 THE CHAIRMAN: Are there any other areas that you can cover, though, that are in the public arena?

MR O'DONOVAN: Perhaps these questions ought to be asked on the public record.

25 The Commissioner has received submissions from at least one milk collective, the Kiama/Shellharbour/Albion Park milk suppliers, and they have suggested that the market around Brisbane, which I guess has most interest to you, and you would be a market participant in relation to that, they describe it as the least competitive market in Australia, along with Sydney. And they have suggested, although only in very broad terms, and were unable to provide specifics in relation to it, that there is cartel behaviour effectively between the processors which has an effect of depressing farm prices. Is there any comment you would like to make in relation to those matters?

30

35 MR HOULIHAN: Other than to say I suppose that from the point of view of competition Brisbane was the most aggressive processor market in the deregulated environment, where in fact you actually ended up with four major processors bidding for retailer private labels, just before and after deregulation, which was in fact not matched in Sydney or any other state market, where basically it's normally just two players. From a farm supply point of view, over a considerable period of time the farmers in this region have had an opportunity to be members of either the Dairy Farmers group, the Parmalat supplier, I think to join the Norco Cooperative, or in fact be direct suppliers to National Foods.

40

45 As the milk supply in this region has declined for a number of reasons, not necessarily attributable just to deregulation, or those circumstances, most of those processors have sought to balance their supply with their manufacturing needs. And so really in the last 18 months we have seen the extensive use of contracts at farm level to secure farm supply.

MR O'DONOVAN: As in long-term contracts?

MR HOULIHAN: Ranging from anywhere from 12 months to five years; where farmers have an opportunity to contract specifically to a processor. In that sense,
5 say, compared to a Victoria, where you would have a Murray-Goulburn or a Fonterra where you would have thousands of suppliers without contracts just being members of the co-op, you have a region here where almost every farmer one way or another is offered a contract. If that context is seen as being somewhat uncompetitive, perhaps it is, but those contracts run for varying lengths of time and farmers do
10 change processors when it suits them.

MR O'DONOVAN: In terms of how the market in South-East Queensland operates, there are regional features of this particular market? Is it true it say that there are still regional markets between processors acquiring from farmers locally or does the milk
15 market truly operate on a national basis?

MR HOULIHAN: In the Australian context, I think there are dairy regions, and those regions in some cases overlap with major metropolitan consumption points. So, in the case I suppose of Brisbane, with surrounding milk being drawn from as far
20 away as 400 to 500 kilometres, servicing the major Brisbane, Gold Coast, north coast metropolitan population base. Sydney would be your next major market, although the dairying in central New South Wales and northern New South Wales is not that extensive, whereas in fact the next big pool of milk is in southern New South Wales and Victoria. Southern New South Wales and Victoria I would see as one single
25 milk location servicing really the export market, with a very small amount of milk going into domestic consumption. In that sense, you have South-East Queensland/northern New South Wales as one single milk supply region servicing one single market.

30 MR O'DONOVAN: If there is a shortage of drinking milk in Brisbane - - -

MR HOULIHAN: In South-East Queensland, then the next logical location is central New South Wales, Taree, those sorts of locations, which would normally be servicing Sydney.
35

MR O'DONOVAN: It can be shipped up from there?

MR HOULIHAN: Yes, diverted. We don't, but the Dairy Farmers group diverts milk from central New South Wales. In some cases they divert milk merely because
40 of the seasonality of supply. Some times of the year they have enough milk; other times they are short, in winter.

MR O'DONOVAN: In periods where the supply of milk is short of supply, is it a simple matter of just shipping milk?
45

MR HOULIHAN: Milk that was going to travel five hours to Sydney travels six hours to Brisbane.

MR O'DONOVAN: Is there a cost associated with that?

MR HOULIHAN: Yes. But from a processor's point of view it's a marginal cost, so it's not that significant.

5

MR O'DONOVAN: In terms of trying to avoid that by promoting local growers, there's not a substantial incentive for you to get all your supply from around Brisbane?

10 MR HOULIHAN: As to what the processors here are doing, they in fact do pay a price in this region significantly above the prices being paid in southern areas, which really reflects the fact that ultimately, you know, it's the milk in, say, our Victorian region, plus freight to Queensland, sets an economic maximum above which it would not be rational to pay, you know, a milk price. As a result, there is a significant local
15 incentive paid to keep production in this region, and milk production in this region actually does cost somewhat more than it does in southern regions, primarily because the pattern of milk flow is much flatter, which is a significantly more expensive exercise for a farmer to achieve.

20 MR O'DONOVAN: Victoria being, I suppose, the best state - - -

MR HOULIHAN: The benchmark.

MR O'DONOVAN: - - - the best state in terms of producing milk?

25

MR HOULIHAN: It's the lowest cost producing state.

MR O'DONOVAN: In terms of the effect that has on the retail price of milk, is milk
30 priced nationally or does that produce an effect that milk in Victoria is cheaper than milk in Brisbane?

MR HOULIHAN: No, it is actually priced nationally. A number of years ago the major retail years sought to have standard national pricing for milk. But a lot of that
35 averaging out of milk prices is effectively done by the processors in offering to service the major retailers, although that is not the case in brands.

MR COOMBIER: No, there are different prices in brands.

MR HOULIHAN: There are different prices within regions and even different prices
40 within regions.

MR O'DONOVAN: The price of branded milk actually does reflect the difference in costs of producing consistent milk yearround in regions that don't necessarily
45 produce milk as consistently as down in Victoria?

MR HOULIHAN: Yes. An example would be the pricing of milk. Paul's brand in Mount Isa is more expensive than Paul's brand in Brisbane.

MR O'DONOVAN: That reflects the difference in?

MR HOULIHAN: Freight and various other distribution costs. And the fact that Queensland milk is more expensive than our milk in Victoria.

5

MR O'DONOVAN: Are there international influences on the price of milk?

MR HOULIHAN: Yes, most significant. Sixty per cent of Australian milk production is essentially exported. If anything, it has driven farm gate prices in the last 14 months. It's been the massive increase in global prices for skim milk powder, cheese, butter, whole milk powder. Essentially we have seen world record prices never before seen in those commodities, most of which has flowed back into the Victorian farm system and the New Zealand system, and putting upward pressure, I suppose, on prices in the other Australian regions. But at the same time that pricing has merely offset what had been dramatic increases in costs associated with drought. So, many farmers have had to switch to completely buying in feed at considerable cost. And, unfortunately, while they are getting record farm gate prices they are not necessarily making - they are still not necessarily making any great profit.

20 MR O'DONOVAN: Are those input costs still increasing at the moment?

MR HOULIHAN: They are, particularly wheat.

MR O'DONOVAN: Is the drought still having an influence or are we now seeing the effect of the international price of grain coming into play?

MR HOULIHAN: It's more the international effect of grain. We have seen some relief of the drought situation in the sense that many farmers are now starting to get some pasture, but where they do need to buy in supplementary feed that feed is still at record prices, in particular the high protein, as I said, the high protein feeds.

MR O'DONOVAN: If you are a Queensland dairy farmer who wanted to participate in the upside of these shifts in the internationally traded part of the milk market, are there opportunities to do that or is there just some knock-on effect coming up from Victoria in terms of how you price?

MR HOULIHAN: It's really a knock-on effect. In the Queensland market, the amount of milk produced in this region really is almost in balance now with the demand of the local processors for packaged milks. As that point of equilibrium is reached, it will hold the prices in this region at a relatively high level. That's one of the unusual dynamics of this market, that the milk price in this region will probably never fall, from a farmer's perspective. Whereas in Victoria, if the world price of butter and powder falls, the farm gate price will fall. It's just a one-to-one effect, whereas in this region we won't see that sort of change.

45

MR O'DONOVAN: I think that's as far as I can take it.

THE CHAIRMAN: We are going to move into private session for the purpose of discussing private negotiations. I will ask the room to be cleared at this point of time.

5

ADJOURNED

[11.18am]

CONTINUED IN TRANSCRIPT-IN-CONFIDENCE

CONTINUED FROM TRANSCRIPT-IN-CONFIDENCE

RESUMED

[12.12pm]

5

COMMISSIONER MARTIN: Thanks, Mr Robson, for coming in. You have all the background to this hearing and the nature of it and the inquiry, which the chairman in opening this morning put out all the description of, the basis on which we are holding
10 the inquiry, so I won't go over that, and you have received the documentation relating to it.

We are not swearing in witnesses, but I do need to remind you that it is an offence
15 under the Criminal Code to give evidence at this inquiry that a witness knows is false or misleading or omits any matter or thing without which the evidence is misleading. You understand that, Mr Robson?

MR ROBSON: Yes.

20 COMMISSIONER MARTIN: As I mentioned, the chairman has been called away, so that Dr King and myself will conduct this hearing. Given I know you have time constraints, I will pass straight to - I just wanted to check, you were summonsed for this?

25 MR ROBSON: Actually, I was, but I didn't sign that summons on receipt, and I notice I have been summonsed under the name One Harvest. One Harvest is a business name, but doesn't do any trading whatsoever. I guess for my part - it's really up to you guys, but I'm representing four businesses. I'm CEO of Oolloo Farm
30 Management which runs nine farms, six of which are in the Northern Territory. I'm CEO of the Harvest Company, name which is a trading business, mainly agency trading in fruit and vegetables. I'm CEO of Harvest Fresh Cuts, which is a processor in Queensland, and CEO of Vegco Pty Ltd, which is a processor in Victoria. All of those companies have a - when it comes back, to a common shareholding with my
35 wife, Pamela and I.

COMMISSIONER MARTIN: The common shareholding is under One Harvest?

MR ROBSON: No, it is not.

40 COMMISSIONER MARTIN: What's it under? What's the generic?

MR ROBSON: They are four different shareholders, four different separate companies that have different trusts.

45 COMMISSIONER MARTIN: Are they 100 per cent owned by your family?

MR ROBSON: They are.

COMMISSIONER MARTIN: I will pass over to Mr O'Donovan to conduct the interview.

5 MR O'DONOVAN: What I think I might get to you do first is to just describe briefly each of the businesses that you just described and just tell us what each of them does, starting with the farm business.

10 MR ROBSON: Ooloo Farm Management owns three farms and operates those farms. Those farms are a mango farm, a lettuce farm and a melon farm. It is a developer and manager, picker, has a picking and packing agreement with Timber Corp on another six mango farms. The Harvest Company is quite a long-established company. It was, up until 2000, in the Brisbane Markets. It now operates out of an office, but it trades in both - on a merchant basis, a full merchant basis, where we buy and sell and take ownership of melons, asparagus, avocados, a whole range of
15 products - - -

MR O'DONOVAN: Just in the Brisbane area?

20 MR ROBSON: All over, Australia-wide. It also trades on an agency basis, representing growers and taking a commission.

MR O'DONOVAN: In terms of who it sells to, does it have a particular program?

25 MR ROBSON: It sells to Woolworths, Coles, Metcash, independent green grocers and a little bit to market wholesalers. Harvest Fresh Cuts Pty Ltd and Vegco Pty Ltd are two processors that produce a range of packaged salads, work with contract growers and supply product to Woolworths, Coles, Metcash, Franklins.

30 MR O'DONOVAN: That's the finished packaged salads that you see in the plastic bags, chopped and washed?

MR ROBSON: Yes, it is, and vegetables, and in a range of hard - not just plastic bags but tubs and bowls.

35 MR O'DONOVAN: Containers?

MR ROBSON: Yes.

40 MR O'DONOVAN: First to the farm business, starting with a simple commodity like lettuce, you have a lettuce farm?

MR ROBSON: That's correct.

45 MR O'DONOVAN: Have there been any influences on the price of a lettuce, the sale price of a lettuce for you in recent years that have caused the price to go up?

MR ROBSON: Yes and no. Actually, I would like to - can I request a closed hearing for this, because I would prefer not to talk in front of the competitors.

5 COMMISSIONER MARTIN: Perhaps, Mr O'Donovan, you can restrict the initial questioning to areas that won't fall into - - -

MR ROBSON: I can't see anything on the list, with due respect, that I don't want my competitors to know. I don't want to be obstreperous, but that's just - - -

10 COMMISSIONER MARTIN: We will see if Mr O'Donovan ...

MR O'DONOVAN: I think it is really going to be dealing with price issues- perhaps I can ask it this way: have there been any, firstly, weather factors which have adversely impacted on the cost of production?

15 MR ROBSON: Absolutely, short-term wise.

MR O'DONOVAN: Firstly, the drought, did that make a difference?

20 MR ROBSON: Not really, not on the vegetable industry, it didn't. Most of our contract growers supplying into processing, whilst they did have some water issues, actually took, three or four years ago, took - what's the word - risk management procedures and actually bought farms in areas that had better water supply. The only reason - the lettuce farm we have is very new, it's less than a year old, and the reason
25 we took that farm on, we took it on in partnership with one of our major lettuce growers, one of our major contract growers, the reason we took that on was to take lettuce growing to area of Australia where it previously hadn't been grown and where there's water security.

30 MR O'DONOVAN: Do you think that you in particular were insulated from that effect, but others in the industry did suffer as a consequence of the drought?

MR ROBSON: Absolutely. For instance, a big part of the Australian winter lettuce industry is supplied out of the Lockyer Valley, and several years ago we mitigated
35 our risk by substituting our Lockyer Valley supply with areas that weren't going to have water issues.

MR O'DONOVAN: Are those water issues across commodities in fruit and vegetables? Are there any commodities you operate in that are insulated from the effects of the scarcity of water?

MR ROBSON: No.

45 MR O'DONOVAN: In terms of the rising fuel prices, has that had an effect on farm businesses and the prices at which they can deliver - again, just in broad terms?

MR ROBSON: Yes, it has, yes.

MR O'DONOVAN: Has it been a significant impact that in part explains the rise in fruit and vegetable prices?

5 MR ROBSON: The interesting thing, I don't agree with the statement of the rise in fruit and vegetable prices, but I don't want to discuss that in front much my competitors. I'm happy to discuss that with you, and we have documentary evidence to the contrary, in some lines.

10 MR O'DONOVAN: Apart from those obvious macro factors like fuel prices and the drought, have there been other big broad factors that would have impacted producers equally that would have or could have led to a price increase?

