

Public hearing – Cairns

4 April 2008

Time: 11am – 5pm

Address: Cairns International Hotel
17 Abbott St

Room: Tully Rooms 2 & 3 (Ground Level)

Witness	Submission	Summons
Horticulture Australia Council Ms Kris Newton Chief Executive Officer	63	No
Horticulture Australia Limited Portfolio Manager Mr Richard Bennett & Consultant Mr Shane Corniskey	92	No
<i>Lunch 12.30 -1.30pm</i>		
Mareeba District Fruit and Vegetable Growers Association President Mr Joe Moro	n/a	Summoned & compelled to appear by ACCC
N.Q Banana Growers Co-operative Association Limited President Mr Barry Kanowski	n/a	Summoned & compelled to appear by ACCC

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TRANSCRIPT OF PROCEEDINGS

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

DR STEPHEN KING, Commissioner

GROCERY PRICE INQUIRY HEARING

CONDUCTED AT: CAIRNS INTERNATIONAL HOTEL, CAIRNS

DATE: 11.00 AM, FRIDAY, 4 APRIL, 2008

COMMISSIONER KING: Good morning, my name is Stephen King. I am a
Commissioner of the Australian Competition and Consumer Commission and one of
5 the presiding members of the public inquiry into the competitiveness of retail prices
for standard groceries. I welcome you all and declare this hearing open.

This hearing is convened under Part VIIA of the Trade Practices Act 1974. The
purpose of the hearing is to give the ACCC an opportunity to investigate in detail the
10 issues raised as part of the inquiry with industry participants.

Now, I wish to emphasise, many attendees at these hearings are not attending
voluntarily and have been summonsed under s.95S of the Trade Practices Act. In
particular, I note that in general the ACCC has summonsed all supplier companies.
Therefore, no conclusions can be drawn regarding a company's willingness to
15 participate in the inquiry from the fact that a company is appearing at the hearings.

Some of the material covered in the hearing sessions will be confidential and
commercially sensitive and, therefore, parts of the hearing will not be open to the
public. In particular, where a supplier company has been summonsed, it is likely that
20 much of the questioning will relate to highly confidential issues. As such, media
representatives and attendees should not expect the entire hearing for each of the
witnesses to be public.

The ACCC has to be able to investigate issues that are commercially sensitive to
witnesses without damaging the company's competitive position and commercial
25 relationships. This is particularly the case where a witness has been summonsed by
the ACCC and is forced to attend these hearings.

Transcripts of the public parts of the hearings are placed on the ACCC's web site.
30 The ACCC may disclose some aspects of the confidential components of the
transcript after consultation with the relevant parties after the hearings.

Where there are industry associations or representative organisations who are
attending voluntarily, it is more likely that most of the hearing sessions will be
35 public. That being said, I understand we have some growers attending this morning
and I suspect that a fair bit of the information that we will be after from you will
actually relate to your private business dealings and we will expect that that will be
given in confidential session.

Turning to procedural issues, all witnesses have received a document that outlines
40 how we intend to approach these hearings so I will not go through the procedural
points in detail. I just wish to emphasise that although we are not taking evidence
under oath at this hearing, it is a serious offence under the Criminal Code to give
false or misleading evidence to the ACCC.

45 Transcript of proceedings at the inquiry, other than proceedings which are held in
private, will be available on the ACCC's web site. The ACCC is not utilising

external counsel at this hearing. However, witnesses may be questioned by ACCC staff members.

5 That concludes my preliminary remarks. I thank all of the witnesses who are attending the hearings today. I realise that you are busy people and my apologies for starting a little bit late this morning. Attending these hearings, we do understand, can put a significant imposition on you and your organisations.

10 The first witnesses today are the Horticulture Australia Limited and we have Mr Bennett and Mr Corniskey.
Now, Mr Bennett and Mr Corniskey, if you would be able to state your relevant positions for the transcript?

15 MR BENNETT: Richard Bennett. I am the Product Integrity Manager for Horticulture Australia Limited.

MR CORNISKEY: Shane Corniskey. Food and Agri Business Consultant, CDI Clinical Management, based in Brisbane.

20 COMMISSIONER KING: I guess I will start, Mr Bennett, by directing my questions towards you. If you would be able to just briefly outline for us the role of Horticulture Australia Limited.

25 MR BENNETT: Horticulture Australia Limited is a grower owned company. It is set up under legislation but it is owned by the peak industry bodies who are levy payers under that legislation. Membership is divided into either A class, for those who have a statutory levy, or B class, for those who are voluntary levy contributors to Horticulture Australia Limited. The company manages over 1,000 research and development and marketing projects on behalf of industry and research and
30 development expenditure from grower levies, be they mandatory levies or voluntary levies.

35 It is matched dollar for dollar by the Commonwealth government. We turn over approximately AU\$80,000,000 per annum. We have a staff of 45 primarily based in Sydney but with a number of officers like myself who are not based in Sydney. Does that meet your requirements?

40 COMMISSIONER KING: That is a good start. Now, the research and development projects that are supported by Horticulture Australia Limited, they are actually subcontracted out to other parties, I understand.

MR BENNETT: In almost all cases, yes. There are occasions where a research and development project will be undertaken by a member of our staff but that's rare.

45 COMMISSIONER KING: Obviously a lot of the expertise and the questions that I am going to have relate to your impressions or your understanding of grower costs as to what occurs in the supply chain. I would like to ask just a preliminary question

because it is one that has come up at a number of inquiries and we seem to be getting a range of different information, as in the sense of the horticultural body. Do you have any feel or any understanding for how the retail level fruit and vegetables are split between the major supermarket chains and between other outlets, such as
5 markets, retail markets, fruit and vegetable stores and so on?

MR BENNETT: Well, certainly speaking from my experience, I have an understanding of that and I think this inquiry has actually been quite eliminating in actually I guess confirming some of what industry understand as being the position.
10 I guess it has also tested some industry members' perceptions of what those channels might have contributed or the proportion of sales that they might have represented. So yes, we have got an understanding of ---

COMMISSIONER KING: Are you able to put numbers or percentages on that?
15

MR BENNETT: Well, if you are looking at major supermarket chains, yes. I fully agree with the data that is coming through, you know. Whether it is 43 or 45 per cent, we won't split hairs on it but, you know, it is around that region, yes.

20 COMMISSIONER KING: So around the mid 40?

MR BENNETT: Yes.

COMMISSIONER KING: We have had claims made on the public record in these
25 inquiries as low as 35 per cent and as high as 65 per cent.

MR BENNETT: I'm happy with the data that I've seen that suggests that it is that in fresh fruit and vegetable sales. We are not talking about grocery sales.

30 COMMISSIONER KING: Just fruit and vegetables, okay. So do you have any feel for how that has changed over recent years? Are the major supermarket chains increasing their share of the fresh fruit and vegetable retail level sales, or is it pretty much similar over the last decade or what's happening?

35 MR BENNETT: Well, Shane's done the analysis on that.

MR CORNISKEY: I'd suggest that over the recent years, and if we are talking of five years here that the proportion of fruit and vegetables that are sold through MSCs has actually slightly decreased and the proportion of fruit that is sold through
40 independent greengrocers has slightly increased.

COMMISSIONER KING: Okay. Do you have any opinion as to why that small change has occurred?

45 MR CORNISKEY: I think it is due to the competitiveness of the independent greengrocers with the major supermarket chains. I will call them MSCs. I think that we will generally see, when you are looking at individual greengrocer businesses -

and we have looked at a small selection of those - I suggest that the profitability levels that they are achieving are quite robust and so, therefore, they are able to compete reasonably well as a general rule across directly and that with some of the MSCs. Obviously there are cases where that's not necessarily the case, the different
5 businesses and that are performing differently, but as a general overall rule, yes, we think that the independent greengrocers are very robustly competing with the MSCs.

COMMISSIONER KING: Do you have any understanding - I won't ask you for exact numbers but do you have a feel for how the major supermarket chain sales at
10 45 per cent approximately is split between Woolworths, Coles and if I can call them "the others", the independent Aldi and so on?

MR CORNISKEY: Not so much beyond the Coles and Woolworths in that there is not a lot of, you know, good strong, robust data there and it is changing a heck of a lot. Certainly I would believe that Aldi is aiming for market share, particularly even
15 in fresh fruit and vegetables, but I think there is probably about a 5 or 6 per cent split in market share between Woolworths and Coles with Woolworths being the more dominant.

COMMISSIONER KING: So you would look at probably Woolworths, say 25 per cent to 20 for Coles or perhaps a bit under?

MR CORNISKEY: Yes, something in that order.

MR BENNETT: In that order.
25

COMMISSIONER KING: And that is your experience as well?

MR BENNETT: Yes.

COMMISSIONER KING: When we look at the major supermarket chains, and obviously we will come back to discuss how the fruit and vegetables get from the farmer's gate to the major supermarket chains, if we compare major supermarket chains and the greengrocers, obviously there are different ways that they source their fruit and vegetables. Again thinking at a retail level, do you see there as being any
35 major differences in terms of the quality and consistently of the fruit and vegetables that come through the major supermarket chains versus the greengrocers?

MR BENNETT: You know, I don't think there is a single answer to that. It depends on the type, the variety, the timing of the season and all the rest of it. You can make generalisations that suggest that the independent fruit and vegetable retailers might
40 have in general a higher level of quality and because of their overheads and a whole range of reasons, in fact, they can still make a living out of a higher purchase price.

Having said that, their ability to compete is more than - is not necessarily based on
45 price, it is based on service and location and convenience and a whole range of other things that they are able to offer, in particular the knowledge and skills of a lot of their staff. So there is a whole range of reasons why they are able to compete but as

far as generalisations on quality, you know, I can - my gut feeling is yes, they are able to consistently offer a higher specification product to consumers.

5 MR CORNISKEY: Yes, I would totally agree with that. I think certainly with the general greengrocers, particularly those that are competing in the same geographic space as Woolworths or as Coles, that certainly one of their points of differentiation is the quality of the product. I think they are able to achieve that through the fact of they are able to buy today, put it on the shelf, you know, a few hours later. I think their supply chain is a little bit shorter in terms of the procurement of their products and so, therefore, they are able to manage that chain a lot better and so, therefore, the quality is enhanced.

15 I think there are exceptions to that where there are lower priced or lower quality greengrocers and that who might be more fruit barn-type style and who are actually servicing a lower socio-economic sort of demography and that where the quality of the produce supplied is lower, but that's purely based on the costs. They actually buy the product cheaper and they sell it cheaper.

20 COMMISSIONER KING: Now, if we can come back to I guess the other end of the chain, back to the farm gate, I will ask you I guess some general questions to start off with but then I would like to in a sense turn to some specific products, and I note your recent submissions to the inquiry which has, I think, nine case studies in it. So I will be referring to some of the products that you have looked at in detail but if we come back to it again at a general level, can you just briefly describe the different ways that fruit and vegetable growers tend to get their product to markets? So the different avenues that it goes from, and again if I can keep with fresh rather than looking at products that go to a manufacturer, such as the macadamia case study that you have got. If we can keep with just the fresh fruit and vegetables, what are the ways that the product goes from the farm gate to the customer?

30 MR CORNISKEY: Okay, and we are talking retail here.

COMMISSIONER KING: Yes.

35 MR CORNISKEY: MSCs.

COMMISSIONER KING: MSCs, and also, through greengrocers. As we know, they do use alternate channels so a brief description of those alternative channels.