15 MR ROBSON: I think the biggest single impact is floods, believe it or not, which is the opposite of droughts. Again, I can take you through a sequence which I think exhibits some changes in pricing, but I really don't want to discuss that in front of my competitors.

MR O'DONOVAN: Sure. I think that's - - -

20 COMMISSIONER MARTIN: Perhaps we will go on to - just one question while we are still in public: we have been talking about your growing, but you have mentioned contractors?

25 MR ROBSON: That's right. When I've been answering, I guess I've been answering on behalf of contractors as well.

30 COMMISSIONER MARTIN: What's the broad scaling of those? Mr O'Donovan asked to you explain how your business works. How much is it contractors, how much is it farming that you own?

MR ROBSON: On lettuce, 97 per cent would be contractor.

COMMISSIONER MARTIN: And the other products?

35 MR ROBSON: Avocados, 100 per cent agency, which is other growers. Melons, 90 per cent other growers. So the farming business is only three years old. Mangos 100 per cent ours.

40 COMMISSIONER MARTIN: For those who aren't associated with the ACCC or Mr Robson's organisation, once again, sorry, we will have to go to a private hearing.

ADJOURNED

[12.22pm]

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RESUMED

[2.08pm]

5

COMMISSIONER MARTIN: We might commence. Mr Young, thanks for coming in. The chairman is currently away on other business; he will be returning. But for the moment Dr King and myself will be conducting the hearing.

10

You have received information relating to the inquiry, and the chairman this morning outlined all the background to the inquiry and the way it's being conducted, so I won't go back over that.

15

Mr Young, for the record, can you state your name and your role?

MR SCHRODER: Andrew Young, CEO of Brismark and Brisbane Markets Ltd.

20

COMMISSIONER MARTIN: I just need, in terms of the conduct of the hearings, to remind you it is an offence under the Criminal Code to give evidence at the inquiry that the witness knows to be false or misleading or omits any matter or thing without which the evidence is misleading. Do you understand that, Mr Young?

25

MR YOUNG: Yes.

COMMISSIONER MARTIN: Thank you. I'll pass over to Mr O'Donovan to lead the discussion.

30

MR O'DONOVAN: Could you just briefly set out what Brismark is and what it does and what you in your capacity as the CEO have responsibility for?

35

MR YOUNG: Brismark is an industry organisation. Its role is to serve and to represent the interests of wholesalers within the wholesaling sector of the fruit and vegetable industry. It's also a major stakeholder in Brisbane Markets. I'm CEO of Brisbane Markets as well, which is the unlisted public company which owns and manages and develops the Brisbane Markets, the central trading facility for fruit and vegetables in Queensland.

40

MR O'DONOVAN: First up, are there any particular statements you would like to make, or are you happy just to answer questions?

45

MR YOUNG: I'll just make a couple. A lot of our involvement in the inquiry is to look at the issue of the mandatory Horticulture Code of Conduct. In terms of the retailing issues, I think a lot of what we can say has often been said before. There have been numerous reviews over the last decade, going back to the 1999 joint parliamentary select committee inquiry into the misuse of market power issue with retail chains. So I think a lot of that has been said before.

So a lot of our focus is looking at the role of the code and why it's in the industry and its role in terms of only regulating part of the industry, versus the whole industry.

5 MR O'DONOVAN: In your submission you identified some specific concerns about the way in which the code operates. Could you briefly outline what your concern is about the operation of the code?

10 MR YOUNG: Okay. The code was put together after a lengthy process, which was highly politicised, so some of the issues which were being raised are not reflected in the final outcome. The objectives of the code, in terms of raising transparency or promoting better commercial practice are fine. But in terms of the outcome, what we've got is a code which, instead of promoting better commercial practice, goes further and prescribes what that commercial practice should be. So in that regard we regard it as anti-competitive and we also regard it as unworkable.

15 The major issues are in relation to, to operate as a merchant you are required to negotiate a price immediately upon or prior to receipt of the product, and in our industry most wholesalers nationally are receiving product from 11.00 pm at night through to 4.00 am in the morning and, to apply the code rigidly, that would require
20 wholesalers to be negotiating prices with growers at 2.00, 3.00, 4.00, 5.00 in the morning, which, apart from being impractical, also means that they would be doing it before market prices were known in terms of the market for the product, which would mean growers would be getting a return which would be less than they would otherwise achieve if it was pitched off the market price.

25 We have always advocated the ability to have a merchant transaction which enables the wholesaler to reflect in the return to the grower the market price less a documented margin, so our issue is the part of the code which relates specifically to how wholesalers operate in an effort by the part of the government through the code
30 to redefine the meaning of the word "merchant" in particular.

MR O'DONOVAN: When you say "merchant transaction", that's where the wholesaler takes ownership of the goods?

35 MR YOUNG: Yes.

MR O'DONOVAN: But at the time of taking ownership of the goods agrees that the - - -

40 MR YOUNG: Sorry, the definition of the word "merchant" in terms of taking ownership of the goods, how we see the definition operating in a central market is that the title changes at the point of on-sale by the wholesaler. This is what fundamentally has changed in the code. If a wholesaler is receiving product today and taking title today but not selling it until tomorrow, the next day or the next day, it
45 means they are pitching a price which doesn't reflect the market price and which would mean that wholesalers then are seeking, obviously, a higher margin to cover off on the risk.

The way the markets have worked in the past, the title changes at the point of sale, at the very instant of sale, and the return price to the grower can then reflect the sale price which the wholesaler receives less a margin. We are saying that margin can be documented and there can be flexibility in the system.

5

That's what growers in the main want. They want a fair price for their market which reflects the market on the day, not some other price which doesn't reflect the market and which may obviously be less than they would otherwise achieve because wholesalers are taking far greater risk in the pricing of the product.

10

MR O'DONOVAN: Is agency not an alternative? In fact it sounds almost like an agency transaction.

MR YOUNG: Agency gets raised.

15

MR O'DONOVAN: Or is it just a margin?

MR YOUNG: Agency gets raised a lot as an option, but agency law is well documented and well known in our industry, and it's not an option for a number of reasons. One, it would require the wholesaler to be able to give all their intellectual property to the supplier of the product, so they lose their goodwill, they lose a lot of the intellectual property in their business, in terms of who they are dealing with. It also means - - -

20

MR O'DONOVAN: Just because they report who their buyers are?

25

MR YOUNG: Under agency law, you must make that available to the supplier. That's a legal law, in terms of the bulk of law that exists for agency transactions. It also would require them to be able to account for each package sold. So in an industry where, if you look at our market, there are 600,000 tonnes, 60 million packages on average going through the market on an annual basis with 53 wholesalers, to be able to turn around and then account for every package - because, again, agency law is very specific in how accurate you are in accounting for every single item - the risk associated with moving to agency would be just be horrendous from a wholesaler's perspective; a lot higher costs would be involved, a lot greater risk, and they would lose some of their intellectual property in doing so. So there's no real benefit at all in a wholesaler operating as an agent; on the contrary, quite a lot of negatives.

30

35

MR O'DONOVAN: Just looking at the amendments to the horticulture code that you have proposed in your submission, it was effectively to permit reinstatement of price determinations based on formulas? Have I understood that correctly?

40

MR YOUNG: Yes.

45

MR O'DONOVAN: And the transparency concerns would be addressed by having to agree the formula in advance, with the price set by the market?

MR YOUNG: That's correct. The other options - we have put in one option there. The other options are, for example, an opt-out type clause, so that the parties, if they agreed, could opt out of certain parts of the code. So that's another option. The third option would obviously be a broader review of the code, to try and make it more
5 effective as a code which promotes good commercial practice, rather than what it currently does. From our perspective there are three options which would be available to make the code more workable, more cost effective and more efficient in terms of promoting good commercial practice.

10 MR O'DONOVAN: Assuming that there were modifications made to the code, do you have a view about whether it's better to have a code or not? Provided that the kinds of restrictions that you are concerned about are removed from the code, would you prefer to see a code, or do you think a completely unregulated environment
15 would be better for your members?

MR YOUNG: Most of the people in our industry are comfortable either way. There are some benefits, whether it's a voluntary or mandatory code, to having a code which does promote good commercial practice. We have a record, as in our own organisation, of promoting the use of documented terms of trade, of having your own
20 dispute resolution system, which we've had in place for many years. We've got trained and qualified mediators on staff. There are mechanisms already available to address the issues, so we are quite comfortable whichever way it goes. But codes should be there to promote good commercial practice, whether it's mandatory or voluntary. As long as the objectives are the same and you can get engagement from
25 all sectors of the industry, then it's going to work. Where you don't get that engagement and where it's unworkable, then it becomes meaningless.

MR O'DONOVAN: You have suggested in your submission that the fact that the code doesn't apply to the retailers or to any retailer interferes with competition in
30 some respects. Can you just explain what your basis for that view is?

MR YOUNG: It's distortionary. The code as it currently stands in particular imposes significant and quite onerous requirements on a wholesaler if they are to
35 comply in full. Again, we have looked at this with some of the wholesalers who have analysed it, and their experience is really, to comply fully, they are looking at a 10 per cent increase in staff. So there are significant and quite onerous requirements being placed on wholesalers to comply with the code.

MR O'DONOVAN: If I can stop you there, are we talking about the processing of
40 documenting, agreeing, identifying, being able to track through the system the individual growers' produce?

MR YOUNG: Yes. The other elements of the code - the terms of trade are not an issue, the dispute resolution is not an issue. It's how they are required to operate to
45 be code compliant. The follow-up - at the moment you have a lot of growers who don't want to sign off on the horticulture produce agreement, so there's a lot of additional follow-up to try to get people across the line, the investment of time by

senior staff within their own organisations to make that happen, the day-to-day administration in terms of documentation. So there are significant costs being imposed on just one sector of the industry, the wholesaling sector.

5 The wholesaling sector is a major supplier to independent greengrocers, obviously, so it's distortionary in terms of costs applying to one supply chain which do not exist in other. Direct supply supply chains do not have those costs. So that is anti-competitive and distortionary.

10 The issue is that those costs, if they are not worn by the wholesaler, become passed back up the chain to the grower. So it becomes a disincentive for a grower to supply that supply chain, because to supply it to a wholesaler versus supplying it direct, potentially they are going to be offered a lower price because there are higher costs in one supply chain which are not in another.

15 MR O'DONOVAN: Just to test that idea, at the moment the kinds of process obligations that are included in the code, the obligation to agree terms in advance, to have them written, those are the kinds of features that you would expect organisations like Coles and Woolworths would as a matter of course already do.
20 Are there things in the code you think that the big retailers don't do?

MR YOUNG: There are things in the code which would make their terms of trade probably unable to be, or to be non-code compliant. There are issues in the code whereby the requirements and restrictions placed on wholesalers put them on a
25 different playing field to a retailer buying direct, whatever retailer they are.

There are issues in terms of the returns of product, which wholesalers cannot cover off on it in a similar manner to a retailer buying direct. There's issues in terms of risk and risk management they can't cover off on. There are issues of product returns
30 they can't cover off on. There are numerous areas where there's a totally different playing field for a party under the code versus a party outside the code, and the differences are extreme, particularly in relation to areas such as product disputes, product returns and dealing with risk and the change of title.

35 MR O'DONOVAN: Could you just tell us in specific terms what the key differences are, starting with product returns? What is it that a wholesaler is prevented from doing that a retailer can do?

MR YOUNG: A wholesaler under the code, if product is out of spec, cannot return
40 the product to the grower. We have had these arguments with the ACCC in terms of interpretation of the code and our own horticulture produce agreements. You can look for claiming a credit back against the grower, but there can be no return of product. That is a major issue, where you have a dispute, and one option that is available to others outside the code which doesn't apply to wholesalers. There's that
45 as an issue. They cannot return title. I've seen terms of trade for parties operating outside the code where they do do that. Parties outside the code may claim damages for loss of profits; you can't under the code. So there's a range of issues along those

lines which provide for a much tighter and hamstrung operating environment when you compare it to parties outside the code.

5 MR O'DONOVAN: It's been put in submissions to us by at least one of the major supermarkets that the voluntary code that they operate under, the produce and grocery industry code of conduct, is sufficient; it's a voluntary code and has, I suppose, less detail than the mandatory horticulture code?

10 MR YOUNG: Yes.

MR O'DONOVAN: Have you given any consideration to that question whether or not the produce and grocery industry code is an adequate substitute?

15 MR YOUNG: We would be happy to operate under that code. Again, the interpretation of that code, even with people within the ACCC, is incorrect. I've heard it said from senior people within the ACCC that it can't apply to the wholesaling sector because they can't sign on to it. That is not correct. There is no provision in that code to require any party to sign up to it; it is a voluntary code. There are parties that have endorsed it, so their name is in the front of the code. But
20 the wholesaling sector was under that code and was pulled out of it by the prior government, and in fact we still are under it. If you look at the moment, the Australian Chamber of Fruit and Vegetable Industries is still a signatory to that code but there is no requirement at all for parties to be a signatory to come under that code. So the interpretation that is being pushed there is incorrect. But yes, that code
25 remains available as an option and we would be happy to look at that as an alternative to the existing code.

MR O'DONOVAN: Do you say that applying that voluntary code to the supermarkets doesn't overcome the competitive concerns that you have in relation to
30 the horticulture code only applying to wholesalers?

MR YOUNG: No, it's a different code, it doesn't really impose any costs. It in some respects puts up a bit of an idea of what might be better commercial practice, but in many respects even some of that is fairly loose. As a voluntary code, we're happy to
35 work with the voluntary code.

MR O'DONOVAN: Has that canvassed your views sufficiently on the horticulture code?

40 MR YOUNG: I would add a little bit more, in terms of the position that some of the sectors of industry have taken.

There has been a lot been said about the code and the industry. When nothing was being substantiated, we did some of our own research. We engaged Roy Morgan to
45 design a survey and surveyed growers, which no other sector of the industry was doing. Certainly the views we got back from growers - the survey was done in May last year, just ahead of the code coming in, but the issue had been around still for

three years by then - 67 per cent of growers at that point in time wanted what we are seeking, in terms of a merchant transaction where the price paid to the grower could be based on the wholesale price achieved by the wholesaler less an agreed and documented margin. So that is grower support for what we are seeking.

5

To go further than that, in terms of the importance of the code, growers in that survey - and they used a survey sample of about 3,500 and got 605-odd surveys, so it's quite significant from the point of view of a survey - the code ranked last out of nine topical industry issues. And that was the same with an earlier survey we had done the year before. I don't think that growers are switched on to the code as an issue, they don't see it as the issue that some people would have you believe. I think most growers just want a good commercial relationship with their wholesaler, and anything that is put into place which promotes good commercial practices is going to be far more effective than the current code.

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MR O'DONOVAN: Changing tack slightly, you operate as a wholesaler yourself?

MR YOUNG: No.

20 MR O'DONOVAN: Or only as a representative of wholesalers?

MR YOUNG: As a representative of wholesalers. We're a service organisation.

25 MR O'DONOVAN: But you are able to observe the operations of the wholesale markets over time, presumably, and have some views about it?

MR YOUNG: Yes.

30 MR O'DONOVAN: If we can deal with the issue first of food price inflation, which in a sense instigated this inquiry, there was certainly a perception and some evidence within the ABS statistics that food price inflation was outstripping the CPI and that it may have been particularly evident in areas like fruit and vegetables. Based on your experience and observation over the last two or three years of fruit and veg going through the wholesale markets, are you seeing evidence of food price inflation in those markets?

35

MR YOUNG: We are saying an increased value of product. Keep in mind, we have been through a period of some years now with fairly erratic weather conditions. Erratic weather conditions create shortages of supply, which, in a market which is based on supply and demand in terms of pricing, means higher prices will result, and there's no better example of that than bananas after Cyclone Larry. Whether those same increases would have applied in the absence of the fluctuations in the weather conditions is only crystal ball gazing. But certainly in our sector of the industry the pricing has been more buoyant because of the climatic conditions which have prevailed to a large degree, together with some underlying growth in demand - people are starting to eat more healthy - and some underlying and gradual growth in population.

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MR O'DONOVAN: When you talk about those particular climatic conditions, is the drought the main one you are referring to or are there others?

5 MR YOUNG: We have had drought, we've had flood, we've had cyclones. You name it, we've had it. So there's been quite an array of natural disasters that have impacted upon the production of fruit and vegetables.

MR O'DONOVAN: And the effects they have had on supply, we have seen a corresponding and entirely expectable increase in wholesale pricing?

10 MR YOUNG: With tight supply, yes, prices will go up significantly, potentially, yes.

MR O'DONOVAN: In terms of other factors that are driving costs at the farm level, are they also feeding into the costs at the wholesale level?

MR YOUNG: No. Fruit and vegetables are essentially a commodity market. Pricing in commodity markets is driven by supply and demand. So whether it has cost a grower \$5 a carton to produce or \$10, at the end of the day demand for the product will determine - to a great degree, demand in quality will determine what the price is, the market price for the product. So that's what determines price, rather than input costs.

MR O'DONOVAN: In terms of that higher wholesale price being reflected in the retail price, from your observation are we seeing a magnified effect in the retail market or are you just seeing higher margins placed on things that are more expensive at the wholesale level?

MR YOUNG: I don't doubt for one minute that the way retail chains price their product has evolved, and you probably commercially wouldn't blame them for some of that. If they know they can sell the same volume of product at \$5/kg as \$3/kg because it's in fairly inelastic demand and they have the data to prove that - which they all have nowadays - then you're probably going to see them charge the higher price. I think that situation is certainly being built into their pricing models at the moment and has been over the last few years. So I think that is now becoming fairly well known. They have the data at the till that tells them, whether we run that product on special or not, we are still going to make this amount of money, and that's how they base their pricing decisions.

MR O'DONOVAN: But do you see the level of concentration at the retail level as providing any special ability to do that, or is it just that they just run their businesses in the way that they want?

MR YOUNG: They compete fiercely. I think fruit and vegetables probably remain one of the more competitive sectors in the retail grocery industry, and that's largely because we still, through the strength of Australia's central market system, have a

very strong independent retailing sector, and that is healthy competition. They compete fiercely.

5 There are always some anecdotal stories about practices, and they are probably more in the past than recent, but they are all issues that have been canvassed before other commissions, commissions like this, previously in the last decade.

10 MR O'DONOVAN: Do you have any sense of what the market shares in fruit and veg look like between Coles, Woolworths, Aldi, independents, independent fruit and veg retailers, farmers' markets?

15 MR YOUNG: A reasonable sense. Farmers markets are still a blip on the radar. The independent retailers are probably maintaining a healthy percentage around 30-odd per cent. Sorry, I'm talking retail fresh, so that distils back further when you bring in food service and processing. In terms of retail fresh, the retail chains are probably sitting at around 60 to 65 per cent and the independents and others around the 30 to 35 per cent. If you bring in the likes of food service, food service is probably around 25 per cent and then you distil back the other percentages accordingly.

20 MR O'DONOVAN: In terms of the way in which retail pricing is done between the major supermarkets, as opposed to an independent grocer, is there more, I suppose, market driven pricing at an independent grocer, so that when there's a massive glut of a product in a wholesale market you'll see that product pretty cheaply in a retail grocer, whereas you get more flat pricing, less spikes, in a major supermarket's retail pricing?

30 MR YOUNG: I think it's very variable. If an independent greengrocer in particular is selling on price, then yes, you will. If you have an independent greengrocer who is more focused on quality, you may not get it to the same extent. So there's a lot of variability in the industry.

35 MR O'DONOVAN: In terms of competing for the goods of a grower, are wholesalers in any sense in competition with the major supermarkets or is there so much supply that it's - - -

40 MR YOUNG: No, they do compete. A lot of wholesalers still service the supermarket chains, and that's well understood. But in terms of the supply chains, they do compete. Good growers are in good demand if they grow good quality product, and if a supermarket chain wants them for direct supply then obviously they are going to be in some level of competition at wholesalers who may want that product at the same time.

45 MR O'DONOVAN: What would prompt a grower to choose to supply to a major supermarket chain rather than decide to sell through a wholesale market?

MR YOUNG: There can be a range of reasons. If they have been courted by the supermarket chain for a period of time, it may be an offer of what appears to be a better price up front. It may be a promise of a better relation or communication issues. It becomes a business decision for the grower. There would be a number of reasons that they take into account.

MR O'DONOVAN: At least as the market is currently structured, from a grower's point of view, if they are not happy with the direct relationship with the major supermarket chain, how many other alternative options in the marketplace do they have to shift their product?

MR YOUNG: Quite a few. If you come back to the central market system, there are over 400 wholesalers nationally, there are about 500 wholesalers off-market nationally. You have processors, which are suitable for some products. You have got exporting, which there are parties involved in export. The industry is very competitive and there are options available.

MR O'DONOVAN: Do you have any, I suppose, truck with the theory that there are growers who are captured with little choice but to sell at very low margins to the major supermarket chains? Is that consistent with your understanding of how the market operates?

MR YOUNG: Look, it's got to be a business decision. If they are really boxed into a corner, that may happen. But in terms of a matter of course, all growers have got options in how they sell their product, and it gets back to the commercial relationships that they establish. So as a general principle I'd say no, I don't agree.

MR O'DONOVAN: Do you have any, I suppose, particular knowledge or information about the impact of the particular specialised returnable plastic crates which supermarkets have used, that has an impact on, I suppose, your members?

MR YOUNG: Yes. It adds costs in the supply chain. The original documentation that came out that looked at returnable plastic crates was a report done by Horticulture Australia Ltd in 2002, and that certainly showed that it would shift costs up the supply chain back to the grower. I believe that report has been borne out.

In terms of the impact in the markets, the impact is more so where if growers are packing into those crates and product is rejected or product doesn't end up into the supermarket and it comes back into the markets, there has to be repacking done, so there is a cost. But at the end of the day a lot of that cost will then be sheeted back to the grower. So the issue itself is, yes, there are costs in the industry, and at the end of the day the costs are most likely to be borne by the grower.

MR O'DONOVAN: Have there been any specific detrimental aspects on how the wholesale market operates by having such a large amount of demand dealt with directly between the major supermarkets and growers?

MR YOUNG: In an ideal world it would be great to have all products through the wholesale market system, that would be the ideal world, but it's not a reality.

5 MR O'DONOVAN: Ideal as in ideal for the wholesalers or ideal for the operation of the market?

MR YOUNG: Ideal for growers and the operation of the market. It gets back to, if you concentrate your supply and demand you're going to have the best marketplace. Whether that's fruit and vegetables, clothes or cars, if you're concentrating your
10 demand in a specific location, you end up with the best and most competitive marketplace. I think that will clearly give you the best result for the industry.

MR O'DONOVAN: By hiving off a substantial proportion of the demand and the supply to an outside market, has that changed the way the wholesale markets
15 operate?

MR YOUNG: No.

MR O'DONOVAN: They still remain an efficient way of dealing with - - -
20

MR YOUNG: It's still efficient. It's just a degree of fragmentation of the demand. Their concerns come in situations whereby if there was a product where a lot of the top quality product ended up not coming through the central market and if prices for the product were being pitched off the central market price, then obviously you
25 would be getting a market price which was being paid generally, possibly even in relation to the direct supplier, but a market price pitched off what was not first grade product, if there was little available. In that situation, obviously, there are detriments to the grower.

MR O'DONOVAN: I think I read in your submission that there was a suggestion that there was some delay in price signals coming through because the major supermarkets tended to price flatter, rather than having the more volatile, I suppose, retail pricing; that it tended to exacerbate oversupply issues back at the wholesale level because the price signals weren't getting through to the retail level, so when
30 there was a big influx of produce it wasn't being bid quickly enough?
35

MR YOUNG: Yes. The issue there is how - in some respects, there's an issue in terms of whether a retail chain has a responsibility for clearing oversupply. Obviously you can argue they don't. But from an industry perspective, if a market is
40 glutted then the industry benefits from that glut being cleared as quickly as possible. At times, the industry having a more cooperative approach, maybe through pricing, it could be through advertising, et cetera, but a more cooperative approach to conveying the position and responding to it would clear glutted markets more quickly.
45

MR O'DONOVAN: Presumably the retailer could still participate through the wholesale market, get a benefit?

MR YOUNG: They get the benefit, yes.

MR O'DONOVAN: Presumably their pricing can assist in the clearance of that?

5 MR YOUNG: Yes.

MR O'DONOVAN: That's still functional in a broad sense? We don't see huge increases - - -?

10 MR YOUNG: No, the market operates very effectively in clearing. Markets are a clearing house, so markets operate very effectively in clearing whatever volumes of product are there on the day. Yes, there is some warehousing, there's distribution, but the markets are very effective in clearing what's available.

15 MR O'DONOVAN: The major supermarket chains also appear to be sourcing more fresh produce from overseas, importing from New Zealand and the United States. Is that perception correct?

MR YOUNG: Right now there's not a lot of imported product in Australia. There
20 have been a lot of predictions that that will change. We haven't seen some of those predictions come true yet. Obviously over time we are more likely to see more imports, and I think that's a fact of life for the Australian industry. Whether the retail chains focus on filling supplies from imported product is really up to them, but right now I don't think that's the case, no.

25 MR O'DONOVAN: In terms of the retailers' returns, so that's throughout the retail sector, have you seen any evidence that in the last few years the retail margins are increasing whereas the wholesaler and the grower margins are reclining?

30 MR YOUNG: Look, that's a difficult one. From our sector of the industry's perspective, I don't know that there's any standout evidence that would say that retailers are earning more and everyone else is earning less. There's probably some examples where in shorter markets growers are doing well. In markets where there's oversupply then obviously they're not going to do as well, and that's a fact of life as
35 well. The industry is based on supply and demand. If people don't produce top quality product and are trying to market second-grade product without some point of differentiation or advantage, then they are certainly not going to get the top quality price.

40 MR O'DONOVAN: That's all I had.

COMMISSIONER MARTIN: Mr Young, Mr O'Donovan spoke earlier about the value of product. Beyond the price issue - you were making reference to the retailers - what has actually been driving quality in the product? Have you perceived
45 an increase of quality over recent times and have retailers had a role in that?

MR YOUNG: The retail chains?

COMMISSIONER MARTIN: Yes.

MR YOUNG: Food safety and product quality specifications are issues that have been driven by the retail chains. We got involved in the late 1990s in pushing our
5 members, as in wholesalers, to address the food safety issues, and certainly there are quality management systems that have come into play. But both chains do have quality specifications.

10 COMMISSIONER MARTIN: When you say "we", the central market?

MR YOUNG: The markets, yes.

COMMISSIONER MARTIN: How did that play out?

15 MR YOUNG: A lot of wholesalers do have quality systems in place that comply with the requirements of the major supermarket chains or are HAZAP certified in terms of meeting food safety certification requirements. So there has been broad adoption of these practices across the industry, right from the grower level through the wholesale level and on to retailers.

20 COMMISSIONER MARTIN: Would you say that most product, therefore, that comes into a wholesaler has some sort of basis of verification?

MR YOUNG: From a food safety perspective, possibly. From a quality
25 management perspective, no. If you're looking at quality systems or quality standards, no, there is an absence of them within the industry. If you go beyond the two systems that Woolworths and Coles have in place, the Australian chamber introduced a product quality specifications standard last year which is pitched off the Woolworths standard, and that exists in the industry. But in terms of something
30 which you would call an industry accepted national system of product quality standards, there isn't one.

COMMISSIONER MARTIN: Is there a move towards one or is it something that's
35 in abeyance?

MR YOUNG: I understand there's some discussion at the moment that is looking at - there's fresh specs, which are the Australian chamber standards that have been adopted through the central markets, based on the Woolworths standard, and I understand there are some discussions about looking at those standards as a broader
40 industry adopted standard. But they are discussions.

COMMISSIONER MARTIN: Just on this impasse or apparent impasse vis-a-vis
45 merchants and agents - and this is just looking at some of the issues you have raised - it seems the main issue as to why you said your members don't want to act as agents is that the identity of the buyers is - - -

MR YOUNG: It's not the main. There are a number of issues. That's one of them.

COMMISSIONER MARTIN: I didn't quite understand a couple of the other ones that you mentioned, about it being more complex.

5 MR YOUNG: Agency law isn't determined by what's in the code, it's determined by common law, as you're aware, and there's a large body of it which details the legal responsibilities of an agent in relation to their relationship with the vendor. That large body of common law says that they must account to the vendor in terms of who they sold it to, what was sold, what it was sold for. So it gets down to the issue of legal risk in being able to account accurately for every package you sell.