40 MR CORNISKEY: Okay, if we talk about MSCs, there is a variety of different mechanisms. One involves a grower dealing directly and that with the retailer and so they are a single supplier to that particular retailer. There are examples of what we call "grower consolidators" in the industry where the grower in their own right supplies a product and that to the MSC but also draws product from other growers and then co-ordinates supply of that product to the retailer. There is also examples of what we call "non-grower consolidators", many of which have evolved out of the wholesaling sector. We once again take multiple growers' products and put that together as an offer indirectly to the MSCs and there is much less now, which is

continuing to decrease, where the major supermarket chains actually purchase a product directly off wholesalers in the marketplace to fill what I would call their gap needs.

5 COMMISSIONER KING: Okay. Now, essentially when you talk about the wholesaler market out to the MSCs, you said that is fairly small. Are we talking about just a couple of per cent, 5 per cent, 10 per cent of what would go through the MSCs?

10 MR CORNISKEY: It varies depending on the MSC. Certainly Woolworths has a greater propensity to buy off wholesalers and that percentage would be somewhere, depending on product lines, 10, 20, maybe 30 per cent. It does vary considerably, depending on the nature of the product line. Coles certainly is more involved in non-wholesaler sourcing of the product. In some instances that may be zero but at
15 certain times with certain products again it could be 20, 25 per cent.

COMMISSIONER KING: Now, if we compare how greengrocers, the local fruit and vegetable store, tend to be supplied, what is the main channels that those stores would use?

20 MR CORNISKEY: Most certainly the major channel, particularly major metropolitan centres, is from wholesalers who are located in the major central markets. In some of the more regionally-based centres the retailers and that may buy direct off the farm and that for a certain proportion of their needs but because of the
25 diversity of products and that that are needed, obviously they can't buy all of their products off a single grower. So by far and away the majority of product sourced by the independent greengrocers comes from the central wholesale markets.

MR BENNETT: Sorry, if I can add to that.

30 COMMISSIONER KING: Yes.

MR BENNETT: I think the submission highlights the fact that there are businesses which specifically consolidate for regional outlets.

35 COMMISSIONER KING: I was about to ask about that.

MR BENNETT: And I think that is important, and they actually have a very important role.

40 COMMISSIONER KING: Now, do they tend to - if I can call them "regional consolidators", do they tend to purchase direct from the farmer in the regional areas and then supply to the greengrocers in that area?

45 MR BENNETT: Both.

COMMISSIONER KING: Or do they use the market system as well?

MR BENNETT: Both.

MR CORNISKEY: And probably more majorly through the wholesale system, I think we have referred to them in our submission as "country order suppliers". They
5 are not wholesalers, although there are some examples of that, but certainly a lot of the time there may be groups even in major metropolitan centres where, you know, eight or 10 independent greengrocers and that may actually use a single person and that to go and buy on their behalf and supply the product and that to them.

10 COMMISSIONER KING: Now, if we consider individual products, the case studies that you have given to us tend to show that different farmers or different growers tend to use quite different channels. You have the situation going from 100 per cent going through a wholesaler at one extreme to 80 per cent direct to MSCs at the other extreme. Is that generally representative in the sense that there is no average grower
15 and there is no way an average grower gets to market their individual growers and they make their individual choices?

MR CORNISKEY: Most definitely, yes.

20 MR BENNETT: Yes, for a whole range of reasons, whether that is history. A lot of them have had - you know, there are relationships between producers and wholesalers that span generations, just as there are - I think your Woolworths submissions suggest that 80 per cent of their suppliers have got a history lasting over 10 years as supplier. So there is a whole range of reasons why that is the case.

25 COMMISSIONER KING: So history is one reason why a grower may tend to either favour one channel over another channel. What other factors come into play? How much movement is there by growers between channels? How has that changed over time? If you can give me an understanding of that and what are the factors that lie
30 behind it, other than history, and I understand ongoing interaction, a good understanding with the wholesaler or with the major supermarket chain is a key factor. The business relationship is important. What else is important?

MR CORNISKEY: I think beyond history, and it is detailed in the second
35 submission on p.45, you know, one of the obvious and probably the most important consideration is price return, you know. Where do I get the best price? As Richard has enunciated, history. Who is it that we have done business with over a period of time? There is in some instances this strong belief or philosophy in supporting the central market as being a price-setting mechanism and there are a number of growers
40 and that who say "We will never deal direct with MSCs because we just believe in the need to support the central market". That is a philosophy or a belief. I think it is fair to say that the variations in marketing skills is a very important consideration.

45 Some growers say that "We are not marketers, we are produces, so therefore, we contract the services of other people and that who have those skills and marketing", hence the reason why they probably have a greater predominance of either supplying wholesalers or brokers, people and that who have got skills in that area. Also, I think

risk minimalisation is a big area where some growers, you know, like to supply a product and that to both major markets, whether it is direct or wholesalers. They tend to spread their product and that so that I guess in their instances it is about, you know, averaging, of trying to achieve the average performance if they could.

5

It is also very much the case that it is unlikely that an MSC will be able to take 100 per cent of the grower's product because of reasons of grading, sizing, all of those sorts of areas, and the other one, I believe, is volume fit. It is a definite situation that if you are a smaller grower, particularly on a smaller end of the volume of production, you are not likely to be on the radar of an MSC. So, you know, they, therefore, then have to go through alternative market channels.

10

COMMISSIONER KING: Now, Mr Corniskey, there were essentially three items that you ran through there when talking about the different channels, other than reputation and history, and if I can summarise them: risk minimalisation, the MSCs can't take 100 per cent, and the smaller growers tend not to be on the MSCs' radar. I would like to run through those, although I will take them in a slightly different order to the order that you had.

15

20 You said that the MSCs tend not to take 100 per cent of the grower's stock due to issues of grading and sizing. Can you just expand more on what you mean by that? Why wouldn't an MSC take 100 per cent of a grower's crop?

20

MR CORNISKEY: Well, if you go into a supermarket, as it is for an independent greengrocer, they try and present to the consumer as uniform a quality of product within a particular agorographic space. If it is any product, they try and make that product as uniform as they possibly can because obviously the consistency of sizing or grading is something that the consumers and that obviously like to see, and it doesn't look particularly nice on a display to see a good product as well as, you know, a poorer appearance quality or a poorer quality product, you know, on the one display, and also, consumers want, you know, certain sizes of product. You know, they may choose - some consumers want large apples, some want small apples, some want medium-sized apples, and I guess the strength of the retailer is to anticipate what that desire is of the consumer and to obviously try and meet that need.

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MR BENNETT: Sorry, I think at the other end, Commissioner, that producers always produce a range of qualities and if I can include size in that, you know, we do have price look-up codes, for instance, for small, medium and large but retailers generally purchase within one range. If you look at the apple category, they might range 12 different varieties. Given the shelf space that they afford to each variety, they cannot actually logistically cope with more than one size range, a small, medium or large, for each variety. Coles actually tried this a few years ago where they actually had small, medium and large tiered on island displays at a retailer - in fact, in a way it was actually working - trying to assist industry to actually move a range of products but, in fact, it failed and for a whole range of factors, including margins on, you know, each different line and sales movement on each different line.

40

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They reverted back to the most preferred size range that consumers preferred. So it has been tried and, of course, industry would like to encourage it but in the end it doesn't quite work like that ---

5 COMMISSIONER KING: Okay.

MR BENNETT: --- despite the fact that that smaller or larger fruit may well be blemish free and have every other attribute, you know ---

10 MR CORNISKEY: Visual attribute.

MR BENNETT: --- visual attribute and unseen attributes, such as sugars or pressure or whatever. They may well be equally acceptable from consumers but it is just not a size that they prefer.

15

COMMISSIONER KING: Maybe like the apples my daughter always prefers, which are the smallest ones possible, because then she doesn't have to eat as much of it at lunch.

20

MR BENNETT: You know, as an organisation, we have had a program where we used, you know, the Wiggles apple snacks to use apples 58 to 62 ml in diameter for specifically that purpose and, you know, we sold 600,000 units in the first year. It failed to meet the sales criteria of the retailers within 18 months.

25

COMMISSIONER KING: There are a number of issues that you have just actually raised there. Firstly, let me come back to the interaction with risk. If the major supermarket chains only take particular grades of fruit, particular sizes of fruit and vegetables and they would be specified in the contracts with the growers, does that mean that essentially the supermarket chains are putting the risk back on the growers? If your crop ends up for whatever reason just not quite meeting the specifications, does that mean that the supermarket chain will simply say "Sorry, we won't take any of that". How does that affect the grower? What can growers do to try and deal with that type of risk?

35

MR BENNETT: There is a number of comments on that. Number one, retailer MSC specifications are flexible. In fact, for some lines, variation to a specification comes out on almost a weekly basis. For some lines, and I guess being in the Goulburn Valley, the apple and pear and stone fruit industry are close to myself, and in years where we have had summers like the one we are experiencing now where colour in Pink Lady apples, for instance, is just hard to get, all the other eating attributes are terrific but the proportion of the surface colour pink doesn't meet the specifications.

40

So both retailers in the past have, in fact, altered their specification for an entire season so that they can actually get sufficient quantities of the product for consumers. So I think they are quite quick on their feet in a lot of respects in order to make sure the consumers get the varieties they want.

45

COMMISSIONER KING: Okay. Now, when you say "quick on their feet" ---

MR BENNETT: They are in constant contact with their suppliers.

5 COMMISSIONER KING: Is it the individual growers or the individual wholesalers point out the issue to the supermarkets?

MR BENNETT: Yes.

10 COMMISSIONER KING: How quickly do they tend to respond? Are we looking at them saying, well, you know, weeks, days, hours. What sort of time frame?

MR BENNETT: I guess if I can keep on the Pink Lady analogy, it happened as soon as harvest commenced.

15 COMMISSIONER KING: Okay.

MR BENNETT: And it was quite expedient.

20 COMMISSIONER KING: So the growers and the parties the market chains were dealing with would have told them "Look, we have got an industry-wide problem here or a region-wide problem here in the Pink Lady crop".

MR BENNETT: In fact, it came as no real surprise to the retailers because in their
25 pre-season meetings with suppliers, you know, it was obvious that this was going to be the outcome and that the retailer should start thinking about it before the product actually starts to be supplied.

30 COMMISSIONER KING: Okay.

MR BENNETT: And it was anticipated. So, yes, it was a good move.

MR CORNISKEY: I think your comment, Commissioner, about either industry or regionally-based changes, if you look at what Richard was talking about with the
35 Pink Lady, that was a regionally-based issue. I think the situation does exist obviously where growers and individual growers, for whatever reason, may not be able to produce to the spec of an MSC and maybe the rest of the industry may be able to do that and it may be an individual management issue, an individual climatic issue. There is a whole range of issues and that there which may be just individual
40 grower specific and, yes, I think it is then the case that the MSC in their dialogue and that will say "Well, you know, you haven't got what it is that we want.

We will either cut back a little bit in what it is that we purchase and that with you", and if you consistently do that, I think there is probably - there is certainly examples
45 where, you know, the MSC has then said "Well, you can't deliver what it is that we want" and I would see that as being, you know, pure comments. The specifications are out there and it is up to the grower and that to as much as they possibly can, but

for areas like industry and regional issues and stuff, certainly we would find that they are quite back on their feet.

5 COMMISSIONER KING: I think the other side of it too, we keep on talking about
does the product actually meet the retailer specification. In fact, some growers target
on always exceeding the retailer specification by the biggest amount possible and, in
fact, the supermarkets aren't able to pay enough to attract their product. Now, in that
situation, would that product then move through the markets or would they
essentially, even though they are better quality than is in the contract, still supply the
10 MSCs?

MR CORNISKEY: I think there is actually - even in this limited case study work
that we have done as part of submission two, there is two examples there where the
growers deliberately supply more of their product and that to the wholesalers because
15 they know - they believe in their minds that they produce an absolute premium
quality product for which the wholesale network or the mid chain network and that is
actually prepared to pay more than what the MSCs are prepared to pay. I think it is
fair to say that the MSCs generally and that are not necessarily wanting and are being
able to pay for the absolute premium quality of produce all of the time.

20 COMMISSIONER KING: Okay. Now those two products that you mentioned, is
one the case study 8, bananas?

MR CORNISKEY: In one case it is case study 4, which is tropical fruit.

25 COMMISSIONER KING: Mangoes, yes. Sorry, tropical fruit.

MR CORNISKEY: Yes, and case study 3, mangoes.

30 COMMISSIONER KING: Okay, yes. Thank you. Just before we leave this
particular issue of risk though, for an individual grower, in your experience, if an
individual grower, for example, happens to have a problem, let's say a localised hail
storm creates some minor blemish on a crop, would the MSC tend to be
understanding of that situation or is it just a case of "You haven't met the
35 specifications. We can't shelf this with the unblemished fruit. Sorry, you will have
to find another outlet this year".

MR BENNETT: I think it depends on the product and the location and all the rest of
it. In fact, the Pink Lady example is almost a national issue, which is why the
40 national speak for both Coles and Woolworths.

COMMISSIONER KING: Yes, I guess I'm trying to get down to where it is almost
an individual grower or a couple of growers.

45 MR BENNETT: You know, it is unfortunate, but for that grower, it is highly
unlikely that he will have a - he certainly won't have a market with the MSC.

COMMISSIONER KING: Okay.

MR CORNISKEY: And probably quite a discounted market through the wholesale market network as well.

5

MR BENNETT: Yes, because there is just too much competition from a product that meets the specification, whatever that specification might be.

10 COMMISSIONER KING: Okay. So whilst the wholesale market is there as a bit of an insurance on the fruit, they won't have to dump the fruit in general unless it has sort of been so badly damaged.

MR BENNETT: I don't know what you mean by "dump" but it could be - there is another outlet, which is processing.

15

COMMISSIONER KING: Yes.

MR BENNETT: And, of course, I refer to processing particularly when it is not a part of the producer's normal supply program. Producing is in effect a salvage operation, unless it is dedicated crop like Valencia oranges or whatever but it is a salvage operation where hopefully you might recover the cost of harvest and you really must harvest a damaged crop like that. You can't actually leave the crop on the tree.

25 COMMISSIONER KING: Yes.

MR BENNETT: So something has got to happen to it so you might as well get juice and salvage at least your picking costs out of it, otherwise, you know, you might expend the funds to pack it either into the conventional packaging or even into more bulk packaging. In the case of apples and pears, it might, you know, go into a 400 kilo packaging or another form of packaging where you haven't actually expended what you would normally do on packaging and you are hoping for a lower priced market for it somewhere through the wholesale network.

35 COMMISSIONER KING: Okay. If we go just briefly to case study 3 from your submission, which is from mangoes, and I notice there is 40 per cent there directed to the MSC, 40 per cent wholesaler and 11 per cent goes to the export market and 3 per cent to processors, can you give us a bit of an idea of why is this grower choosing these different routes to the market and what is influencing that decision?

40

I mean, it is that the best quality fruit goes to export? Then, as you said, this particular grower, the significant amount of high quality fruit, does that then go to the wholesaler? What is making this decision? Why is the grower just simply not relying on one or other channel?

45

MR CORNISKEY: In that particular example, as you may see, case study 3 also includes strawberries. That particular grower is a strawberry and mango grower. If I

could just refer to the strawberries, if I may for a start off, that grower supplies - and the rest of the people who are here haven't got the benefit of seeing this table but this particular grower supplies 82 per cent of their product direct to the MSC, not even via a consolidator, and 11 per cent to a wholesaler, 1 per cent to export and 6 per cent to processors.

The position of that particular grower or the choice of that grower is the fact that they produce good average quality strawberries that are desired by the MSC. That particular grower has a very high degree of skill in listening to and doing business and that with the MSC and they appreciate that, and that particular grower's total percentage of product of strawberries which is supplied to them has actually increased that's in the MSC.

They will say - and I think I will very quickly flick through to that - that particular grower will say that the pricing that they received for strawberries or the average net price that they received for strawberries is 18 per cent higher through the MSCs than what that is they receive through the wholesalers. In relation to mangoes, this particular grower produces a premium quality mango that he believes, in particular one MSC, is not prepared to pay the high prices that he asks for that particular product.

They are able to achieve that price level in a particular export market and so, therefore, only a proportion of that or 40 per cent of that product goes through one MSC but not the other one, and he believes that the wholesale market, certain segments of the wholesale market are prepared to pay for that particular premium quality of product that they actually produce.

COMMISSIONER KING: Thank you. So as well as considering risk, what the grower is doing there is considering the various options and say "Where can I get the most bang from the market?", if I can put it in that simple way.

MR BENNETT: Absolutely.

COMMISSIONER KING: Okay. I want to come back to smaller growers and their route to market in a second but before I get onto that, I noticed in your first submission you make a couple of comments that I would like just to get some more clarification on. You note that it is your understanding that Coles and Woolworths are reducing the number of suppliers that they are dealing with. Now, I guess the simple way of asking you this question is for me to say: is that a good or a bad thing and why? What implications do you think this has for the industry? Is it a good thing or bad thing? Does it mean we are going to see grower consolidation? Does it mean that the horticulture industry is going to start to become fragmented between those growers who are able to get big enough and good enough to service the MSC than the rump? So I would really like to get a bit of a feel about what this trend means.

MR BENNETT: It is an enormous - you know, there are books written about this, Commissioner, and that is that it is very difficult to understand the dynamics of the

industry. In fact, I see a lot of small growers who are, in fact, quite dynamic, quite versatile in their business model, able to adapt new business varieties pretty quickly, might pack their own product and supply the wholesale sector or local retail fruiterers or, in fact, other consolidators who then supply either MSCs or other
5 mid-chain businesses. So it is an enormous dynamic in the industry. When we talk about reducing the number of suppliers, I think both retailers - and correct me if I'm wrong - have publicly stated that the number of direct suppliers, so the number of suppliers supplying direct into their distribution centres, is reducing. That doesn't necessarily mean that the number of producers in this industry is diminished.

10 MR CORNISKEY: It is really because of the fact that we are going to see increasing numbers of consolidators, whether they are grower consolidators or non-grower consolidators, and the opportunity will be for, if it is a grower consolidator - sorry for interrupting, Richard - but for the grower consolidator to either increase their own
15 level of production that they supply through that network to the MSC, or as is very often the case, they will actually draw a product and that from other growers to then supply the MSC for a whole range of factors which in a lot of cases revolve around risk minimalisation.

20 COMMISSIONER KING: Presumably, the consolidators and particularly the grower consolidators, they themselves will have a contractual arrangement with individual farmers on an ongoing basis. Would that be a correct assumption?

25 MR BENNETT: Not necessarily contractual. It is not necessarily contractual but it is a relationship.

COMMISSIONER KING: Okay.

30 MR BENNETT: And it can change and a supplier to one of those consolidators might, in fact, supply multiple consolidators. Now, there are no hard and fast rules here.

35 MR CORNISKEY: I think the diversity of the relationship between growers and grower consolidators is enormous. It can be a relationship which is just basically unspec. Ring up, "I've got some product here" or "I need someone to fill an order. Do you want to supply? Have you got product of that particular standard and that to supply us?", "Yes, I have", and then there is an agreement to supply to a level where there are examples of grower consolidators who supply to the individual growers all the information about what variety, seed, may in some cases even plant the product,
40 may even spray the product, fertilise the product, harvest the products and so, therefore, the grower is a crop caretaker. And so there is an agreement on "When we take the product, we will pay you X" - sorry, "When we harvest the product, we will pay you X". So there is an incredible diversity of different types of relationships and that varies from crop to crop.

45 COMMISSIONER KING: Okay.

MR BENNETT: I think we will see change or where we have seen change in the last five years is some of those grower consolidators have, in fact, become substantial growers in their own right and if the smaller grower is endangered in any way, it is because what that grower is currently providing to the consolidator is, in fact, being
5 overtaken, if you like, by the consolidator's own production and that is just one of those dynamics. Now, I don't want to get into the argument of whether that is MISs or not because, in fact, I don't believe it is only MISs.

I believe that there are a number of family-based unlisted businesses who are, in fact,
10 very much into the business of having control over their supply chain from the agronomics, from the seed right through to the marketplace, and because that is the model that is evolving most successfully for them. Other businesses find that the risk of having - the risk is diminished by having land-holders, even if they are under some sort of production contract, actually taking that production risk for them
15 because of the elements you mentioned before; drought, hail.

Frost I think is, you know, a huge issue. So that's what I am saying, that the supply chain, particularly at the production end, is very dynamic and it is very hard to measure. Certainly in my 25 years in the Goulburn Valley, the ones that I've seen
20 disappear, in fact, have been the mid-sized businesses because they had a larger number of dependent families, really. The labour per unit of production was higher. They didn't have the economy to scale on issues such as the one cut packing, which is our best.

MR CORNISKEY: I think I might add, there are some - there are certainly examples of growers and that who say these sorts of things and they do occur to them. I think that most of the people that we spoke to as a part of the preparation of this submission, our previous experience would suggest that that situation is getting better, it is improving, and I think that largely is as a result of the changing buying
30 structures that the MSCs have evolved over multiple years.

There is much more centralisation of purchasing effort and that these days not necessarily on a State by State basis, and as a result of that, I think there is more knowledge. Also, some of the information technology systems that are in place are
35 better. So, therefore, communication from store level back to the distribution centre to buying agents is better and so as a result of that I think there is less of this right call at the last minute, "We don't want your product", but certainly there are examples of that that occur and I think, you know, the MSCs would probably say "Yes, it does occur". Whether it is on a background of whether it is spurious or not, I
40 think that is - I wouldn't really like to comment one way or other there in that instance.

MR BENNETT: You mentioned returnable plastic crates or alternative packaging formats, Commissioner, and certainly Horticulture Australia Limited did have a
45 research project which you have triggered my memory of which was actually to develop a model so that growers could understand the relative costs of existing and alternative packaging formats to understand whether they were going to be

advantaged or disadvantaged by the introduction of alternative packaging formats, and I think that demonstrated that there was no single answer, that it does depend on your proximity to the distribution centre, whether, in fact, you were a direct supplier or, in fact, supplying another consolidator before it went to the distribution centre.

5 There are a whole range of reasons why a business might get the outcome that they get. So that work certainly is available.

MR CORNISKEY: And I also think that it certainly is the case, as with both instances have gone to RPC-type operations where there are pack houses involved in the production of fruit and vegetables. Yes, certainly, they have resulted in needs to change configurations and stuff which have created additional costs, and certainly, you know, smaller pack houses and that where the MSCs are a small part of their business, they make the commercial decision "Well, we just won't supply the MSCs because it is not in our economic interest and that to do so". Certainly in relation to Coles, they will contend that when they negotiated the price that RPC's and that were to be supplied to the individual growers, they actually had those discussions on a one-on-one basis and actually looked at some of the costs that are negotiated with converting over additional transportation costs and they will say - I don't have evidence to prove it but to say that a number of those factors and that were amortised over a period of time in relation to the costing structures associated with RPC's.

COMMISSIONER KING: Thank you for that. I think with the issue of the small growers, you mentioned the small growers not being on the MSCs' radar, the issue of how those small growers tend to go through the markets or through the wholesalers. Those issues and the related issues to the Horticulture Code, are they best dealt with by the Horticulture Australia Council?