10 When you operate in a fast moving consumer goods area like a market, with products being received from a grower on a daily basis of consignments - we have some wholesalers that may be receiving product from 400 or 500 growers. As I said, we have in the Brisbane Markets 53 wholesalers handling probably around 60 million
15 packages annually and transacting sales which are probably averaging, transaction-wise, between 400 and 700 transactions a day, with orders being received from anything from 8.00 at night through to when the market closes at 10.00 in the morning. For a wholesaler to take on the legal risk associated with accounting for every package sold accurately - - -

20 COMMISSIONER MARTIN: Forget the legal risk for a moment. This idea that it's not possible to do a proper accounting of these transactions surprises me.

25 MR YOUNG: It's not a - - -

MR O'DONOVAN: Accurate reporting - I would have thought that's what modern business practices are about.

30 MR YOUNG: You don't. If you receive 20 pallets of tomatoes, which could be classified by 24 different size/colour combinations, and you receive one semitrailer load today and another semitrailer load tomorrow and you have an order for two semitrailer loads the next day, you don't necessarily attribute the exact price for each carton back to the carton. You don't, you can't do it.

35 COMMISSIONER MARTIN: The chains must be doing it?

MR YOUNG: Why? They don't.

40 COMMISSIONER MARTIN: Don't they? How do they know what they are getting?

MR YOUNG: They are buying a discrete volume of product at a discrete nominated price. When you're working as a wholesaler you are receiving what may be a variable quantity of product, you are not ordering it. You are talking to your grower
45 and you may believe that 10 pallets are coming, and 12 turn up. You may believe there are certain - - -

COMMISSIONER MARTIN: That's a slightly different issue, because that's - - -

MR YOUNG: But it's not, commissioner, because you're not dealing - if you're a
5 retailer, you buy what you want, you buy it at a price that suits your purposes at the
time and you sell it after you have applied the margin you are after to make a dollar.
Wholesale operates very differently.

COMMISSIONER MARTIN: You are saying it's about a business discipline, in
10 terms of things arriving unannounced; is that the position?

MR YOUNG: They will, yes.

COMMISSIONER MARTIN: But isn't there an agreement that underpins all of this,
15 a horticultural agreement that's been signed between the grower and the wholesaler,
because there can't be legally a transaction, and therefore part of that agreement
would be that the supplier, the grower, notifies accurately what he is going to
supply?

MR YOUNG: Exactly.
20

COMMISSIONER MARTIN: That's the whole idea of the code.

MR YOUNG: What applies under the code in the ideal world doesn't necessarily
25 apply on the ground, when you have 17,000 growers supplying 400 wholesalers in
six market across the country with \$5 billion worth of product annually. Markets are
a clearing house - - -

COMMISSIONER MARTIN: I think therein lies the challenge.

30 MR YOUNG: Well, the markets are a clearing house, and you cannot treat a
wholesaler like Coles or Woolworths who are there ordering a pallet of product
because that's all they want to sell tomorrow.

Wholesalers have relationships with growers, longstanding relationships, and if they
35 make a phone call at night because they are still picking and say, "We've got 10
pallets coming tomorrow," but when they clear out the packing shed they have got
12, 12 turn up. To believe or think that the wholesaler is going to reject two pallets,
just to stick it to the grower, it's not going to happen. Similarly on issues with
quality.

40 COMMISSIONER MARTIN: Yes, but he would know that it's changed to 12.

MR YOUNG: He may not.

45 COMMISSIONER MARTIN: I mean, it's just a phone call or an email.

MR YOUNG: Well, he may or may not. It doesn't always happen. These are the issues, and the flexibility that's needed when you're operating in a market. Product is sent in the afternoon or night. It's received at night, it's gone in the morning.

5 COMMISSIONER MARTIN: But it wouldn't be a problem if it was an agent?

MR YOUNG: Well, it wouldn't be a problem for the wholesaler, it would just make it someone else's problem, because if the market is glutted or the agent says, "Well, too bad, send what you want, I'm just going to sell it for you", so the wholesaler can
10 take no responsibility. That's not good for the industry. The attitude of agents being there and having no responsibility for industry issues is long gone. These people have a significant investment in the industry, they have million dollar investments in warehousing, cool stores, et cetera. They are people that want a stake in the industry, rather than being seen as some peripheral identity, as an agent who is there working
15 as a servant to a grower. That thinking has gone many years ago.

COMMISSIONER MARTIN: I don't think that a lot of agents around in various sectors would see themselves as dilettantes or not interested in the industry that they deal with.

20

MR YOUNG: I can assure you, they don't want to be compared to a real estate agent, if that's a comparison that can be made. They are people with massive investments in the industry, they trade, they market, they represent, they promote. They do a lot more than just being there acting on behalf of a discrete number of
25 growers.

COMMISSIONER MARTIN: I think Dr King has a question.

COMMISSIONER KING: On a similar issue, you suggested that an alternative for
30 the horticultural code and the merchant approach was to have a market price to allow a merchant or a wholesaler to contract to a formula which would involve a market price minus a margin. What would be the basis of the market price? What do you mean by the market price?

35 MR YOUNG: What the product sells for.

COMMISSIONER KING: If I'm a merchant, and say I've got product from 20
growers and I sell it on to five different retailers, just to take a simple example - and let's pick a product, let's imagine it's golden delicious apples - so you can tell I'm
40 from the south - so I have bought from 20 different growers golden delicious apples, I sell them on to five different retailers; what do you mean by the market price? I might have a different price for each of those retailers?

MR YOUNG: You could do. All wholesalers will maintain sales sheets. So they
45 have an idea at what price that product was sold. If there was product from you or two or three other growers, whatever the situation maybe, if a product is consolidated

to fill an order or if your product is broken up to fill multiple orders, there are still sale prices which are verifiable in terms of what the sale price is.

5 COMMISSIONER KING: So I would be following the different growers' product through to where it goes. Let's say, pick Albert Farm or whatever, who provides me with some of these golden delicious apples, and let's say I have divided their apples up into two groups, one which has gone to one retailer and one which has gone to another at different prices, then you're saying the market price would be sort of a volume weighted average back to Albert farms for their golden delicious apples?

10 MR YOUNG: Well, there are a number of ways you can - - -

COMMISSIONER KING: I'm just trying to work out how it would work.

15 MR YOUNG: Yes, but there are a number of different ways you can do it. If the line is sold at multiple prices, you can have a total return price for the whole line. So if there were different prices to different retailers, or for, say, number 1 quality product, then yes, you could have - say you sold it to a retailer at \$10,000 but it represented that there were some differentials between the pricing, then it may be
20 that, yes, the price reflects the overall price achieved across the line. If it's different quality then they do report it differently.

So there isn't any assessment or averaging between grades, no. It can reflect a number of different things. It could be the actual sale price, it could be the sale price
25 received for a line. They are probably the main two ways that we would operate.

COMMISSIONER KING: The problem that I have with your suggestion is that what you seem to be saying is, "Why can't we have something that looks like the agency process but without, if you like, the legal backdrop to an agency
30 relationship", which means that the growers in some ways are left - they have to trust the merchant. They have to assume that the merchant is doing the right thing by them.

MR YOUNG: Isn't a lot of business built around trust? By the same token, the bad
35 debt stays with the wholesaler. It's not as though it's trimming away elements where there's disadvantage for the grower and there's a countervailing argument in terms of bad debts. The wholesalers are wearing bad debts, the wholesalers are doing more of the product programming. We run programs in the market that are promoting products. Some of the wholesalers are contributing to promotions themselves. It
40 isn't a one-sided thing, it's an efficient mechanism. The way the industry operates has evolved over many years to be the most efficient mechanism to maximise the return to growers.

COMMISSIONER KING: I understand that there are two sides to every coin, but
45 one side of the coin, which was, as I understand it, a factoring in - - -

MR YOUNG: Can I say this: if growers really want agency, they have to demand it, and if there's a demand for it then wholesalers will do it. The issue, no matter what style of transaction growers want, if they demand it and are prepared to pay the price for the service or the administrative costs involved in delivering that service, that's
5 what they will get. The thing is that what we have now is a system which takes away the flexibility, takes away a lot of the choice, certainly for wholesalers, and does not give any choice to those growers who do want the flexible arrangement which offers them a cost effective mechanism to have their product sold and get a market-based return back at the end of the day.

10 At the very least, if you don't even like that, then at least look at the system of letting people contract out of the rigid requirements of the code. Because you can't have it all one way. Growers cannot have the best return they can get and yet have someone else pay for all the costs involved with the very rigid administrative system which
15 regulates wholesalers to the nth degree. Leave the options all open and let the market determine what system is in place.

The fact that there's next to no agents operating in Australia today isn't just by chance. The fact is that most people do not want to pay the cost of having someone
20 who is operating strictly as an agent. If you go back 50 years, most people were agents. But the governments which regulated commissions in those days wouldn't increase the commission rates, wouldn't let people survive in business, and there was this gradual shift across to the hybrid style system which was permitted under the legislation which existed in Queensland under the Farm Produce Marketing Act,
25 which was only repealed in 2000. So there was an evolution based on what worked for the industry on a cost effective basis, and the people followed that across.

COMMISSIONER MARTIN: Nothing else?

30 MR O'DONOVAN: Nothing from me.

COMMISSIONER MARTIN: Thank you very much.

THE WITNESS WITHDREW
35

ADJOURNED [2.59pm]

40 **RESUMED** [3.07pm]

COMMISSIONER MARTIN: We'll re-continue the hearings. We have the representatives of Avocados Australia Ltd here, Mr Allen and Mr Kwaczynski. You
45 have both been summonsed to attend this hearing.

Before I pass over to our counsel to conduct the interview, I just need to remind you that it is an offence under the Criminal Code to give evidence at this inquiry that a witness knows is false or misleading or omits any matter or thing about which the evidence is misleading, and you understand that?

5

MR ALLEN: Yes.

MR KWACZYNSKI: Yes.

10 COMMISSIONER MARTIN: Thanks, gentlemen. I'll pass over to Mr O'Donovan.

MR O'DONOVAN: Briefly, could you just indicate to the commissioners what the role of Avocados Australia Ltd is, who its members are and what its primary functions are?

15

MR ALLEN: Avocados Australia is the peak industry body for avocado growers in Australia, it's so a national peak body. Its responsibilities are to its members and growers that aren't necessarily members of the organisation, from a subset of areas. We operate within the horticultural Australia levy system, therefore we have a set of responsibilities to growers as a whole in terms of making sure those levies for marketing and R&D are invested effectively and efficiently. Then we have a number of responsibilities directly to members, in terms of policy, advocacy and other services that we might offer to those growers and their businesses.

20

25 MR O'DONOVAN: Is it as an organisation funded by the levy?

MR ALLEN: Not directly, no, it's funded by members.

30

MR O'DONOVAN: Are you each avocado growers as well as having positions in Avocados Australia?

MR ALLEN: No, I'm the CEO of the organisation, and Henry - - -

35

MR KWACZYNSKI: I'm the chair of the industry and I'm a grower.

MR O'DONOVAN: You are a grower?

MR KWACZYNSKI: Yes.

40

MR O'DONOVAN: Are you happy to answer some questions that I'll ask, which you'll probably know as a grower?

MR KWACZYNSKI: Okay.

45

MR O'DONOVAN: Just to understand the industry itself, I understand that in terms of revenue to growers it's around about \$120 million?

MR ALLEN: Yes.

MR O'DONOVAN: In terms of the market share of the major supermarkets - when I say that, I mean Coles and Woolworths, as opposed to the smaller independent
5 retailers or Aldi or greengrocers - do you have an idea of what the break-up of market share is?

MR ALLEN: For avocados, it's around 60 to 65 per cent, depending on the year or
10 season.

MR O'DONOVAN: Would go through to major supermarkets?

MR ALLEN: To major supermarkets, yes.

15 MR O'DONOVAN: So they roughly fit a bit over 50 per cent of the market?

MR ALLEN: Each, you mean individually?

MR O'DONOVAN: No, Coles and Woolworths combined?
20

MR ALLEN: Combined, yes, they are around that 60 to 65 per cent mark.

MR O'DONOVAN: Do you have a break-up within that as between Coles and
25 Woolworths?

MR ALLEN: Yes, Woolworths is a little bit higher than Coles, but it fluctuates from year to year, depending on the push that a particular chain is looking at.

MR O'DONOVAN: In terms of your members, would they most commonly have
30 direct arrangements with the major supermarket chains if they are going to deal with them or would the major supermarkets acquire their avocados through the wholesale markets?

MR ALLEN: It's a mix of both. Depending on the stage or the development of a
35 particular business or a size, and their capacity to actually deal with that type of business arrangement direct with the supermarket chain, they would have a direct relationship. They would also always have a direct relationship as well as with a wholesaler or some kind of second party or third party arrangement for selling. So
40 it's always a mix, because the supermarket chains only take a particular band of fruit size. Therefore you can move a certain amount through that system, but everything that's outside that supermarket spec has to go somewhere, in the terms that run the business.

MR O'DONOVAN: So there wouldn't be any grower who just exclusively grows for
45 a major supermarket?

MR ALLEN: You couldn't, no. It's not economically viable to undertake a business under that arrangement.

5 MR O'DONOVAN: Apart from the size, would it be true to say that once a grower reaches certain size, there is an incentive for them to deal directly with the supermarket?

10 MR ALLEN: Yes, either a grower reaches a certain size or is involved in a marketing or a cooperative that is at a certain size. So you have the two options of supplying through that second - that grower-owned body. But yes, you have to be at a certain level of production to be able to have enough of that band to be able to service that client.

15 MR O'DONOVAN: In terms of the cooperatives, can you describe how they form and how they choose to operate within the market?

20 MR ALLEN: Yes, sure. The cooperatives have formed over a number of years. The Australian avocado industry really became very commercial in the early 1970s, and by the time we hit the late 1980s there was an interest in actually growers working together and getting to the stage where they needed to be consolidating their fruit to be able to deal with the market more effectively and cost effectively. It's an evolution that's been seen across a lot of horticultural industries. They have formed under numerous circumstances. The ones that survive - because there have been a number that have fallen by the wayside - are basically grower owned. They are
25 either a true cooperative, in a legal sense, or they operate as a company-based cooperative, a company-based organisation in a cooperative type way. So the structure is they would deal in the same way with the supermarkets or the wholesale market as a large grower would.