MR BENNETT: Yes.

COMMISSIONER KING: So I will hold off on those questions for the moment. Similarly, one other area that I wanted to touch on is the relationship that the pricing from under contracts with the MCSs - and this is one area which, I must confess, even after the information we have got, I still don't think I quite understand how the MSCs do their pricing back for the product - how they benchmark their pricing, whether that benchmarking system is fair. There seem to be some claims that at least because of the specifications that they use, they then benchmark against the wholesale market price that is claimed is an unfair benchmark. Are you able to give me some insight - and it may just differ massively by individual products and I suspect it does, which may relate to my confusion - but can you give me some insight into how the major supermarket chains price the product to the growers, how much risk that then puts back on the growers and is the pricing simply fair?

MR CORNISKEY: You're right. There is a very wide range of pricing mechanisms. Sources to us suggest that we are talking, in relation to Coles, about 25 per cent of their product lines have a component of fixed pricing over a period - over a significant period of time.

COMMISSIONER KING: I will actually ask you to speak up. I presume this PA is not working yet. Sorry, if you could just speak up. So the mic isn't going to help.

5 MR CORNISKEY: With particular products there are examples where the MSCs will have a contracted price in relation the whole season with either one or multiple suppliers, and at the end of the year or as a cycle throughout the year, one or two times they may actually sit down and have a look at that pricing. There are examples of where a product may be priced across a crop season, which might be one month, two months, three months and that with individual growers, but by far the more
10 predominant pricing method is on the basis of offers of volume, product, quality and pricing on a weekly basis.

A number of the MSCs - the MSCs will ask the suppliers to provide a forecast on, say, maybe a Wednesday or a Thursday in terms of what the product is that they have
15 got available, the sizes, the qualities and what their offer of pricing is and that for the next week.

COMMISSIONER KING: Now, when you say "the offer of pricing", that is the offer of pricing from the MSC to the grower or from the grower to the MSC?
20

MR CORNISKEY: In the initial stages it is from the grower to the MSC.

COMMISSIONER KING: Does the MSC then say "Well, what happens to that price?". Is it the case that the MSC say "We have added up all the volumes. Your
25 price is a bit too high. Sorry, we are not taking your product this week", or is there some sort of to and fro between them?

MR CORNISKEY: Yes, there certainly is generally a to and fro situation. The other supplies, if there is multiple supplies in the same time frame, there might be, say,
30 three or four supplies of a particular product on a particular week. It could be seven or eight or it could be just one, you know. There is multiple numbers depending on the product category. They may then say, you know, "Your price is a little bit too high and so, therefore, can you bring the price down?". It is subject to negotiation.

35 COMMISSIONER KING: Would there be reference to an external price benchmark in any situation like that to, say, the relevant wholesale market price?

MR CORNISKEY: Yes, most certainly.

40 COMMISSIONER KING: And how often would that occur? Is there any adjustment then to that price with quality differences and so on?

MR CORNISKEY: It just varies so much on an individual crop by crop basis but, yes, I think the opportunity for the grower is to say, you know, "Well, we are
45 supplying you a slightly better quality product and that so, therefore, my justification for the margin is X" but, you know, there is all sorts of variation and that but certainly the wholesale market is used as a benchmark in many, many instances.

COMMISSIONER KING: When is the point in the sense of no return for the grower? If I can characterise it like this, you have got the supermarket chain on one side. You have got the grower with the crop on the other side. The crop has to be harvested. The fruit has to be brought in or the vegetables have to be picked. You
5 know, there is some leeway there from the grower's perspective but there is an optimum pick time and you don't want to be saying "Look, I'll come to a deal this week.

10 I'll just leave the mangoes hanging on the tree until next week", partly because they might drop off in between times and it is not particularly desirable. So when does the option start cutting off for the grower if they just can't reach a price with the MSC that they believe is satisfactory? What is the point in time during the week, if I can put it that way, where they have to say "Okay, sorry, off to the wholesale market". Is it just before packing or when is it during the supply?

15 MR CORNISKEY: I think once again, incredible variations, but I think the general rule or the general rule of thumb is that there is a price - there is an agreement on price where there may be - you know, you may agree to supply lower volumes of the product and that compared to what that is they actually want. Most approved
20 suppliers to MSCs have an indicated volume of product and that that they might supply across a particular year and generally most of the MSCs will say, you know, "The approximate volume that we want to get from this particular supplier is such and such", but on a week by week basis that may go up or down depending on what it is that the other approved suppliers and that are actually doing, but certainly it
25 varies depending on the type of - on the crop.

COMMISSIONER KING: So if the grower is unhappy with the price, they may say "Look, you want this amount when it comes", it obviously depends on the crop,
30 "Look, I'll give you 50 per cent of that this week and I will put the rest of that out to market" or "I will reorganise my picking or whatever it happens to be". Is that what you are trying to ---

MR CORNISKEY: Yes, I agree.

35 COMMISSIONER KING: One point before we go, because I know a fair bit of your submission is actually on the costs facing growers, and I guess I have deliberately put that to last partly because that's what we have got the most information from you on, so I don't want to simply repeat what is in your submission. However, before we get to costs, just on one of the things that was mentioned about new product, I think a
40 new product in regards to apples was discussed a bit earlier on and with regards to it was in the supermarket for 18 months but it didn't meet the various targets.

MR BENNETT: No.

45 COMMISSIONER KING: How open are the supermarkets to new product developments? How hard is it to get them in there? Then, once they are in there, how tight is the fight for shelf space?

MR BENNETT: Well, new products in our industry are rare but new varieties and new packaging formats do occur. They have obviously got to - pre-season negotiations, you know, that go on obviously have to convince the procurement divisions of the retailers that it is actually going to return for the retailer an amount
5 for the shelf space that it is taking up that makes it warranted to do, and it could be it is a small trial but it then moves on to larger things. You know, I think what we have seen it recent times in differentiation of even some basic lines, you know, the potato line, you know, has evolved enormously in recent years to where it is taking up substantially more shelf space than previously. It was white, it was either washed or
10 brushed and that was basically it, and now you can get a variety for just about every day of the week for half a dozen different uses and that is terrific. You know, we have got 20 different lines of tomatoes ranging from \$3 a kilo to \$23 a kilo effectively and so that proves that the retailers, both MSCs or retailers, are receptive to innovation in supply both from product and format.

15 COMMISSIONER KING: Do the MSC tend to be receptive upfront or is it the case that the fruit and vegetable shops sort of lead the way, do the experiment and then the MSC tend to follow on if the product is successful?

20 MR BENNETT: I don't think there is a single model. I could say that Woolworths had equity to have in BRA, Breeders' Resources Australia or whatever it is, where they actually actively were in partnership with a business to seek and commercialise new varieties. So, you know, if that is not proactive, I don't know what is. Similarly, I know businesses that have a differentiation of an existing product, you know, they
25 have struggled to get shelf space for it because they couldn't demonstrate that it was going to provide a return all round. So I don't think there is a single model.

MR CORNISKEY: I think it is probably fair to say that MSCs and independent greengrocers see new products as a major or potentially major point of differentiation
30 from one another. Coles and Woolworths and that are always trying get an edge on one another and that may be through new product offerings. That said, it is, I think, quite difficult, particularly if you are involved in supplying a totally new product which might be, you know, in some sort of value-added packaging or new product-type formats.

35 A lot of the decision about whether or not that product is stocked on an individual shelf is actually up to the store manager. The store manager has targets and that which he is obliged to achieve and so, therefore, in a lot of instances, while the head office and that may be saying "Hey, this is wonderful. We want these particular
40 products and that on our shelves", the individual store manager may not stock that product on the basis that initially when you are introducing new products sales are generally slower so, therefore, the return per square metre of space, that may be lower, so that, therefore, has an impact on his own individual store margin. I think it also goes to the level of support that new products and that that are placed on shelves
45 are able to achieve.

I think it is fair to say that MSCs are generally not willing to have outside parties come in to promote products in that most of the product's promotions are done or are coordinated in-house and so it is very hard to get that product up and operating and in the eyes of the consumer. You know, they are not going to put a new bag of
5 something in the premium, the premium-most visual section of a particular shelf, because that is probably displacing something where they are getting very considerable sales. So, yes, whilst they want to adopt new products, sometimes it is hard and that to get some speed or get some ---

10 MR BENNETT: Traction.

MR CORNISKEY: --- traction in the store self.

15 MR BENNETT: Packaged Cellars I think is a classic case where I believe Woolworths persevered with that from 1997 to 2003 before they actually returned a product profit on that shelf space. Now, if that's not perseverance, I don't know what is.

20 COMMISSIONER KING: Okay, so it depends on the product. It depends in the sense going even down to the store manager level in that they are not unrealistic in the way they approach it.

25 One thing I will ask you and if you don't want to answer this question in open session, it is fine, is it just struck me that you might be the only people I can ask it in open session. Obviously out of Coles and Woolworths, who we have had in closed session, a variety of opinions about which of the major supermarket chains deals better with growers, which is the more efficient in terms of their dealings with growers and so on, are you able to say in open session any opinions that you have on
30 the relative performance from a grower's perspective on the horticultural industry's perspective of Coles and Woolworths, and I don't want to put you on the spot. If you feel that is something which you - because I realise it is something which can affect relationships with the grocery majors.

35 MR BENNETT: I am not able to make those comments in public.

COMMISSIONER KING: All right. It suddenly struck me you might be the only ones who could.

40 MR BENNETT: Certainly not, no.

COMMISSIONER KING: No, I understand completely.

MR BENNETT: I have my own opinions.

45 COMMISSIONER KING: Let's get back to costs. Now, your submissions obviously talk about a number of costs that have been facing farmers, such as fuel, labour, fertiliser, and so obviously an underlying reason for this inquiry is the belief

in Australia, based on ABS statistics, that the grocery prices in Australia have been rising faster than the OECD average and that includes fruit and vegetable pricing. Can you comment at a general level? From what you see, being people involved in the industry, at the retail level, do ABS figures ring true or do they seem to overstate the situation? Have retail prices for fruit and vegetables gone up significantly over, for example, the last five years, and if so, what's been driving it, and if not - well, we will move from there, if not.

MR CORNISKEY: I think it is fair to say that the average - there is lots of studies that show that the price that the consumer is paying for a basket of fruit and vegetables - and we are only talking about fruit and vegetable here, not general groceries - it has increased over the last five years because too much data suggests otherwise.

COMMISSIONER KING: Has it been fairly continuous over the last five years or has it been in the last couple of years it has really pushed ahead?

MR CORNISKEY: I think the average price, and even some of this comes back to my own personal experience that says that in the last four years there has been, on a product by product basis, some fairly rapid increasing in pricing but that may be due to a whole range of factors which have nothing to do at all with the fact that the chains are making a greater margin on the product.

There has been - and when you talk about some of the statistics in that they are based not necessarily on a price basket of goods as in terms of the dollar spent but they are actually based on indices, and an example often being said is that the price of bananas, when Cyclone Larry hit, whilst they went to enormous levels comparative to the average price and one of the major contributors to CPI increases, what it didn't necessarily identify was the fact that the volumes of bananas that were sold were significantly less and, you know, whilst the average price may have been higher, there is plenty of consumers out there who weren't buying bananas, they bought something else. So I guess what we are suggesting is some of the statistics say because they are not necessarily priced on a cost price basket of goods rather than on indices where there is actually waiting implied, that it may, in fact, be overstating the increase in pricing of fruit and vegetables.

MR BENNETT: I fully agree with that, Commissioner. I think that if you look at a basket that contains the same items over a period of five years, you will see those fluctuations. But if you look at the basket that the consumer has purchased over five years, you will see that they won't necessarily have bought salad vegetables when East Gippsland got flooded out and it was the primary source of supply at the time, or bananas, as was mentioned to other sub-tropicals when Cyclone Larry hit. So I think, you know, there is an element of not deception or intentional misleading but I'm just saying that there is a lot more - we don't anticipate consumer behaviour, if you like, behind a lot of those indicators or indices and so you've really got to look at actually what consumers are purchasing rather than that consistent basket.

MR CORNISKEY: I think also, particularly in recent times, not being a meteorologist but I would say that there has probably been some pretty major weather impacts, whether it is drought as a general rule across a lot of the major production areas in Australia which has caused in some cases lower levels of supply
5 which has then resulted in higher prices being paid by retailers or by first of all buyers and then obviously to retailers and, therefore, the consumers. There is the instances of floods. There will no doubt be a price spike in tomatoes in the next month or two because of floods and high rainfall delaying plantings in the Bowen area for tomatoes. So there are a lot of weather events which seem to have had a
10 greater frequency and a very significant impact on the supply of certain product lines at certain times.

MR BENNETT: We often regard flood and frost as big an issue as drought because you can actually buy water to actually grow a crop but if your crop is actually lost - I
15 mean our case in the Goulburn Valley with frost, you know, we grow 80 per cent of Australia's pear crop, for instance, and in 2003 and 2005 we had frosts and that spiked pear prices and so obviously consumers turned to alternatives.

COMMISSIONER KING: Just to make sure I don't lose my train of questioning, I
20 do want to actually just grab that last point that you made. How quickly do consumers switch between different fruits and between different vegetables? So is it the case "Look, apple prices can do almost anything. Consumers, they may switch between Golden Delicious and Pink Lady but they are not going to switch from apples to something else", or is it the case for most fruit "Look, apples are expensive
25 this week", you know, consumers just go and buy something else?

MR BENNETT: I think anyone who has studied consumer shopping lists and what we do when we go into a supermarket suggests that we actually make the decision when we are in front of the point of purchase, the shelf, and "I was thinking of
30 purchasing plums but mandarins are a better prospect at this stage price-wise". It is the share of stomach decision that is made and it could well be that the decision is in fact "All of this is far too expensive and I will seek some other food ingredient to fill the stomach", so I think it is probably spontaneous is probably the best answer to that.
35

MR CORNISKEY: And you have got some consumers who really, to be honest, don't take any notice of what the price of a product is. They don't understand the relativities and if they want to buy broccoli today, they don't probably even take
40 notice of the fact whether it is \$2.99 a kilo or 8.99 or 10.99 a kilo. They just buy broccoli but, you know, once again, the diversity or the extreme and that is enormous.

COMMISSIONER KING: Obviously one of the factors that has been mentioned for other primary products, that most notably wheat, has been international prices
45 moving up for the produce and that feeding back into Australia. Has that occurred to any great extent in fruit and vegetables?

MR CORNISKEY: The percentage of fruit and vegetables that are imported into Australia is overall very low. I think the estimate is somewhere in the order of two or three per cent as, you know, a total industry volume. Certainly at different times for certain products. Navel oranges, avocados, they come in at times when the
5 supply of product from Australia is either possibly going to be small or low or the quality of that product is not quite there, but certainly the pricing of fruit and vegetables in Australia is fairly island specific where you don't necessarily have any - you know, we are not really directed by what is occurring at a pricing level on the world stage. That said, you know, there are examples and I see in one of the
10 submissions where there was discussions about tomatoes that were brought into Australia from New Zealand and that then resulted in a lower than average price here in Australia. There is certainly examples of that but, you know, as a general comment, the pricing of fruit and vegetables in Australia is dependant on what the pricing is in Australia in terms of supply and demand.

15 MR BENNETT: I think it is a bigger issue for processing, Commissioner. Well, at this very time, but given that there is over 100 applications for pest risk assessments for a fresh product to actually be given quarantine clearance to come into Australia, it is an issue which is on the minds of just about every grower in this country and it is
20 of enormous significance to this industry, the potential impact of an imported product where it directly competes with domestic production. At the moment, the low level of imports which are fresh rarely, if ever, compete with domestic production, but certainly for processed products where price is more of a factor, and I guess that is more equivalent to your grain incidents where we actually don't eat wheat, we make
25 the product that is made out of it, as it is with a lot of processed products.

COMMISSIONER KING: I'm just aware of the time.

30 MR BENNETT: Yes, so are we.

COMMISSIONER KING: I have questions relating to farmer margins. They might be more appropriately put to the Horticulture Australia Council and their representatives.

35 MR BENNETT: Yes.

COMMISSIONER KING: Are there any other questions which spring to mind? No. Were there any other just final comments that you wish to make? As I said, we have got your submission on the price of the imports and their effects, which has been
40 very useful, and I will deal with the individual farmers. I think that is possibly the best way of getting - we have got the broad level approach here. I wouldn't mind getting the hands-on approach from the individual farmers. Are there any other individual issues though you wish to raise at this point in time?

45 MR BENNETT: I guess the only - there might be one only issue and that is with imported products and its need to meet the Australian requirements of the Australian Food Standards Code where it is suggested that the inspection requirements under

the imported foods program might represent a subset of the Food Standards Code as opposed to the full Food Standards Code and that may provide a level of competitive advantage for imported products. That assumes that an imported product is brought into this country on spec, which I believe is also rare, but it is still an issue and industry is very concerned about, you know, legitimate imports into this country and so I mention that as an addition.

COMMISSIONER KING: Okay, thank you. All right, thank you Mr Bennett and Mr Corniskey. Thank you for your input. It seems to me - I've been enjoying the question - is it worth actually having a half hour break for lunch? Now, that way we can try and get this sound system actually working. Is that okay from your perspective? I don't want to sort of detain you.

ADJOURNED [12.31pm]

RESUMED [1.16pm]

COMMISSIONER KING: Welcome back. I will now reconvene the hearing and I welcome the Horticulture of Australia Council. I believe we have Ms Newton, we have Mr Muraca, Paul Ziebarth, Peter Darley and Colin Cummings and I will try and keep it in order.

Before I start again, I just wish to remind you that this is an offence under the Criminal Code to give evidence at this inquiry which a witness knows is false or misleading, or omits any matter or thing without which the evidence is misleading. Do you understand that?

MS NEWTON: Yes

COMMISSIONER KING: Thank you. Let's get going again. First off, Ms Newton, can you just for the record outline the background, the function of the Horticulture Australia Council?

MS NEWTON: Horticulture Australia Council, known familiarly as HAC, is the peak national representative body for the horticultural industry.

COMMISSIONER KING: We have got a list of your members which you provided to us. Now, I understand that there will be confidential material that you wish to put before us but I would like to keep it a public session for as long as possible.

In your submission or your response to the issues paper you note three factors. The first is market failure. Secondly is the transparency or the lack of transparency in the industry, and the third is margins. Can I just ask you, Ms Newton, just briefly, what do you mean by "Market failure"? What is the problem that you see there?

MS NEWTON: In summary, I'd say that our view is that because there is an effective duopoly in terms of market power from the two major retail chains, that price signals are not necessarily returning from a very, as you heard this morning, complex value chain. Some growers deal directly with the retail chains and the clarity and transparency is usually there. However, as you saw, it is a much more convoluted value chain from thereon. There are consolidators, there are wholesalers, there is the central market system and so on and we don't believe that either the price setting mechanism or the price clarity back to growers is necessarily evident.

10 COMMISSIONER KING: If I can just break that down into a few bits. Some growers, as you said, deal directly with the major supermarket chains. Is there sufficient transparency in the grower contracts with the major supermarket chains and in that process of supply to the MSCs?

15 MS NEWTON: Our understanding is that generally, where there is a contractual arrangement that is on paper, there is, in fact, sufficient clarity. However, we are aware of significant numbers of growers who deal direct with the retail chains, the MSCs, who don't necessarily have those contractual arrangements in place.

20 COMMISSIONER KING: All right. Those growers who don't have contracts, are they dealing through the wholesale market or are they still dealing direct with the MSC?

MS NEWTON: No, they are dealing direct with the MSCs but don't necessarily have a written contract in place.

COMMISSIONER KING: What sort of contractual relationship do they have with the MSCs in that situation.

30 MS NEWTON: I think I might hand that question over to the people who actually have personal experience, if that is right. Is anyone willing to answer?

COMMISSIONER KING: Again, if you would prefer to say it in confidence, we can leave it to the confidential part.

35 MR MURACA: That's fine. Can I just firstly clarify? I will refer, say, to service providers and they will be the people who are providing product to the supermarkets. I refer to them as supervisors and then I will go down and speak to growers as well down the chain?

40 COMMISSIONER KING: Yes.

MR MURACA: So my understanding is the only people who do have any agreement, whether it be written or verbal, with the supermarkets directly themselves are the service providers, the major providers to the supermarkets. The growers, who are not necessarily known to the supermarkets, do not have any contact whatsoever with the supermarket. They deal with those service providers.

COMMISSIONER KING: Okay. So again, just if we can break it down into the two bits, where the grower does deal directly with the supermarkets and doesn't go through a service provider or some sort of wholesale or aggregator, would that grower, generally a large grower, have a contract with the supermarkets or are there cases ---

MR MURACA: I can only speak on behalf of our industry and I'm not aware of anyone that does.

COMMISSIONER KING: Mr Ziebarth, is that your experience?

MR ZIEBARTH: Yes, they don't have contracts.

COMMISSIONER KING: Sorry, they don't have contracts?

MR ZIEBARTH: You can be a direct supplier and not have a contract as a grower.

COMMISSIONER KING: So that is particularly in the vegetable area. What is the experience in the other areas, so I know, Mr Darley?

MR DARLEY: Yes, I will speak on that as an apple grower. I am not aware of any contracts whatsoever in the apple industry. Going back to what Nick said, there is service providers, particularly with the - on the major supermarkets. Woolworths probably maintain one major service provider that people go through. There is a couple of small cooperatives that deal direct with supermarkets particularly in my area, and that's at Orange, but there are no contracts. It is all verbal. There are no written contracts.

COMMISSIONER KING: If I could just concentrate on, for example, those cooperatives at the moment. And I should have mentioned, if in response to any question, you believe the answer is confidential, just let me know and I will come back to the issue later on in confidential session. How does the interaction between those cooperatives and the supermarkets then work? If there isn't a written contract, is there a verbal arrangement or is there a verbal understanding that the growers are working on?

MR DARLEY: It is certainly only a verbal understanding and that fruit is probably produced to their specifications. For reasons only known to the supermarkets they may not state, they could reject that product because in their verbal contract it is on delivery. So they haven't accepted that produce and it may be on their loading dock. They haven't actually received it, it is on delivery, and that's where they will reject for no reason other than known to themselves and they may not give a reason why they reject it.

COMMISSIONER KING: All right. Now, in terms of the specifications, are the specifications provided in writing by the supermarkets or are they simply known by the industry?

MR DARLEY: The supermarkets do have a specification that is available off their web site for everyone to download to those specifications.

5 COMMISSIONER KING: Okay. Do the supermarkets provide any feedback to the cooperative about those specifications or enter into any dialogue with the cooperatives about those specifications?

10 MR DARLEY: Very minimal in regards to that. Maybe it might be a colour standard that is not acceptable but they certainly don't go into very much detail about why they are rejected.