30 MR O'DONOVAN: In terms of whether they are a true co-op or a company-based model, it's the growers themselves who influence the decision-making?

MR ALLEN: Yes.

35 MR O'DONOVAN: These co-ops - again, once they reach a certain size and can meet the specifications of major supermarkets - have an option of dealing direct with major supermarkets?

MR ALLEN: Yes.

40

MR O'DONOVAN: What would persuade a co-op to deal directly with a major supermarket, rather than sell exclusively through the wholesale chain?

45 MR ALLEN: There's been a shift in terms of the marketplace for the chains to deal direct. So if you are looking to access that section of the market, you can more effectively deal direct. That's a driving force to move into that zone. It's about

spreading their risk, spreading their customer base and being more involved with the direct sale of the product. Really it boils down to those simple business practices.

5 MR O'DONOVAN: I suppose there is a certain reliability, in terms of making sure that your product will reach an end market, is the big advantage that the major supermarkets can offer?

10 MR ALLEN: Yes. I suppose there's always - you may be a direct supplier but it doesn't necessarily mean that you get any opportunity to supply. It's not a guaranteed right of sale, and the system is well in place for both chains in how they operate. It also is not necessarily a guaranteed sale, even if you have got to the point where you have prepared an order, because you do have circumstances on a regular basis where that order is cancelled.

15 MR O'DONOVAN: Just looking at that, once you establish a direct relationship with a major supermarket, what's the nature of that relationship? It's obviously not a commitment to buy at a fixed price at the start of the season; is that fair to say?

20 MR ALLEN: There's usually an understanding of what the season is looking like, and on a weekly basis that price can change. There may be discussions at the start of the season about conceptually how they see the market or the world from their perspective, but it's a preliminary discussion and then would work on a weekly basis. So the price can change weekly.

25 MR O'DONOVAN: In terms of the avocado itself, I have absolutely no understanding of how seasonal it is or what the growing life of an avocado is. Can you briefly talk us through that?

30 MR ALLEN: Yes, sure. Avocados in Australia are produced 12 months of the year, and that's undertaken by harvesting in different regions. Basically we say our season starts in the far north of Queensland, on the Atherton Tablelands, moves down the east coast, across through South Australia to the south-west of Western Australia, and bam, we're back at the start of the next year, and we keep just moving around in the cycle. It's a little bit unusual for a horticultural crop, there's not many
35 horticultural crops that have a true 12-month supply. We do have fluctuations in supply volume during that period, so it's not an even supply, although we do have a top-up from our friends in New Zealand, who basically create a volume supply into the market which is pretty even. So every month it's around about the same, give or take a couple of hundred thousand trays.

40 MR O'DONOVAN: In terms of its supply profile, it is much flatter than, say, a seasonal crop like an apple?

45 MR ALLEN: Yes, and it's been developed that way through market forces in years gone by. It does have a life on a tree and does need to be taken off in a particular region, so it's not like one grower can leave a piece of fruit on the tree for 12 months

and pick a time of the year they want to supply it in. So there are still some growing forces in that process.

5 MR O'DONOVAN: If a co-op or a grower establishes a relationship with a major supermarket, it's really just you are in the major supermarket's system and can supply, but when your fruit is getting close to being market ready, that's when the actual negotiation will take place on the key terms?

10 MR ALLEN: Yes. It may take place.

MR O'DONOVAN: Whether or not it does depends on whether or not the major supermarket has the need for the product?

15 MR ALLEN: Yes. It also depends on the price the grower has suggested they would like to receive for their products. They are the main factors that actually determine whether the business is actually undertaken.

20 MR O'DONOVAN: To what extent does what's happening in the wholesale market determine how that negotiation goes?

MR ALLEN: It has a huge effect, and that's one of the problems with the system, that the supermarkets are looking at a particular band of product that they take and they remove that off the market floor at the wholesale market. The wholesale market still has the opportunity to sell some of that - obviously there are other suppliers that put it into their market, but there's a reduced amount of that specification product - size, quality - but you have a complete set of either side on the wholesale market. Therefore you can have some impact on the price at the wholesale market level.

30 The direct sale business still needs some kind of guide to set the pricing arrangements in some way, and generally the wholesale markets across the country are used as a way of determining what the market price is, as Mr Young outlined.

35 MR O'DONOVAN: Just talking about this very precisely specced avocado, because the major supermarkets want it and they are a huge player in the market and they are dealing direct, you are not getting a true supply and demand figure out of the wholesale market?

40 MR ALLEN: Well, it's influenced by outside forces. So if you look at the total system, from grower to somebody who's going to consume, from a market forces point of view, from where we see it, everyone in that chain needs to add value at some point and allow market forces to actually determine both ends of that arrangement. We have a few little anomalies in the middle which prevent that from being a true market forces circumstance in every case, so it warps the system.

45 MR O'DONOVAN: Looking at it from the major supermarket's point of view, their particular avocado specification is selling in a wholesale market on a more restricted basis than if they ran their volumes through that market?

MR ALLEN: Yes.

MR O'DONOVAN: Therefore, the wholesale price, as it appears in that market is higher than what they should pay. Is that how they view the relationship between
5 what their direct price should be and what the observable wholesale price should be?

MR ALLEN: No, because the price determined at the wholesale level is impacted on the whole range of product at the wholesale level. If we take last season from an avocado perspective, we had the biggest season on record and we did have a size
10 profile that happened to be a slightly smaller one. Therefore, on the wholesale floor there's a lot of small fruit. That small fruit has more effect on the rest of the size profile; it's got a disproportionate impact on market prices. So those forces - trying to band it out and determine that the market forces are purely acting on this little zone is not possible, because there's always that trading that goes on and, except for
15 the supermarkets - and even in some cases they will soften their specs - people are able to move in a direction that allows them to suggest a price that they are willing to pay for that product.

MR O'DONOVAN: Is it fair to say that the wholesale price does have a major
20 influence over what the major supermarkets are prepared to pay?

MR ALLEN: It does, yes.

MR O'DONOVAN: From a grower's perspective, they have always got the option of
25 saying, "I'm going to quit with this direct deal, I'm going to send it down to Brismark"?

MR ALLEN: That's an interesting proposition, because once you've set your
30 business up around a certain arrangement and you've got a volume of fruit moving through a particular system, it's a fresh product, therefore once it's harvested and picked, it's not like it's got a shelf life of six months or it's a canned product that can sit there for two years, you have to make quick decisions. Therefore it's not quite as flexible as that. Plus access to the end consumer is controlled by who the retailers are. So if you're suddenly moving a huge volume of fruit that you are regularly
35 putting through the main supermarket chains into the wholesale sector, it's going to clog that up because of the arrangements in place. A supermarket chain might be short on fruit, but they might put their retail price up and manage their whole supply that way.

MR O'DONOVAN: There's a potential - the grower having committed to the major
40 supermarket system, doesn't have as good outside alternatives as - - -

MR ALLEN: It would be a risky business proposition, once you've built your
45 business around that particular arrangement, which is why a number of growers are quite happy with the arrangement, because in a business arrangement, they understand how it works, they have some contractual arrangements in place, and they accept that as being how everybody does business.

MR O'DONOVAN: At the point at which price has to be determined, so I guess the very pointy end, you have a grower with a large amount of supply coming through, which it needs to offload, which it can't offload efficiently any more through the wholesale channel.

5

MR ALLEN: No.

MR O'DONOVAN: But there's no fixed commitment from the major supermarkets to take that fruit at all?

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MR ALLEN: No.

MR O'DONOVAN: Or to take it at any particular price?

15

MR ALLEN: No.

MR O'DONOVAN: Generally speaking, that appears to put the grower in a vulnerable position in terms of negotiating at that point in time?

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MR ALLEN: Yes.

MR O'DONOVAN: Is there feedback to your organisation that the major supermarkets abuse that opportunity or take advantage of that vulnerability on the part of grower, or generally speaking do they see it as a long-term relationship which needs to be maintained and appropriate returns?

25

MR ALLEN: It's a very subjective question. I suppose it's difficult to put anybody's mind in anybody's head when they are making a decision on their own business. I think the negotiating position is always weak when you have a couple of very strong parties in the marketplace. Therefore, comparatively to other countries, growers don't have the same options that are available.

30

It's difficult to say, because they are not going to want to change the arrangement, because if you have set your business up around those arrangements, what comes out of their comments are, as long as they get the business, they can work with that. They know what the price is going to be that week, there's no change to that, that's one thing they are very positive about - once the price is set, that's it.

35

MR O'DONOVAN: Are there any complaints about product being returned unfairly?

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MR ALLEN: There's always situations where that happens. There's a number of reasons why that happens. Specifications are often subjectively applied, and if you want to have an argument about having product knocked out, it's quite possible that you won't get any more orders for a period of time, because you have put them in an uncomfortable position. There's knockouts, and reusable crates are also an issue which has created that problem, or made it greater.

45

MR O'DONOVAN: What you are reporting to us, is this the product of a specific complaint from growers to you?

5 MR ALLEN: From our industry's perspective, we have gone through a cycle of large growth, and supply/demand has been utilised over a long period of time. But we have got to the point where at a supermarket level, at a retail level, controlling the price at retail level controls the volume of fruit that is going to be allowed through the system, and that's the real issue that we have.

10 We had a fantastic example - a very bad example for growers - last year, where the price was kept high at retail level, even though there were huge amounts of fruit moving into the wholesale sector system. This meant that we had about 8 to 10 weeks fruit backed up in cool rooms, which is not very good for a quality outcome for avocados. It has a very short shelf life once it gets past three weeks. Therefore, 15 by that retail price being, let's say, un-market forces determined, so it's more a retail saying, "We want this much sale, this much moving through the system," we ended up with hugely depressed wholesale prices, because you can't keep the secret that there's 10 weeks supply sitting in cool rooms and still more supply coming on to the market. At that end of the equation that becomes a real problem.

20 MR O'DONOVAN: From the major supermarkets' point of view, were they keeping retail prices high because they were reflecting their direct arrangements with growers or were they effectively withholding the supply?

25 MR ALLEN: No, the prices to growers had reduced as well, so the actual return at farm gate had gone down. So those market forces were working very effectively, but they weren't being passed on to consumers. That becomes the issue about how those retail prices are determined. We would never say that anybody in the supply chain, or the supply chain partners shouldn't be allowed to actually do business and be 30 profitable; there's no problem with that. Add value to the chain, we all work as one in that line, whichever chain you're moving through, whether it's wholesale sector or direct. But when the end consumer is not getting access to the pricing that's coming back to the farm gate, there seems to be something wrong with the system.

35 MR O'DONOVAN: If I can go over the detail of that example again, can I check the market share figures again on Coles and Woolworths? You said 65 per cent?

MR ALLEN: Yes, 65 per cent.

40 MR O'DONOVAN: So with a 65 per cent market share, if they hold retail price the same, the demand for avocado won't increase very much because more than half of the market is holding it at that higher price?

45 MR ALLEN: Yes. If you take the view that prices are determinative in people purchasing a product, yes. It goes without saying, I would have thought, but some people don't necessarily agree with that.

MR O'DONOVAN: And what was occurring in the wholesale market was supply was continuing to run through?

MR ALLEN: Yes.

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MR O'DONOVAN: And wholesale price was starting to go down?

MR ALLEN: Yes.

10 MR O'DONOVAN: The wholesale market supplying some of the supermarkets' supply, whatever it is - for us, 10 or 15 per cent still goes direct.

COMMISSIONER MARTIN: What was the retail price we're talking about?

15 MR ALLEN: If I can pass that to you, this is a graph of volume into the market. If you look at the left-hand side of the graph, it's actuals, so it's actually dispatch with retail price average, retail price overlay. It looks at the comparison. The left-hand is our forecast for this current calendar year, so ignore that half for the time being. You can see how retail prices - it doesn't exactly match the volume going into the market
20 on a monthly basis. These are even using averaging of what the retail chains are doing. So it becomes a bit of an issue.

MR O'DONOVAN: Is November 2007 the month of particular concern, where retail pricing is trending up but supply is also dramatically - - -?
25

MR ALLEN: If you go back to the start of the year and look at March, you can see the volume and the price. Volume doesn't reduce that much through March, April, May, but it takes a long time to bring the retail price down.

30 The other thing to point out is this: the pricing information on this graph is averaged across the country. It doesn't reflect that the way a lot of supermarket chains operate is on special in a particular state, so they will price us high at one end and low in another. That's good, in terms of moving product through a particular state, but the see-sawing problem creates an issue at a consumer level in understanding what the
35 value of the product is.

COMMISSIONER KING: Just on the retail product line you have here, what information is that based on? Is it just based on the major supermarket chains or is it based on fruit and vegetable resale outlets, your corner stores, markets?
40

MR ALLEN: This particular graph is based on the major retail chains.

MR O'DONOVAN: It's just Coles and Woolworths?

45 MR ALLEN: Yes. It's difficult to get independent retail averaging but we're putting a system in place where we're going to do that anyway, starting in the next financial year. This particular graph doesn't reflect the independent side; it's very difficult to

get it. But in fairness to the independent market, their pricing is set from a wholesale perspective, but also their opportunity is what the two major chains are doing with price, so they can come underneath at the same quality offer or they can make a larger price on a better quality offer. But it's hard to get a picture of that.

5

MR O'DONOVAN: Over time, what was occurring is consumer demand for avocados was not responding to the increased wholesale supply because there were no price signals being sent through 65 per cent of the market?

10 MR ALLEN: Yes, the transparency in the system was lacking.

MR O'DONOVAN: But at that time wholesale prices were dropping, effectively creating a bigger margin week on week for the major supermarket chains?

15 MR ALLEN: Yes.

MR O'DONOVAN: While that creates a market opportunity for the other 35 per cent of the sector who are presumably picking up avocados for an absolute song and can sell them either at a really good margin or in high volumes, because of consumer preference, I suppose, for one-stop shopping, you don't see the massive sudden swings to the price opportunity in avocados at the fruit shop?

20

MR ALLEN: No. That needs a more long term pricing strategy to change those particular habits of consumers, yes.

25

MR O'DONOVAN: How long did it take to clear the oversupply?

MR ALLEN: It wouldn't have been cleared until into October/November.

30 MR O'DONOVAN: This level of oversupply has not occurred previously?

MR ALLEN: Not to the extent that this particular year presented. Avocados haven't been affected in a significant way by drought. Only about 4 or 5 per cent of our product has been grown in areas that have been drought affected. The dry state area of New South Wales, Victoria and South Australia is a very small production area.

35

The rest of our regions have had no real issue with drought, therefore we have had a very strong production cycle and we will continue to have. We have another record year this year and we will have another record year next year. It's a huge growth phase. That's why the supply/demand issue has presented itself more clearly than in previous years. The industry spends quite a lot of money on promotion, and so do our supply chain partners, whether it be at the wholesale sector, at retail level or the other people in the chain. But that won't overcome a retail pricing position.

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45 MR O'DONOVAN: Do you see the incentives here as just short term reducing the flow of avocados through their retail chain, because in one sense you would expect if they lower their price they would increase their volume?

MR ALLEN: That would be a reasonably logical assumption, I would say.

MR O'DONOVAN: The question is: why would they choose to restrict supply and take a higher margin rather than increase volume and a smaller margin?

5

MR ALLEN: I could surmise a number of circumstances, but probably, from a business perspective - and I have to be honest, if it was me, if I can handle a certain volume of fruit at a certain margin and make a certain amount of profit, then why would I want the hassle of moving more fruit through the system? You know, that's just one way of looking at it, but that's a very business-like way of looking at it. While there's not the opportunity for the fruit to be moved through some other system, then that's a problem from an industry perspective.

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MR O'DONOVAN: Apart from this specific oversupply event last year, generally speaking have returns to growers declined in recent years?

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MR ALLEN: From an avocado perspective, over the last five years, if we exclude the 2007 year, they have been pretty even in terms of return to growers. There's been only small ups and downs. The increased volumes over that period have been managed from a building consumption point of view, so from a grower perspective they have invested grower levy money into driving consumption and building consumer acceptance, effectively in that five-year period from 1.2kg a head to around 2.8kg at the end of 2006. So more than doubling consumption has helped that whole supply - that demand position - and that was unravelled through the circumstances of 2007.

20

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MR O'DONOVAN: Did both major supermarkets behave in the same way?

MR ALLEN: Similar ways. Unfortunately, not exactly the same way. Coles certainly seemed to use an interesting process of having fruit in store at a certain price, and then the following week it would be on special, but it would be the same price, which seemed a little bit strange to a number of my growers that actually go and shop in the local supermarket. That example was specific to Coles. We surmised that was something to do with the position they were in, in terms of Wesfarmers and trying to sell the business.

30

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MR O'DONOVAN: But they were effectively keeping the price the same and advertising it as being on special?

MR ALLEN: Yes. So one week you would see the fruit there, the price was up, and the next week you would have all the special signs around it, or however their displays were.

40

MR O'DONOVAN: Do you have specific records or evidence of that?

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MR ALLEN: I know that was the circumstance in Toowoomba stores and also I think it was Gaden as well.

MR O'DONOVAN: Was that reported to you by growers or did you observe it yourself?

5 MR ALLEN: No, by growers. And it was put at a grower meeting that we had in July, in that region, to about 100 growers.

MR O'DONOVAN: Then Woolworths, what was Woolworths' behaviour?

10 MR ALLEN: Woolworths' behaviour was - they didn't undertake that process. They certainly weren't on special on their weekly cycles, but also did move product retail prices back up to well over what we'd consider a reasonable margin. But maybe it's arguable if their costs were increased during that period as well. They did a lot of see-saw pricing.

15 MR O'DONOVAN: Through this period?

MR ALLEN: Through this period, yes.

20 MR O'DONOVAN: In terms of the retail price that each retailer was charging, were they close, did they follow each other, do they mirror each other?

25 MR ALLEN: That's an interesting question. They price independently in terms of farm gate. At a retail level, they are not that dissimilar at any point in time, they are comparable in their pricing systems, I suppose.

MR O'DONOVAN: Just going back to the graph, where is the retail pricing coming from, is that Scan Data?

30 MR ALLEN: Yes, some of it is Scan Data, some of it is collected data, but it's mixed in terms of that presentation and averaged.

MR O'DONOVAN: When you say Scan Data, you actually purchased it from them?

35 MR ALLEN: Yes.

MR O'DONOVAN: In all states?

MR ALLEN: Yes.

40 MR O'DONOVAN: In terms of collected data, what do you mean by that?

45 MR ALLEN: There are other sources of retail pricing that you are able to pick up, whether it's catalogue pricing, and there's a few other sources that you can determine. There's a couple of networks that collect retail data across the country, that are set up for different commodities that we have operated in.

MR O'DONOVAN: Who put the retail price trend data together?

MR ALLEN: We did, Avocados Australia did.

MR O'DONOVAN: From this material that you had acquired?

5 MR ALLEN: Yes, collated, yes.

MR O'DONOVAN: You suggested that the Woolworths price was moving up and down?

10 MR ALLEN: Yes.

MR O'DONOVAN: But are you saying it was moving from an extremely high margin to a high margin; was that your concern?

15 MR ALLEN: Yes, depending on the store range that you are talking about, yes.

MR O'DONOVAN: What sort of mark-up would cause you to think that they weren't passing through the pricing signals that were - - -

20 MR ALLEN: 400 or 500 per cent.

MR O'DONOVAN: 400 or 500 per cent?

25 MR ALLEN: Yes, depending on the store that you look at. I don't know how they cluster their pricing arrangements and I'm entirely not sure how they determine how much control a store manager has in terms of what pricing is, but looking at their Scan Data it's clear that there's a big range of stores that were way over the mark in terms of percentage mark-up.

30 MR O'DONOVAN: So is the 400 or 500 per cent consistently there for weeks on end?

35 MR ALLEN: It would appear backwards and forwards. They would come back down to what would be 50 to 100 per cent, sometimes a little bit less - 37 per cent I think was the lowest they came back down to - but then jumped back up to the higher percentage. It's a mixed system. When you average it all out, you can make it look quite nice. But when you look at it from a detailed perspective, it can be quite messy. We would actually prefer to have them sell more avocados, that would be the ultimate aim, and have a good partnership in the system, and we're working towards
40 that, but there's always a risk in that.

MR O'DONOVAN: Did you raise these issues with either of the major supermarkets?

45 MR ALLEN: Yes.

MR O'DONOVAN: What was their response?

MR ALLEN: Woolworths were very proactive in engaging. They sat down with both Henry and I and worked through the issue. We certainly had a difference of opinion on determining what the data actually said. As I'm sure you will know, data can be interpreted in 50 million different ways, depending on how you want to look at it. Unfortunately, Coles was certainly not in that same way proactive in wanting to work on a go-forward position. So from a Woolworths perspective they were very focused on ensuring, if there was a problem, they wanted to know what it was and how they could work to fix that problem.

10 MR O'DONOVAN: Is it fair to say that they didn't accept that the kind of behaviour - the deliberate maintaining of a high retail price was not an allegation they were prepared to accept?

MR ALLEN: I wouldn't say that they were - they had great difficulty in understanding that suggestion, yes, great difficulty in understanding that and accepting it, yes.

MR O'DONOVAN: If I were to ask them about it in the course of this inquiry, they would deny that there was any suppression?

20 MR KWACZYNSKI: They would remember it.

MR ALLEN: I'm sure if you spoke to the right people, they would remember the conversation. I notice that their legal counsel put a late submission into the inquiry, and we certainly received a strongly worded letter of, "Pull your head in and sit down, please." I would be surprised if they didn't remember it. There was certainly quite a media frenzy on it.

MR O'DONOVAN: Putting aside that pattern, just looking at that particular event in terms of the relationship between what the wholesale prices were available for farmers and what's happening at the retail level, we were discussing before how the farm gate price has been pretty consistent over time?

MR ALLEN: Yes.

MR O'DONOVAN: Consistent in real terms or just consistent in its - it's been \$2 an avocado for 10 years?

MR ALLEN: From a farm gate price?

MR O'DONOVAN: Yes.

MR ALLEN: No, consistent in straight dollars, not factoring in any inflationary impacts or other changes. So just in terms of dollars on the page return, it's been over the last five or six years reasonably consistent. Also, I'm generalising.

I would just like to put on the record that, depending on the region and the time of the year, there can be a difference in that particular circumstance. When I talk, I'm talking about an average over the full year. I want that on the record, just in case I have a grower come back and say, "My time of the year, it's been down over the last five years." But if we average it out over that period, it is pretty consistent.

MR O'DONOVAN: We haven't seen any consistent inflation in the price of an avocado at the farm gate?

MR ALLEN: No. If we factored in the cost of inflation and the other factors that have increased, I'm pretty confident that I would see a decrease in the return to the grower.

MR O'DONOVAN: Let's just be clear: if we track the price of an avocado, say, for the last five years, we would see on average the price of an avocado would have gone up less than inflation. So if inflation is 14 per cent, which I think it was, between 2002 and 2007, the average price paid for an avocado at the farm gate wouldn't have gone up 14 per cent?

MR ALLEN: No.

MR O'DONOVAN: Would it have gone up half that?

MR ALLEN: Somewhere between flat and half, yes.

MR O'DONOVAN: In terms of the retail price, what movement are we seeing at the retail level, on average? Do you actually collect data about that?

MR ALLEN: No, we haven't looked back on the last previous years because up until last year we had concerns about the price point at retail level, but it wasn't truly operating as a restriction in terms of sales. As part of our go-forward position we will do that, because we have worked out that we need some transparency in the system. So we are implementing that as an organisation.

MR O'DONOVAN: Based on the farm gate prices, you would not expect that avocados have been a big contributor to food price inflation at the retail level, unless something is happening up the supply chain?

MR ALLEN: Yes, that's right. There's no reason for them to have; farm gate returns have not increased over inflation.

MR O'DONOVAN: If we were to look at the retail price of avocados and start seeing above CPI level increases, it certainly can't be explained by what's going on at the farm level?

MR ALLEN: No, because, like Mr Young explained, price to growers at farm gate is so disconnected from what retail prices are, or even what prices are back at that

level in the middle of chain, growers get what they can based on the fruit that's actually being supplied. Therefore, it's very difficult to pass on higher costs from a grower perspective, even if they are being imposed on you from outside of your business practices.

5

MR O'DONOVAN: In terms of just looking at the end, the retail market for avocados, it would seem that your view is that there are problems created by the level of retail concentration for your product?

10 MR ALLEN: I don't know how you could argue otherwise, with what is basically a duopoly system that we run on. If we talk to - and we interact quite substantially with the international avocado community, and it's a very connected and marketing and retail oriented system - they complain about retail concentration in the UK and the US. And we say, "Well, imagine if you just had a Tesco's and Sainsbury's," and
15 they fall off their chair. Then you say to the Americans or the South Americans, "Imagine if you just had Wal-Mart and Kroger." I mean, they just find that unbelievably bizarre. So there's no way you can argue we haven't got retail concentration, from our perspective.

20 MR O'DONOVAN: There may not be an argument about that, but the question is: is it the source of specific problems that you have identified?

MR ALLEN: It can do nothing but impact on the supply/demand, I don't think. Is there an economist who would argue it doesn't?

25

MR O'DONOVAN: I'm not here to answer the questions.

Turning to the fact of New Zealand imports, which seems a peculiar result, for a New Zealand grower to sell into a market which is concentrated in a way that's causing
30 problems for Australian growers, why is there the importation into Australia of New Zealand avocados?

MR ALLEN: Because there's a market opportunity during that period when Australia can't supply as much avocado currently as the market demands.

35

MR O'DONOVAN: It's just a seasonal shortage that they take advantage of?

MR ALLEN: Yes, it's a seasonal shortage. They take advantage of that seasonal shortage, and that seasonal shortage has become less over the years, so they have sought other markets to solve their problem. Plus, in their particular exporting to
40 Australia arrangements and also exporting to other parts of the world, they have a very small domestic market; they can't rely on just selling into their market; they produce so much more product than they are able to sell, so the forces which actually band them together to be forced to supply, say, our two chains or somebody else, are
45 very strong.

MR O'DONOVAN: But export is not a viable alternative for Australian avocado growers?

5 MR ALLEN: It is, there's a little bit of export that happens. But in terms of an industry making investment decisions on promotion, promoting in your own country, which you then can directly benefit from, as opposed to promoting in another country, which any other country can come in and take advantage of you building consumption in that market, is a tough marketing decision. Plus on top of that we have quarantine decisions in terms of getting product into other countries.

10 We have had a market application into the US since 2001, 2002, and they approximately can just see us on the list a little bit, maybe. But you are talking about a 12- to 18-year average cycle to get into that market. There are opportunities, but they are not quite as simple as they might appear to the outside.

15 MR O'DONOVAN: Avocados are not an international traded commodified product?

MR ALLEN: They are, they are traded extensively. They are not as big as a banana crop or a citrus crop, but South America, Chile, Peru, Mexico, Dominican Republic, 20 Israel, South Africa, they all inter-trade, very much so. We have a higher cost of production, which challenges us in terms of the markets we can enter. It doesn't mean we can't compete under those markets, but if you're going to take the risk on a market, if you treat the world as one market and Australian consumers are one particular set of consumers, you make that decision based on a set of business 25 principles, you are forced to go to other places if this particular set of circumstances change or you are not able to build that business further.

MR O'DONOVAN: Does the existence of that international trade effectively create a limit on what you can charge at the farm gate for your product? Is it always an 30 option for Woolworths or Coles to go outside and say, "We'll just buy it from South America"?

MR ALLEN: No, not at this stage. In the future, that's quite possibly the 35 circumstance that will eventuate. Mexico has an application to export avocados to Australia, and Chile is on the verge of getting their application in. Both those countries our government is working on free trade agreements with, therefore, even though they are not directly linked to quarantine issues, there's the opening up of that trade which actually helps facilitate the process. So at that point in time we do begin to then be factored on top of our own domestic forces that are put in a duopoly, we 40 start to get these threats from outside, which aren't manageable in a duopoly system.

MR O'DONOVAN: If the behaviour you report is occurring, then the only effect that's likely to have is to suppress further the farm gate price?

45 MR ALLEN: Yes.

MR O'DONOVAN: But may not actually result in any passed on benefit to consumers?

MR ALLEN: That's right. It has only one direction, yes.

5

MR O'DONOVAN: In your discussions with overseas avocado growers who sell into the US market, which is less concentrated, do they get better returns than Australian avocado growers?