15 COMMISSIONER KING: Okay. Now, we have heard this morning about situations where there was a regional issue of matching specifications, in particular the example of I think it was Pink Lady apples was given. In your experience, do the cooperatives have that type of relationship with the supermarkets where they can say "Look, our cooperative or the members of our cooperative, due to the following reasons, are not able to perfectly match the specifications. Can we deliver fruit which is not on spec?"? Is there that sort of dialogue that goes along with the supermarkets?

20 MR DARLEY: Yes, certainly in that reference this morning, particularly the Pink Lady, because that is a very popular apple these days and supermarkets will certainly consider fruit that may be off spec particularly with colour, but if you go a little bit further and if it is hail damaged fruit, there is certainly no specification there from the supermarkets and they will certainly say they won't stock that type of fruit. So then you've got to go and look at another market and that is processing it probably at the rate of 10 to 15 cents per kilo, or you may be able to find a market on the wholesale market that may take a minimal amount of that fruit, but the majority of it does go for processing.

30 COMMISSIONER KING: With these verbal agreements, how is the price determined?

35 MR DARLEY: Probably be, from what I can gather from that, is the major supermarkets will particularly negotiate or look at a price probably in a planning of 10 to 14 days ahead of delivery on that product. Be based on their assumption of what is the price determine that they are going to pay and it will be up to the grower whether he is prepared to accept that price. If he is not going to accept that price or he is not going to deal with them, he will then consume his produce to the wholesale market.

COMMISSIONER KING: So in terms of pricing, in your experience it is a take it or leave it offer by the supermarket.

45 MR DARLEY: That's true, yes.

COMMISSIONER KING: Again, just to check, I will whip back up the line again.

Mr Cummings, actually, I should mention, we did have the avocado growers yesterday in a fair bit of detail so I'm not deliberately going to ignore you but we have had a fair bit of detail on avocados.

5 MR CUMMINGS: I would like to comment ---

COMMISSIONER KING: Please, yes.

10 MR CUMMINGS: --- because I have knowledge of the indirect supplier.

COMMISSIONER KING: Please, then, that will be an issue.

15 MR CUMMINGS: The issue of the contracts between Woolworths and the cooperative in this case is just a verbal agreement.

COMMISSIONER KING: Okay.

MR CUMMINGS: And the price structure is basically take it or leave it.

20 COMMISSIONER KING: Again to take it or leave it. And Mr Ziebarth and Mr Muraca, is that also your experience, that it tends to be a take it or leave it price offer?

25 MR ZIEBARTH: It can be quite more complex than that. I'd rather talk about that ---

COMMISSIONER KING: Offline, okay.

30 MR MURACA: And so would I.

COMMISSIONER KING: Okay. See if you could just keep a list of questions that I need to come back to offline.

35 Let me just follow up on another point that was mentioned by you, Mr Darley. Actually, one of the things I'm going to have trouble keeping track of is exactly who makes which point, so I'm actually not sure you made this point, Mr Darley, but someone mentioned the knockback at the delivery bay. When it is knocked back at delivery bay, is that the produce that is packed in the specific Coles or Woolworths plastic cartons, for want of a better word?

40 MR DARLEY: I'll answer that if you like. Particularly with Coles, of course, it is in their own returnable crates which they control themselves and that becomes very difficult because the - I will just use the example of the apple industry last year. There was a full semi-trailer load of apples rejected once they had arrived in
45 Brisbane. That fruit was rejected by Coles. They had to be returned to Orange for repacking at the grower's expense. If there is a rejection, up until this season when

Woolworths now decided to have a contract with CHEP in regard to returnable crates, they are still accepting what we call the black box, the black cardboard box.

5 So if there is a rejection there, you have still probably that window, if it is rejected to consign that fruit, that will redirect that fruit to the wholesale market, but once that fruit has been consigned to the wholesale market - and the wholesaler knows exactly where it has come from so he is not really going to do the right deed, unfortunately, that has probably got stamps all over it that it had been sent into Woolworths so buyers are going to be very cautious in purchasing that product and they would
10 certainly considering a purchase at a reduced price.

COMMISSIONER KING: Okay. Now, the rejected apples which you mentioned rejected in Brisbane, that was Coles, did you say?

15 MR DARLEY: Coles.

COMMISSIONER KING: Did Coles provide a reason for that rejection?

MR DARLEY: I am not aware of it. It is through the cooperative. I'm not aware of
20 what the statement was on that one.

COMMISSIONER KING: All right. Now, as you mentioned, there is the repacking. Presumably, again I will stick with apples because we need a sort of specific example on this. Can you give me any measure of the labour costs associated with the
25 repacking from the returnable Coles crates to a more standard box either in a per crate or per kilo sort of measure?

MR DARLEY: I can give you the cost just on the freight to start with. You would be looking at about \$4.20 freight.
30

COMMISSIONER KING: \$4.20 a kilo.

MR DARLEY: No, \$4.20 per unit of case.

35 COMMISSIONER KING: Okay, per case, yes.

MR DARLEY: Packaging, you would be looking at - these are figures I've just got to pull out of my head.

40 COMMISSIONER KING: No, that's fine.

MR DARLEY: But it would be reasonably accurate on repacking. You would probably be looking at \$1.7 per case to repayment in standard type cartons.

45 COMMISSIONER KING: Yes.

MR DARLEY: And then you have got the cost of returning those returnable crates back to Coles as well. So you would be looking, on an empty crate, of probably 55 cents per crate back to Coles' distribution.

5 COMMISSIONER KING: Okay. So we can probably say about a cost of \$6.50 per case is the extra costs associated with those.

MR DARLEY: Correct.

10 COMMISSIONER KING: Just on that particular - and again I will focus in on the particular because it is almost more enlightening than the general in a case like this - are you able to give an estimate of what the margin would have been per case from the grower's perspective or the co-op's perspective if those apples had been accepted by Coles?

15

MR DARLEY: That would be very difficult to answer because I wasn't ---

COMMISSIONER KING: Of course, you didn't have a price, yes. No, sorry, okay. Should we take away from this - I mean, we are looking at a cost of about 6.50 for the repacking per case. Can you give me at least a feel of --- is 6.50 a case a large number or a small number, or are we looking at a case margin of \$3.50 or are we looking at a case margin of \$10? So are we talking about 65 per cent of the margin or are we talking about ---

25 MR DARLEY: You would be looking at probably an overall cost, on the sale price that is on there, of about \$26. They would have been based on about \$2 a kilo the growers were getting for that fruit.

COMMISSIONER KING: Yes. So you are wiping off between 20 and 25 per cent?

30

MR DARLEY: Yes, 25 per cent, yes.

COMMISSIONER KING: Okay, and then when they go to the wholesale market, would you normally expect a lower margin on that case?

35

MR DARLEY: Well, first off, no, they would be very similar to the market price and there wouldn't be a rejection because they would have packed them in your normal marketing boxes.

40 COMMISSIONER KING: No, but what I'm saying is as you said, when you then go to the wholesale market with the repackaged fruit, in a sense there is a cost associated with that in that you don't get the price that you would.

MR DARLEY: Yes, correct.

45

MR ZIEBARTH: Can I just add something perhaps.

COMMISSIONER KING: Please.

MR ZIEBARTH: There is also the assumption that that fruit can be placed in the
wholesale market and quite often, because the wholesalers have very tight
5 relationships with the people that buy their fruit which are generally worked out
several days beforehand and they know that in any week they can place X amount of
fruit with their customers and if a semi-trailer of unallocated unplanned apples lobs
on the floor which has been rejected by supermarket, sometimes they really struggle
to place it because there is no market for it, and that then - the effect of that is it is
10 downgraded price-wise even more to just get it to go somewhere. So it is not as easy
as "We haven't been able to place it here so we will just flick it into the wholesale
market".

COMMISSIONER KING: No, I understand.

15

MR ZIEBARTH: Those relationships in the wholesale market are very tight. The
wholesalers do their forward planning with their own customers and the spontaneity
of it is decreasing. You used to be able to do that. Now you can't.

20 COMMISSIONER KING: With something like apples, with the rejected cases,
would they almost always be moved through the wholesale market or would there be
a direct sale to, say, a juice manufacturer or something like that? You know, at the
end of a process, if you can't move them through another channel, where do they end
up?

25

MR DARLEY: In juice.

COMMISSIONER KING: In juice.

30 MR DARLEY: And 10 to 15 cents per kilo.

COMMISSIONER KING: Okay, and would that be a direct supply to the juice
manufacturer?

35 MR DARLEY: Yes.

COMMISSIONER KING: Okay. Is that similar for other fruit and vegetables, that
the last resort in a sense is juicing?

40 MR ZIEBARTH: Well, for a lot of product there is no juice option, no processing
option, and the last resort is the cow or the pig.

COMMISSIONER KING: Sorry, the ---

45 MR ZIEBARTH: The cow or the pig.

COMMISSIONER KING: Mr Muraca, in grapes, similarly, what would be the last resort?

5 MR MURACA: Could we come back to that? That's why I was making some notes. I have quite a bit to say about that.

COMMISSIONER KING: All right. There was some news not that long ago about the last resort for grapes being on the ground.

10 MR MURACA: I must admit, that there is no repacking of table grapes et cetera, you just simply can't do it. There is that much is perishable that it doesn't happen but I would like to talk on the effect that it has on pricing when it is rejected.

15 COMMISSIONER KING: Okay. And similarly, actual avocados, repacking avocados must be a terrible problem.

MR CUMMINGS: It's a non-event if it has been ripened, yes.

20 COMMISSIONER KING: Okay. What would happen in that situation if there was a lot of - sorry, I should make sure the question is clear. If there is a delivery of avocados that is rejected by one of the major supermarkets, what is the alternative for the avocado growers or suppliers if it is, say, a co-op in that situation?

25 MR CUMMINGS: Well, from North Queensland, very little because of journey and distance. So it would end up in the central markets at a best sale price and if it is not sold there, it would be dumped with the farmer to pay the costs.

30 COMMISSIONER KING: Avocados, do they have to be supplied in the returnable crates by Coles?

MR CUMMINGS: Yes, and black boxes.

35 COMMISSIONER KING: So the black boxes, as I understand it, can go to market but how do you deal with the returnable crates from Coles?

MR CUMMINGS: I personally have not dealt with them.

40 COMMISSIONER KING: You have not dealt with them. Now, I focussed deliberately on Coles because Woolworths, as you have noted, has a slightly different arrangement. The Woolworths arrangement, is that more flexible in the sense that if there is rejected product, there is less likelihood of it needing repacking because it can be just in a black lined cardboard?

45 MR DARLEY: Up until now, yes, because you've got that flexibility of the black cardboard carton but I think we are seeing the direction, Woolworth is now with a six year contract with SHEP to supply their RPCs.

I think their attitude would probably be very similar to Coles but up until now we have had that option of rejection that "Maybe you can filter that black box back onto the market" because a lot of wholesalers have now requested for it to be placed in black wholesale - black cardboard cartons.

5

COMMISSIONER KING: Okay.

MR DARLEY: I can only speak for the apple industry.

10 COMMISSIONER KING: I understand. Is that similar experience in the other industries?

MR MURACA: Yes.

15 COMMISSIONER KING: It does strike me as being odd. I know the hearings are in early days but there does seem to be something that is a bit different about this industry and the use of the returnable containers or returnable crates compared to other industries, and the parallel I run is with pallets where there are CHEP pallets all over Australia and they are used and reused and they are standard, and they are
20 passed around industries and I think formally they always remain the product or the ownership of CHEP but, you know, there is not a situation "Gee, if you use my pallet today, you have got to return the wooden pallet to me and then repack on someone else's".