10 MR ALLEN: Depending on the season, they do. The US market is one of the higher value markets for avocados in the world and also a very undeveloped market as a whole. So they do quite well into the US market, yes, which is why it's been of such interest to a number of those South American and central American countries to access.

15

But in terms of timing and opportunity, we are talking about those export markets from an avocado perspective. They are attractive, but for them as exporting countries they want as many options as they can to spread their risk across the market, so that they have options if something happens in a particular market. That's why they will always open a new market, in preference to just concentrating on that single market.

20

MR O'DONOVAN: If that market were open to Australian avocado growers, is it likely that there would be a market opportunity there which they could exploit?

25

MR ALLEN: It is likely, yes.

MR O'DONOVAN: And market conditions there appear to be better than market conditions here?

30

MR ALLEN: Comparable. In terms of return to grower at the farm gate, they would be comparable value. I mean, it would be a decision to make in terms of building another market, so you have built more options in your business, as opposed to, "Wow, there's all this extra money in this market, we're going there." It's not that arrangement in terms of the market, it's more about it's a comparable market which would return economically to growers.

35

MR O'DONOVAN: Presumably it's not a market that is subject to this withholding of retail price reductions?

40

MR ALLEN: It's a more competitive market. I mean, you would have to look at the US system and how their chains set their prices from a fruit and vegetable perspective, but the competition that exists there is much greater than the competition that exists here, and also in terms of where they access their product from.

45

MR O'DONOVAN: When there is this big suppression of the wholesale price of avocados, are there no processors who make guacamole or some kind of avocado product which can take advantage of that?

5 MR ALLEN: Yes. There are other options in terms of where the product can be moved to?

MR O'DONOVAN: Yes.

10 MR ALLEN: The simple answer is that it's not - there's a lot of barriers to entry to processing in avocados, therefore you either build a business around the costs of setting up a plant and building that business on an ongoing basis - it's not just something you can jump into and out of as the market becomes available.

15 We had the circumstance where two oil companies who produce cooking grade human consumption avocado oil came from New Zealand and set up in Australia. They lasted for about two to three years, during a period in which they couldn't purchase enough product to make their business work in this environment, and moved out. Now, that just proved that processing in avocados is a tough zone to
20 operate in, and expensive, therefore it's not something - it's not like juicing or something like that, where you give it a squeeze and if you've got a bottle, you stick it in.

25 COMMISSIONER MARTIN: Mr O'Donovan, I'm conscious of the time. Did you want to move on a bit to the wholesale market as well? You seem to have focused on retail and retailers.

30 MR O'DONOVAN: If you have specific comments on the wholesale market, certainly feel free to make them, but it sounds like it operates - - -

MR ALLEN: Well, it operates like the wholesale market always has operated. I think the wholesale market system that we have in Australia has been built up through many years of processes. Some of what Mr Young said we would agree with 100 per cent, some of it we would probably have some dispute in some area.

35 There are some issues about returns, determining prices for a particular product, we have averaging, all of those sort of things, become an issue in terms of transparency. Probably that's all - the overarching comment is the more transparent the system is at a wholesale level, the better for the whole industry, and we would argue better for a
40 strong wholesale market sector, because that's what we really want: we want a strong wholesale market sector that gives growers another choice between direct supply and maybe local supply as the three options you might use.

45 MR O'DONOVAN: In terms of the horticulture code, do you think it was an improvement on the market as it was prior to the introduction of the code?

MR ALLEN: I think that's something that's going to be - it's too short a time to actually make that assessment. It's unfortunate that the code didn't apply to retail and to export and processing, that's very disappointing from our perspective. I'd say 99 per cent of the time retailers would operate above the code any anyway.

5

MR O'DONOVAN: In terms of the standard they apply?

MR ALLEN: In terms of the standard they apply. So by excluding them, it does give one the impression that there was something, there was some issue, because from our understanding they would have no issue in meeting the requirements of the code, and building that into their business practices probably would not have been an onerous process.

10

MR O'DONOVAN: If I can just stop you there, one exception seemed to be the rejection of product. Do you agree with that, that there is an ability of the supermarkets, because they are not bound by the code, to return fruit to the grower in a way that a wholesaler now cannot do?

15

MR ALLEN: There would appear to be a difference in terms of reject systems, yes.

20

MR O'DONOVAN: In terms of the standards supermarkets have for themselves, do you think that they are fairer and more transparent and honest about the reasons that they are returning and rejecting fruit than a wholesaler?

MR ALLEN: There's always reports that - it's hard to make that judgment, because in some circumstances they are perfectly justifiable in their rejection, absolutely, but in other circumstances it's a tenuous and very arguable knock-out reason. It's usually gone before it gets a secondary look. Do you argue with one of the biggest customers you have or do you just take it on the nose and move on and hope that you get the order next week? So who would know.

25

30

MR O'DONOVAN: Is the issue here that when a retailer or a wholesaler suddenly realises it has more stock than it wants to deal with, it will start saying, "It's not to spec, it's blemished," so you are not getting an honest reason for rejection?

35

MR ALLEN: It's one way of making that happen, yes.

MR O'DONOVAN: But is this a real problem, a substantial and significant problem that we need to look at in terms of the code?

40

MR ALLEN: It's probably more related to price reduction. I mean, they will still make the sale usually, but it's sold for much less because of, blah, blah, blah - more so than an absolute reject, when you're talking about the wholesale level. Whether that's the case or not is arguable. But the code should be able to put into place that measurement system that allows for that, that checkability.

45

I would argue that the code probably needs five years and some tweaking. It does need some improvement, just ensuring that it meets what it was intended to meet going forward in that period. But when you are talking about a set of business practices that have existed for 50 or 100 years, you are not going to change it in
5 12 months. It's just not physically possible.

MR O'DONOVAN: In terms of your members, your preference would be that it also apply to supermarkets?

10 MR ALLEN: Yes, absolutely. I agree with Andrew Young wholeheartedly. It's very sensible to have it across the whole system.

MR O'DONOVAN: If the commission decides that it wants to look more closely at this question of whether or not the major supermarkets held retail prices at very high
15 margins and had these negative impacts on the whole pricing for a long period, you are happy to provide us with whatever information you have that will enable us to have a look at that question?

MR ALLEN: We can provide you with the volume data, the available supply data.
20 I would suggest that I'm legally not allowed to provide any of the Scan Data through our arrangements; there are very strict, very thick contracts about how we can use that data in any kind of detailed way. But I would expect that this particular inquiry would have the power to obtain it; I would be very disappointed if you didn't. I would be very disappointed if you didn't utilise that across all of the retail sector.

25 MR O'DONOVAN: That's all I have.

COMMISSIONER MARTIN: Thank you very much. Sorry it took a bit longer, but it was well worth exploring that issue, which is complex. Thank you for appearing.

30 MR ALLEN: Thank you.

THE WITNESS WITHDREW [4.05pm]

35 **ADJOURNED [4.06pm]**

RESUMED [4.10pm]

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COMMISSIONER MARTIN: We will continue the hearings. We have representatives of the Queensland Citrus Growers. Gentlemen, if you could identify yourselves and indicate your roles with the organisation.

45 MR SIMPSON: Thank you. I'm Chris Simpson, the manager of Queensland Citrus Growers. With me is Kevin Parr, who's a member of our management committee.

He's also the treasurer of our association. The president of our association is Nick Ulcoq, who is a citrus grower from Gayndah, and he's not present with us today.

MR O'DONOVAN: I have some opening remarks, if I could.

5
COMMISSIONER MARTIN: Before you do that, just in terms of our process, you are aware of our processes, and the chairman set them out and referred to them when opening today's hearing. But I just need to note that it is an offence under the Criminal Code to give evidence to this inquiry that a witness knows is false or misleading or omits any matter or thing without which the evidence is misleading. You understand that, gentlemen?

MR SIMPSON: Yes.

15
COMMISSIONER MARTIN: Just in terms of scoping out, we would probably aim to not go beyond about an hour. With that, you can give us some opening remarks, and Mr O'Donovan will lead the discussion. So you start off.

MR SIMPSON: Thank you. Queensland Citrus Growers is a representative body of the Queensland citrus industry. We have 67 members who represent about 80 per cent of the state's citrus production. There are three main areas of production in Queensland: the central Burnett district, which is around Gayndah and Mundubbera, about 200km inland from Bundaberg; the Wide Bay/Burnett area, which is in a similar area but a bit closer to the coast; and in the central highlands at Emerald, which is currently out of production since there was a big quarantine outbreak of citrus canker there about three years ago.

Queensland produces about 70 per cent of Australia's mandarins and also the majority of limes, although limes are still a very minor crop. It's also a significant producer of lemons and navel oranges.

We have made a full submission to the inquiry, which we formally submitted only yesterday, so that didn't give you a lot of advance opportunity to read that, but you have got it now.

35
COMMISSIONER MARTIN: We have been reading it this afternoon.

MR SIMPSON: The submission has been vetted and approved by our management committee and it takes an industry view that might be different from a commercial view.

In that regard, I mention that Kevin, who is the chairman of Sweetee Citrus, which is one of the largest commercial citrus entities in Queensland, they have structured their business operations around servicing the chains, and the current arrangements are working pretty well for their business, and accordingly he may have a different view on some issues from the commercial level than what growers feel about them back at the farm.

Nevertheless, the main concerns of everyone in our industry is ever increasing retail margins and shrinking returns to growers, and that's a concern shared by all of our members.

5 COMMISSIONER MARTIN: Okay. Mr O'Donovan may be able to elicit some similarities and some differences there.

MR O'DONOVAN: Are you a citrus grower yourself?

10 MR SIMPSON: No.

MR O'DONOVAN: You just act as part of the - - -

15 MR SIMPSON: I'm the manager of the association and basically an industry bureaucrat.

MR O'DONOVAN: In terms of how you solicited information to come to the conclusion that there was a concern out there that retail margins were increasing as the grower returns were reducing - have I got that right, that that's the concern?
20

MR SIMPSON: Yes.

MR O'DONOVAN: How did you solicit information in order to come to that conclusion?
25

MR SIMPSON: There's two ways, I guess. First of all, I've been involved for almost 20 years in the industry in a similar role to what I'm in now, so I've been broadly aware of the industry landscape for a long period of time.

30 In addition to that, since the formation of our association, only four years ago, four and a half years ago, we have structured our operations about providing a marketing support program for the industry, which means that we acquire a lot of information on market reports from Brisbane, Sydney and Melbourne, and also industry information, levels of production and stuff like that. That's all voluntary, so there's a
35 lot of gaps in the system, nevertheless we try to provide a two-way flow of information from the growing area to the market and from the market back to the grower and what's happening.

40 From a retailer perspective, we do talk to them, but I also go around and look in the shops and make notes of what I see during the growing season. In that regard, our growing season in Queensland, you have about a seven-month season that is starting for 2008 right now, last week, and it will run through until September, maybe a bit of it will drag on.

45 As I said in my introductory remarks, we produce mainly Mandarin varieties and we go through three distinct phases in our season: the early season varieties, which are imperial mandarins, which are the most popular mandarin in Australia, and that will

go for 12 weeks until June. In July there are the mid season varieties, and we have about three varieties that have about an equal share of the market during that period, but that's only a short window of one month. In August and September, tailing off into October there's the Murcott variety, which is a better variety than the mid season ones and it's our main export variety.

MR PARR: I would like to add that my family is the largest citrus grower in Queensland, plus we also manage orchards equal to what ours are, so we have control of about 25 per cent of Queensland's citrus, so we know quite a bit about the Queensland citrus industry.

We can give you at a later stage, if you like, all the figures that are needed to show that the price of our product is nowhere keeping up to inflation in any way at all, and we are going backwards, just because of different structures that are happening in the world citrus market at the moment. With other southern hemisphere countries coming in with a lot of production, that's taken our export market away, so we have to rely more and more on the domestic market, so that has a big impact on who we can sell our product to, so there are a lot of different influences that affect the industry at the moment.

MR O'DONOVAN: Just so that I understand the market and, I suppose, the shape of it, in terms of the citrus crop - just focusing on mandarins and the products you just described - how much of that is sold domestically, what proportion of the crop?

MR SIMPSON: For Queensland citrus, we export about 25 per cent, although there's been a major decline in exports over the last three years, so maybe it's less than that at the moment. But our crop has been down as well, because of drought effects and the like, although that's probably going to be better this year.

MR O'DONOVAN: Has drought had a big impact on the citrus?

MR PARR: Yes, very much so.

MR SIMPSON: It has, although not so much on volumes of fruit, but it has been down a bit.

MR PARR: Volumes, and quality is our main issue.

MR SIMPSON: And individual orchards that have run out of water. If people still have irrigation, they have generally been okay. But where they haven't had an irrigation allocation further up the catchment, for example, there have been a couple of orchards that have gone totally out of production because they haven't been able to irrigate their trees. So it's been pretty severe.

MR O'DONOVAN: Does that mean the trees are dead, or there's just no yield?

MR PARR: No, they're dead. They're cattle blocks now.

MR SIMPSON: Also when - I'm no expert on water issues, but when it gets down to a certain levels, you can still extract water from bed sands, so people are out there with excavators and stuff, digging holes in the bottom of the river, to pump water on to the trees. You get a lot of salty water when you do that, and that affects the trees.

5

MR PARR: The quality of the water affects the tree and then affects the quality of the fruit.

MR O'DONOVAN: That's the effect of drought.

10

MR PARR: Yes.

MR O'DONOVAN: 25 per cent to export, or something less?

MR SIMPSON: 25 per cent overall. As I said, Murcotts are our main export variety. We also export a few of the mid season varieties and some of our minor early season varieties, but the main variety, the imperial variety, which is the one that is coming into the market now, is basically totally a domestic market product. The reason for that is it has a fairly short shelf life and by the time you put it into a sea container and export it, the quality at the other end is not reliable enough to make it a major export variety. You could airfreight it, but that's very expensive.

20

MR O'DONOVAN: In terms of the domestic market, going through the retail chains, do you have a market share for Woolworths in terms of its - - -

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MR SIMPSON: I've never really considered that equation between the supermarkets.

MR O'DONOVAN: If we lump them together as Coles and Woolworths?

30

MR SIMPSON: I do, generally speaking, I look at them both pretty much the same. I would probably say a third to each chain and a third to the central markets. That's how I perceive it, but whether that's the reality or not, I'm not quite sure. But I view them both pretty much the same in terms of their influence in the market.