25 Similarly, we were discussing over lunch, and our understanding - although this is one of my colleague's understanding so I won't say it is gospel - it is that in the fresh fish industry it tends to work the same way, that you could go almost anywhere in Australia and the Sydney Fish Market containers are being used and reused and so on. Why hasn't that occurred, or in your opinion, why hasn't that occurred in this
30 particular industry?

MR MURACA: Simply because of the differences in the perishability of the products that we use. For example, if you are packing something that - now, what can I use as an example - something that is extremely solid in texture, you can pack it
35 in something that high. In table grapes, for example, you go to something that's a bunch of stems up. So, therefore, the difference that is required in packaging when packaging types is determined by the commodity of the product that you grow and more so by its perishability.

40 COMMISSIONER KING: But you could, presumably, have a standard grape crate which could be an industry standard used by Coles, Woolworths, the markets and so on.

45 MR MURACA: And that would be fine to the supermarket chains, but often, or in most cases I would say, a lot of growers, and I'd say again most growers, grow their fruit and not necessarily know where it is going to go. You might end up putting it in the wholesale markets in the major cities, you might export it or you might sell it to a

service provider because that's what most people will do. Most people are not lucky enough or haven't got the relationship with Coles or Safeways, whoever it may be, so therefore, you have got to leave your options open.

5 COMMISSIONER KING: Okay. If it was a standardised crate of Coles and Woolworths, there would be a fair bit of pressure on it for that crate to then be accepted, though, in most other parts of the market, I would have thought. Is that wrong?

10 MR MURACA: Not by the interest ---

MR DARLEY: No, definitely not, no, because you've still got your independents and they purchase off the wholesale market. So, I mean, there's got to be another range of packaging as well. I mean, we can't bow to the be all and end all of
15 supermarkets. I mean, just because they want it, we don't supply for not supplying supermarkets so why should we use that type of crate on the wholesale market?

COMMISSIONER KING: Okay. Are there any more comments on that particular line of questioning just at the moment?
20 Okay, thank you.

I started off by running one by one through the issues in your original submission, Ms Newton, and we have done I guess a bit of 1 and 2 together, the market failure. No.2 formally was the transparency.
25

Now, we have talked about some issues of transparency in the dealings with the major supermarket chains and the issues of contracts or lack of contracts and also the service providers there. Do the same issues of transparency come up in dealings with the wholesale market?
30

MS NEWTON: They certainly do and you are aware of the Horticulture Code of Conduct?

COMMISSIONER KING: Yes, I am.
35

MS NEWTON: However, I think at this point that might be something that we would be happy to talk about in confidence.

COMMISSIONER KING: Okay. So the Horticulture Code you prefer just to -
40 okay, that's fine.

The third issue is margins that you talk about in your submission. Again, if I can just ask you to briefly introduce that by saying what do you actually mean by there is a problem in terms of margins in the industry?
45

MS NEWTON: I guess it is a question in terms of the relativities of returns, that is margins, from all of those players in the value chain between the grower and the

consumer, and certainly our submission suggested that this was a fruitful topic for the ACCC to look at in more detail and to undertake some research on.

5 We certainly have submissions from growers on an ongoing basis that the relativities in their returns compared to other players in the value chain are not equitable, would be their view. We have no firm data on whether that is true or not and it seems, something that we would support from our submission, a very valuable thing for the ACCC to investigate.

10 COMMISSIONER KING: All right. I would like to discuss margins in the individual products.

MS NEWTON: Yes.

15 COMMISSIONER KING: But I assume that would be something in confident session.

MS NEWTON: Commercial in confidence, thank you.

20 COMMISSIONER KING: No, I understand that that would be commercially sensitive. I'm just having a quick look to see what else we can do in open session. I had sort of assumed that the Horticulture Code stuff - definitely close session, all right.

25 COMMISSIONER KING: I think we are going to have to go into closed session and I apologise for that to the various members of the public who are attending. I think it would be useful. It would be necessary now to go into closed session so that I can address some commercially sensitive issues with the growers that we have got here. So if I could ask that the room be cleared except for ACCC members or members of
30 the Horticulture Australia Council.

ADJOURNED

[1.42pm]

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CONTINUED IN TRANSCRIPT-IN-CONFIDENCE

CONTINUED FROM TRANSCRIPT-IN-CONFIDENCE

5 COMMISSIONER KING: Let's get started again and can I welcome Mr Joe Moro here, who is President of Mareeba District Fruit and Vegetable Growers Association. With you is Mr Scott Dixon.

MR MORO: That's correct.

10 COMMISSIONER KING: Mr Dixon, just before we get started, just for the record, could you name or could you state your affiliation or position?

MR DIXON: I'm a member of the Mareeba District Fruit and Vegetable Growers Association.

15 COMMISSIONER KING: Mr Moro and Mr Dixon, thank you for attending the hearing. I do want to just 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 without which the evidence is misleading. Do you both understand that?
20

MR MORO: Yes.

25 COMMISSIONER KING: Okay, thank you. Mr Moro, did we summons you to appear today?

MR DIXON: Yes.

30 COMMISSIONER KING: My apologies. Then let that be noted on the record.

MR DIXON: Yes.

35 COMMISSIONER KING: Let's start with Mr Moro. Could you just give us a brief outline of the Mareeba District Fruit and Vegetable Growers Association, its activities, who it represents and so on for the record?

MR MORO: Mareeba District Fruit and Veggie Growers Association by name is based around Mareeba and it represents growers in Dimboola and further, also other parts of the Tableland and further afield in Georgetown and even Cooktown.
40 We have about 300 members all-up who grow a wide range of fruit and vegetables crops from vegetable crops to tropical fruits, papayas, paw paws, mangoes, avocados, lychees and the list goes on for a fair while. It ranges in sizes of growers from what you would call small to very large and the association has been in existence for over 25 years and had a very active role in lobbying on behalf of its
45 members with government associations, State, federal and local level.

COMMISSIONER KING: Okay. Now, we have received a letter from your association actually back in 2005. I am just looking at the date.

MR MORO: We have been pretty active on this issue.

5

COMMISSIONER KING: There were a number of concerns that were noted in that particular letter. Packing systems I note was one.

MR MORO: Yes.

10

COMMISSIONER KING: The issue of price determination. Can I just briefly ask you - and obviously the Horticulture Code, and I will get to that and obviously that will form a large part of our discussions - first off, can I just ask you, you outlined some issues relating to the major grocery chains and price transparency. Do you
15 hold those views and or concerns, and if so, can you just outline again for the record what those concerns are?

MR MORO: The association on a whole, with its members, including myself, have always had a very great deal of concern with the lack of competition amongst the two
20 major supermarkets and we as an organisation have had experiences through growers coming back to us about issues in relation to how transactions have occurred that highlight certain issues which have occurred when a product has been returned, which has been mentioned by other people who have testified today. So those issues haven't changed and the lack of competition is something that is strongly felt needs
25 to be addressed because there is distortion, in our opinion, of how prices is negotiated in the marketplace.

COMMISSIONER KING: I won't cover obviously areas that I have covered with other witnesses except with a degree to get confirmation, or if you have a different
30 view, I will try and illicit that view from you. Some of that was obviously given in confidential session, so where relevant I will ask you questions which may be based on information that we have had either today or at another time in confidence but I obviously will not reveal any information that was given in confidence. One of the things that was given publicly this morning, or noted publicly this morning, was that
35 for those growers who have direct supermarket contracts, things seem to be okay or reasonable. Firstly, of your 300 members, would any of your members have direct supply contracts with the supermarket chains, and if so, can you give me an idea of how many, and then if you do have members who have direct contracts with the major supermarket chains, did you agree with the assessment this morning?

40

MR MORO: There are a number of growers within the association who have direct dealings with the supermarkets and as for the comment made that they are generally more happier than growers who have dealings directly through the wholesale market, there is still concern on how the prices are determined and there are issues in relation
45 to when rejection occurs, but overall it is fair to say that there is a better price achieved by going direct but that price is still determined by the wholesale market, and the concerns are that there still is this issue of distortion occurring at the

wholesale market which has impacted on how the price is determined when growers are dealing directly themselves.

5 COMMISSIONER KING: Now, over the course of the last week I have certainly
heard a number of different form of contract that exists between the major
supermarket chains and growers ranging from a situation where the growers present
a price to the supermarkets and then there is some discussion to, at the other extreme,
that some growers might get almost a take it or leave it price from the supermarkets
on other occasions. In your experience, do your members face that sort of range of
10 contract or which type of contract, if any, is more common among your members
who deal directly with the supermarkets?

MR MORO: It is very similar. The same issues apply. It is a take it or leave it
situation in a lot of cases. Some growers have had long histories of dealing with
15 some of the chains and come to a point where there is an issue with regard to price
because cost of production has gone up and they do raise that issue with the
supermarkets in question and for whatever reasons the price is not negotiated in
favour of the grower, the price may remain, or there could have been a price
reduction, or there could have been a tightening up on the specifications and it comes
20 to that point, "Take it or leave it".

COMMISSIONER KING: When there is a cost increase and there has been
significant evidence presented to the commission about the sort of cost increases that
growers are facing, for example, labour costs, fertiliser costs and fuel costs and so
25 on, will, indeed in your experience, the supermarkets come back to the table and
consider price increases based on those cost increases, or is it simply the case the
price is set and that is it?

MR MORO: The comment always made is that it is a supply demand situation. It is
30 again referred back to the wholesale price in the markets, which is supply and
demand. So there is no mechanism ---

COMMISSIONER KING: So to the degree there is a feedback, it is through the
wholesale market costs.

35

MR MORO: So there is no mechanism to pass on costs.

COMMISSIONER KING: Similarly, we have heard some different views about
flexibility on specifications from the MSCs and that was discussed again in open
40 session this morning, the difference perhaps between regional versus individual
grower specification problems. The sort of information that was presented this
morning - I should just check you were in the room.

MR MORO: Yes, I was. I have been in.
45

COMMISSIONER KING: Was that consistent with your own views or your
members' views?

MR MORO: Well, it is the same feedback. When there is a quality issue that affects the industry or the whole region across Australia, generally there is a review or relaxation of the specifications, but when it comes down to individual enterprises and there may be I guess a quality problem with the farm in relation to weather
5 conditions, it could be a growing practice that went wrong or it could be a sizing change in the marketplace as well, there could be an over supply of a particular size in the market, in that situation it is a take it or leave it situation, these are the specifications, we are going to stick to those. And sometimes it has also been reported to me as well that specifications that have been dealt with for maybe a
10 number of years have been entered in good faith.

Those specifications, there has been a change of specifications. They are not necessarily notified to the grower in question straightaway. There is a reduction that occurs in the marketplace and that product then, because it has been rejected by one
15 of the supermarkets and it hits that place on the wholesale market, we don't have the same issue where it is repacked because of our distance from Brisbane, Sydney or Melbourne, so most of our products will automatically end up in the wholesale market and generally those growers will receive a slaughter on the marketplace because it has been rejected by one of the supermarkets.

20 COMMISSIONER KING: Okay. How does the issue of returnable plastic crates - how do you deal with that? If you are dealing with Coles, for example, do they simply not require that you use returnable plastic crates or do they allow you to then use them in the wholesale market if they reject a quantity of produce?

25 MR MORO: It depends on the crop. In some crops it is specifically to use the returnable crate and this issue of repacking, the product occurs back in the marketplace somehow. If there is a rejection, the grower will have to organise that somehow in the capital still which it has occurred in.

30 COMMISSIONER KING: Okay.

MR MORO: In some commodities, Coles in particular has not insisted that it be in one of the returnable crates. They will purchase in one of the existing traditional
35 packages which have been used by the industry over the last 25 years.