35

MR PARR: The thing is, if you look at the overall quantity of the fruit, it wouldn't be as high as a third/a third of production, but in that quality range that the chains take, it would be split up similar to that, but there's a lot more out of spec that won't go to the chain stores, that goes on to the domestic market. So your actual volume percentage of crop wouldn't be a third/a third/a third but a percentage of the crop that is the value for the chains, it would be that. But probably a third into both of the major chains and a third into the domestic market would be fair enough.

40

But then, like I said, there's a lot of unders and overs, what we call unders and overs and second grade fruit that just doesn't go into the chain, it all goes into the domestic market. If you look at the overall picture, probably about 40 per cent of the overall crop goes into the supermarket chains, and that's what's not exported.

45

MR O'DONOVAN: But they won't take fruit outside of certain specifications, so 100 per cent of that is all cleared through market and independents?

5 MR PARR: Not quite. Sometimes they have special buys, where they will go into the market or they will come to us and want to put a one of a cheaper line on. It doesn't happen that often. Very seldom do they come direct to the grower, but they might buy off the marketplace at a special buy, at a lot cheaper price.

10 MR SIMPSON: The chain stores always focus on what you call the premium sizes, the ideal size apple or ideal size mandarin, and the once that are a bit oversize, a bit larger or a bit too small, they're the ones that don't normally fit within their size specifications, as well as their quality standards as well.

15 MR O'DONOVAN: In terms of how they are sold, is most of the selling direct to the major chains or are they participants in the wholesale market?

20 MR PARR: The two big groups - Gaypak and the Sweetee group are the two major suppliers to the chains - between the two groups, we probably supply two-thirds, then the other third is split up around a lot of the smaller ones. There is one collective bargaining application that was put through the ACCC, and that's up and running this year, where another group of smaller growers have got together.

25 Basically, the two larger groups, Gaypak and Sweetee, do not direct sell as a direct sale. Gaypak go through a marketing system, still go through the central marketing, and then the agents buy it and sell it on to the chains. We direct sell, but we do it through a Brisbane agent, who controls the supply into Sydney, Brisbane and Melbourne, basically, and South Australia - not an agent, a merchant, sorry - he supplies. So we do it through another party, we don't go direct.

30 MR O'DONOVAN: You don't have a direct relationship with Woolworths?

35 MR PARR: No. We do, but we don't. We don't actually do the actual business side of it, but we do. None of the fruit hits the marketing system, it goes direct to the DCs, but it is all organised through a merchant.

40 MR SIMPSON: On page 3 of our submission, I basically explained the major changes in wholesaling, but it does explain how the growers have formed groups. Just a little tally: there are 79 growers in the main production area, there are 23 people who pack their own fruit or have central packing or whatever; out of those, there are probably eight major packers; and there's probably only five who are groups. Kevin's group, Sweetee Citrus, is a consortium of probably five major growers who got together.

45 MR PARR: Five growers.

MR SIMPSON: Gaypak is the next one, which is a genuine cooperative with about 23 growers involved in that cooperative, then we have a couple of others who

contract pack for themselves and a number of smaller growers as well, and they tend to have about eight or 10 growers that they service. So some of them then market that fruit under their common brand, and some of them are store packed fruit for another grower under his brand; he markets it himself under his brand. So it can
5 come out in about five different ways. Nevertheless, there are probably only about eight major entities in the Queensland citrus industry, and then about another 10 smaller ones.

10 COMMISSIONER MARTIN: Can I ask, in terms of the direct selling, Mr Parr, you said you had an agent - not an agent, a merchant.

MR PARR: A merchant.

15 COMMISSIONER MARTIN: How does that relationship work? Does it work under the code, given that he's buying - - -

MR PARR: Do you want to start on the code now?

20 COMMISSIONER MARTIN: I don't want to start on it; I want to know, does he operate under the code?

25 MR PARR: We operate the code between the growers and the Sweetee group, then the Sweetee group sells on. Because of the way the code is set up, it's impossible for us to use the code between where it's supposedly being used, because of the way we market our fruit through the pooling system. We have to pool to be able to centrally market and to distribute our fruit where we need to, so that each grower doesn't have to split up every bit of his fruit to go to every market.

30 The only way we could get around it was we had a code between the growers and the Sweetee marketing, and then we don't know what happens after that. I don't know whether I should be telling you that or not, but that's the way it is, because once we go past that, everything is pooled and we get paid back from the pooling system.

35 COMMISSIONER MARTIN: Your growers who supply Sweetee marketing, you just have a fixed price for them?

40 MR SIMPSON: Yes, we get a fixed price. We get a fixed price back from the chain and we get a fixed price back from our merchants, the merchants we deal with on the domestic market, then it all goes into a pool. It gets worked out on a per size, per grade and it's all per kilo, so it doesn't matter if it's packed in 9kg, 13kg, 18kg or 15kg boxes, which are all the different options we have, we put it all back to a per kilo basis and then we get paid out. So no one gets jeopardised if his fruit doesn't go into the chains that week and the chains are paying more. It's just an ease of marketing system that we have to have to make our operations work.

45 We are marketing about 1.5 million cartons of fruit, and to split it up into every individual grower, the five individual growers - this fruit went to Melbourne and this

fruit went to Brisbane - it's just impossible. It's not only that: because we have so many different sizes of packages, with Woolworths we use an 9kg box to supply imperials; with Coles with the imperials we use a 13kg box. Then you get into Ellendale mandarins, where some of them for Woolworths will be in a 15kg volume fill, Coles will be in a 13kg volume fill, you have got 18kg volume fill patent packed on the domestic market. So it gets - so we have worked out a system where we put everything back to a per kilo basis.

10 COMMISSIONER KING: Just so that I can look at it, the price that Sweetee gets from the merchant is presumably unknown at the time that Sweetee has to buy the fruit from the farmers?

MR PARR: Yes, basically.

15 COMMISSIONER KING: There has to be some way that Sweetee gets around the risk. Is that the basis, that the guys who are in Sweetee are also farmers?

20 MR PARR: Yes, they are all farmers. We work out our price that we are going to sell them to the chains and we work out our price that we are going to sell to the merchant, and then the merchant - every merchant in Sydney or wherever, they have a price that comes back in, depending on quality of course, as long as there's no quality issue.

25 COMMISSIONER KING: You presumably can't do that perfectly in advance?

MR PARR: No.

30 COMMISSIONER KING: Does that mean there are some weeks where you say, "Oops, we paid a bit too much to you guys last week, so we will just reduce the price a bit this week"? The risk doesn't disappear, so was just wondering who is bearing the risk? Is it actually back to the farmers still, even though it's formally under the code?

35 MR PARR: Yes. It doesn't matter which way you go, it always comes back to the grower, the one who cops the risk. Wherever we possibly can, we have set prices. It doesn't always work, but most of the time that's the way we like to work. We like to know if our product is being sold before it leaves the farm.

40 COMMISSIONER KING: It's not being priced weeks in advance or anything?

45 MR PARR: No, we set a chain store price weekly. We go to the chain store, normally early in the week, and that's for the following week, and we get our orders in. One of our main issues with the chains is knock-out, for sure. But one of our main concerns is cancellation of orders, it's a real problem with us, where they have ordered at the beginning of the week, they will order, because sales are going pretty well, and then sales will slow up. So we have ordered, we have packed up in 13kg returnable crates, and once they are packed up in that and they have a date code on

them, and then you have them there and they are supposed to go on Friday and the order is cancelled Thursday night, so you have packed for the week and you have all these orders to go out, and 25 per cent of them might get canned. So what do we do with them then? We have to repack them.

5

COMMISSIONER KING: You repack them and then put them on to the wholesale market?

MR PARR: That's what happens sometimes. Sometimes we can do other things.
10 There are different things. They might go into crates. The returnable plastic crates are a problem.

COMMISSIONER KING: That's the issue.

15 MR PARR: The cardboard box that we use is fine, we can send them on - - -

COMMISSIONER KING: You can't use returnable plastic crates on the wholesale market?

20 MR PARR: No, you can't, because you lose track of it, and then we have to pay the cost have of them. In saying that, I'm not dead against returnable crates, I think they are a great idea, they are a great system, they are easy to cool, they have a terrific cooling system, the principle of it all. And when the system runs well, it's a great way to handle product.

25

COMMISSIONER MARTIN: It's a pity it's not standardised.

MR PARR: That's right.

30 COMMISSIONER KING: They are a bit like pallets, which are nominally all owned by Chep: they move around the industry and you have no idea where they are, but eventually they all turn up somewhere.

MR PARR: Yes, that's exactly right.

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MR SIMPSON: Can I just add, Kevin has set up his business to use those crates, but for other people who haven't, who have older packing lines, they are a real problem, and the cartons too. If you are stuck with a 9kg carton or a 15kg or 18kg carton is what your packing line handles, you basically have to reengineer it all to make sure
40 when you get packing line it will accommodate the new cartons, and there could be a major investment required there, and that is happening in some operations. You can get the 9kg carton and just have the inner sleeve coloured black, which is more expensive than the 9kg carton when it was just plain vanilla cardboard as well.

45 One of the ironic things about it is the whole point of the crates is the one-touch on the shelf and off the shelf, and when you go and watch them in action in the supermarkets, it doesn't work that way. They will pull out a black box from the

storeroom and top up the black boxes on display. Now, it's just a store design concept, which we will wait and see how long it lasts.

COMMISSIONER KING: I have noticed them do that.

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MR O'DONOVAN: In terms of when supermarkets have the ability to cancel an order, is it any time up to delivery?

MR PARR: Basically, yes.

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MR O'DONOVAN: They can just tell you, "Take it back, we don't want it"?

MR PARR: Yes.

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MR O'DONOVAN: Do they have to have a reason?

MR PARR: Well, the reason is they haven't got the orders they thought they were going to get, basically, and we wear it. A lot of the time we can date code it again for the next week, because we do have a fairly good life, but a lot of it, there are sometimes when you can't do that.

20

MR O'DONOVAN: Is the arrangement different with wholesalers, like property passes when a wholesaler says, "I'm going to buy your product," do they really buy it, or do they say they will buy it and then send it back to you in the same way?

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MR PARR: No. We might renegotiate a price sometimes. We are never going to - the last thing we want is the wholesaler to get caught with product that's going to sit around on the market floor, and then it creates that impression that there's a glut of product around or your product is not moving. So you are better off to sometimes - we don't always get it right when we negotiate a price the day before that product is going. If we get there and it's not working, we negotiate a price.

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MR O'DONOVAN: The wholesale market remains a dynamic price-driven place?

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MR PARR: Yes.

MR O'DONOVAN: But that's not really true with the supermarkets; it's a take or no take?

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MR PARR: Yes, if they get cancellation of orders, it's not normally because - it could be other reasons, if someone else has come in with a cheaper price. I don't want to say - I have to be careful - the chains are a very big part of our business and I don't want to do anything to jeopardise that.

45

COMMISSIONER MARTIN: Are you saying you have no evidence or you don't want to talk about it?

COMMISSIONER KING: Or would you prefer to do it in confidence?

MR PARR: I would prefer not to talk about it.

5 MR SIMPSON: Can I just say, in our submission - and I'm not very close to the
commercial level either - but it has been explained to us what the process is, which
I've put in here, and the chains basically get their quotes once a week. Then there's
negotiations around the quote that's put in, until they reach an agreed price, which is
10 usually back to the market price. It might not be the same. It could actually be
sometimes higher than the market price because the quality fruit might be better, and
the sizes, the preferred sizes that the market doesn't reflect, and then they will reach
an order.

15 But one thing that happens in that process is that there's a lot of claim and
counterclaim as to who's quoted what in the market, and with the quoting process,
there's no transparency in it, and a lot of people get very suspicious about. There are
horror stories that one person quoted a certain price, someone else quoted a different
price, which seems to be irrationally low, and you say, why is that? Maybe that was
20 a different quality or a different range of sizes or something like that; nevertheless it
might be held up as being representative of that other quote. And it leads to a lots of
confusion.

So there is a very serious lack of transparency in that process that causes lots of
problems, and in our respectful submission I think we have said that we really feel
25 the ACCC needs to delve into that in a lot of depth, just to understand it.

MR PARR: It does happen. We do have times when we're quoting out to the
following week, where we will bring our price back considerably because we know
30 we are going to come into a glut situation, where we might go from 10,000 cartons
this week to 70,000 or 80,000 cartons next week. We can't just sit on the price, so
we're going to drop the price, and some of the other smaller suppliers might say,
"What's happened to the price?" But if we hadn't done it - - -

COMMISSIONER KING: You wouldn't move your product.
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MR PARR: That's right, and we have to shift the product. When we do that,
hopefully it reflects the price that the retailer sells them for, and most of the time it
does.

40 MR O'DONOVAN: In terms of what sort of margin you think the retailers seem to
put on your product - - -

MR PARR: Pretty much the same as what the avocado boys were saying; anything
45 from 5 per cent up to - sometimes, when you get out of season product it might be up
around 1,000 per cent. It gets very high sometimes.

MR O'DONOVAN: Does that reflect just the sheer shortage of out of season product?

MR PARR: Yes.

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MR O'DONOVAN: So it's not any market manipulation on their part?

MR PARR: There was a fine example this year, where there's a world shortage of lemons at the moment, and California lemons normally pile in at Christmas time, and we were getting a certain price - we only had very few, a small quantity of summer lemons, so we don't have a big quantity at that time of year, and California normally looks after the supply in that December/January period. But the price we were getting didn't reflect the very high prices the chains were charging.

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15 MR O'DONOVAN: Why is that? If there is a big shortage of supply, surely that's a market opportunity you can take advantage of.

MR PARR: Yes, we try to. But it's still a lot better than what our normal price is; it just didn't reflect what the chains were selling it at.

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MR O'DONOVAN: Is that because they bargain better? When you see that 1,000 per cent mark-up - - -

COMMISSIONER KING: Sorry, Mr O'Donovan. There are no members of the press here any more. Why don't we formally go into confidential session, so that will mean, Mr Parr, you don't have to worry about anything you say being reported in tomorrow morning's newspaper.

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MR PARR: Okay. Good.

ADJOURNED

[4.38pm]

35 **CONTINUED IN TRANSCRIPT-IN-CONFIDENCE**