COMMISSIONER KING: Okay. Which particular products do they tend to have the more flexibility on?

40 MR MORO: At this stage - well, the one that I know of intimately is mangoes. Mangoes they can purchase in either packaging styles but there are some growers that are packaging a percentage of their product into those, but they still have an option, Coles, to purchase from the existing package lines and may repack that product in the marketplace. And generally in that situation it is done through an
45 intermediary, a broker or a wholesaler who would repackage that product in, say, Brisbane or Sydney or Melbourne.

COMMISSIONER KING: Actually, before I leave the packaging system, because you mentioned the returnable plastic crates ---

MR MORO: Yes.

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COMMISSIONER KING: I think you refer to it as a one touch system in your letter of 2005. Is it mainly the repacking issue that is the cause for concern with those crates or are there other issues surrounding those crates?

10 MR MORO: Well, I think it comes back to that issue, take it or leave it. A lot of growers at the time felt, and has alleviated to some degree because in the mango industry in particular there has been a situation where either box can be used, the black box or the package box, or the existing carton, or the old carton system, but the concern was that if you wanted to continue doing business with one of the
15 supermarkets, you would have to comply with that. If not, you had to go back into whatever marketing system you had in the past.

So there was a lot of concern that it was something that was being forced upon the industry. There was the cost of the cartons themselves being very, very expensive,
20 and they have still proven to be expensive, especially the carton-style carton, and the other issue was the fact that with the distance we were from the marketplace, the cost in the hiring and how that hiring was calculated and if there was a return issue or a product wasn't accepted, how would the cost be shared in that situation?

25 COMMISSIONER KING: Presumably, in the case of a return, the cost isn't shared. That is my understanding. It is borne by the grower.

MR MORO: No, that's right. They were the concerns, yes.

30 COMMISSIONER KING: We talked briefly about direct to supermarket chain supply. Now, again, I understand from this morning's public session that there is a trend towards intermediaries or consolidators. Different terms seem to be used for them.

35 MR MORO: Yes.

COMMISSIONER KING: Let me call them intermediaries for want of a better word, sometimes who are themselves growers, sometimes who are standalone individuals or companies. Are they the same issues or are they different issues that arise with the
40 use of those sort of consolidators as compared to the growers who have the direct supermarket contracts?

MR MORO: Well, it is more vulnerable with I guess the issue where some of these intermediaries for whatever reason enter into liquidation or enter into receivership.
45 There is an issue there. There is a recent case in the Tablelands which I thought I emailed to Louise about in relation to some pumpkin growers on the Tableland that

lost \$270,000 in the last season because this wholesaler or intermediary went into receivership.

5 It is alleged that he moved his assets into safe havens so that he wouldn't have to pay any of the outstanding debt. So that is one of the issues. The issue is how prices are negotiated. The other issue relates back to the code as well in that in a lot of cases, because the grower for whatever commercial reason feels that he has to stay with that wholesaler or intermediary, he is not prepared to - just because they can't enter into an agreement in relation to the code, he can still do business with that buyer even
10 though they don't have a compliant code which is under the current Act, and that's one of the reasons why we forwarded the code that Mr Katter had entered into parliament which Scott Dixon here helped draft which covers some of the issues which, in relation to default mechanisms, where negotiations can't be agreed upon, and also the issue of trust accounts for the holding of funds, we feel strongly, on this
15 issue, that when a transaction occurs, that the wholesaler or whoever is the buyer doesn't hold on to the funds.

It should be held by an independent party and then payment be made by the independent party, for example, whatever is the agreed price or the agreed
20 percentage to the wholesaler so that the funds are quarantine and can't be lost, as the current situations occurred in this case with the pumpkin growers, and it is not just pumpkins, it is a wide range of crops. Usually I get two or three cases a year of this over a 12 month period where you hear of these situations where growers haven't been paid and it varies, the amounts of money that we are talking about.

25 COMMISSIONER KING: You mentioned difficulties in moving between consolidators. Are the difficulties because there is simply loyalty or long-term relationship between a grower and a consolidator? Is the difficulty that there just aren't very many consolidators in a particular crop or for a particular type of produce
30 so there is nowhere else to go? Or is something else going on that limits movement of growers if they are not happy with their current arrangements with the wholesaler?

MR MORO: Well, it is probably a combination of issues. One is loyalty. There is no doubt about that, that growers over time have had a relationship with that
35 wholesaler and felt that they have been looked after. There is also the fear that it is better the devil you know than the devil you don't. "So if I change, will I end up in a worse situation". There is also the feeling that if you rock the boat too much, there will be retribution in the marketplace.

40 That's something that I haven't experienced but I know that a lot of my members feel that that is something that they may get themselves into if they decide to rock the boat and say "We don't like that" and make comments or change from one wholesaler to another. And the other option - the other issue is there are some
45 wholesalers, depending on which lines we are talking about, which products, that can really only handle that commodity. So there may be only three or four, for example, that may be able to handle a particular commodity or in some cases there may be one in every capital city.

There may be four but there is one in every capital city and if you want to spread your market and your market list, it does limit your capacity, I guess, if you decide not to use those particular people. So there is a series of issues. One is loyalty, one is this fear that they will be somehow punished in the marketplace, and the other is the fact of the capacity of the market or the wholesalers to handle your product.

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COMMISSIONER KING: As a route to the major supermarket chains, are you aware of any growers who use more than one consolidator or they only use one consolidator? I'm aware from this morning's evidence that growers may divide their crop between the wholesale markets, major supermarkets export and so on, but actually just focusing on the major supermarkets, if they go through consolidators, it is always just one or can they actually split their crop?

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MR MORO: I would say the majority is one but I'm aware of cases where growers may use two different intermediaries to supply two different major chains.

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COMMISSIONER KING: Okay, so it may be the case that they go down this route to Coles and this route to ---

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MR MORO: Yes.

COMMISSIONER KING: Any example where they would use two different routes to the same supermarket, as in two different routes to Coles and two different routes to Woolworths?

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MR MORO: In different capital cities there is evidence of that. For example, if they are dealing with an intermediary in Sydney, they may be selling through that into Woolworths, let's say, or Coles, and they may be dealing with an intermediary in Melbourne who will again be doing a similar situation in either city. So it depends on the marketing situation. It depends on what their relationship is with the wholesaler as well.

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COMMISSIONER KING: Okay. Now, I'm deliberately avoiding the issue of the market because we are going to get to the Horticulture Code. I keep saying we are coming to it.

35
MR MORO: Yes.

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COMMISSIONER KING: Just the last thing though, again in a sense confirming or rebutting or clarifying what was put this morning in evidence before the commission, the evidence this morning was that growers used a range of different strategies for selling their crop. Some rely very much on the major supermarket chains, some almost entirely on the wholesale market, some go across both of those and have some export. Does that sort of range of options line up with your experience with your 300 members, and if so, what do growers use to determine where their crop is going? Why do they decide to use these different channels or why do they decide to use one channel rather than another?

MR MORO: Basically they are looking for the best possible price and they are also looking to minimise their risk. They may decide to deal with a number of intermediaries or deal with an exporters, a supermarket and a wholesaler, to minimise risk of payment as one, but the other thing is also with the issue of quality.

5 If you have a variance on quality in size or on appearance, you may have limited amounts for one of those particular sectors so you need to look at your option. Now, it depends on the commodity again.

10 It depends how volatile a commodity is because each commodity is very perishable. Some commodities are more perishable than others. So the grower will look at his options in that area there in relation to trying to get the best possible price but also ensuring that he will get payment and also ensure that he can be able to move the majority of his crop that he has on a quality aspect so that he is not limited to, say, a particular size or a particular quality aspect and then what does he do with the rest?

15 So he tries to broaden that horizon or broaden that spread of options and again it depends on the commodities.

20 Sometimes you don't have the same complexities of quality, for example, as straightforward. You can grow it and you don't have that much variation and maybe there might not be many options either. It may be purely put into the wholesale market. The chains may not be interested in that product at this point in time if it is an early development product, especially on the tropicals, so it varies on the commodity.

25 COMMISSIONER KING: Because a number of your members deal with tropical fruit, how many of your members - well, let me break it into two groups. From the perspective of Australian produce, is much tropical fruit exported from the country to other parts of Asia or elsewhere?

30 MR MORO: It has varied over the years but mangoes are still predominantly exported out of the Mareeba Dimboola area. The percentage has diminished over time because of cost issues but mangoes is one, lychees is another crop that is exported, and again it varies depending on price and on supply and demand domestically versus exports, wherever is the higher price. The longan industry is

35 another one which has been exported over time.

COMMISSIONER KING: Sorry, which industry?

40 MR MORO: Longan, which is a relative of lychees. We will have to get you some one day.

COMMISSIONER KING: I'm sure I've seen them.

45 MR MORO: I'm sure you have. You do see them in the supermarkets but generally it is one of the more speciality stores. It is a brown-looking fruit. Bananas, for example, there has been some exports but it has been limited. The bulk of the industry has been domestic. Avocados are in the same category. I'm just trying to

think of all the papayas. The main front one is mangoes and lychees are the two export groups.

5 COMMISSIONER KING: If we could sort of focus on mangoes and lychees for a moment. To what degree does a grower have an export option in the short-term? So, let's say I'm a Mareeba mango grower. I don't like the price I'm getting domestically. Is it easy for me to shift my product into an export stream or do I essentially have to be - you know, is there an investment that I need to make in preparation for taking an export option?

10 MR MORO: Well, again it depends on the market. There are some markets which are limited to a particular way of treatment and Japan is a good example of that with VHT, which is vapour heat treatment, and there is only two plants that I'm aware of in Australia which are active. One is in in Machoola, which is in Mareeba, and the
15 other one is in Darwin. So if you wanted to go down the road which is particularly export directly yourself, you will have to put one of those facilities but in a lot of cases those two facilities would enter into a contractual arrangement with growers to grow - or not necessarily - a contractual arrangement that would occur close to
20 harbours.

Like you would start back around about now. So they would enter into a price, it would be a price per kilo or a price per tray and they would then sell the product to that treatment facility and he would then carry out all the marketing. But say you wanted to get into the Hong Kong market, you could quite easily do that. No
25 different to dealing with the wholesaler in Sydney or Melbourne. There are a number of exporters and there are also some exporters based in Cairns that you could negotiate it. You might have to look at the quality aspect. You might have to look at the timing issue. Other than that, it is pretty straightforward. Not much different for putting a product into the Sydney or Melbourne market.

30 COMMISSIONER KING: Okay. And would that hold for lychees as well?

MR MORO: Lychees are very similar as well but if you are looking at a market for - well, Japan I don't have access to at this point in time, but New Zealand, for example,
35 you would have to go to a treatment facility in Ipswich which would then treat it for radiation and then it could enter into the New Zealand market for lychees and mangoes as well, and paw paws as well can go into New Zealand in a similar way. So all you would have to negotiate is a buyer in New Zealand. Usually it is done through an exporter in Australia who then hires the facility and puts it through
40 the facility. So there is a variance of ways that you can do it but it can be pretty simple and it can be pretty complex, depending on the market.

COMMISSIONER KING: A crop like lychees, can you give me an idea how much would be sent overseas and how much would be consumed domestically?

45 MR MORO: Well, the industry percentage, I would say, is probably around the 20 per cent of the total crop. The bulk of the crop is domestic.

COMMISSIONER KING: Okay.

MR MORO: And mangoes would be very similar.

5 COMMISSIONER KING: Again, this may reflect that I'm from Melbourne but lychees seem to be a crop that have developed fairly rapidly, say, in the last 10 years. That is a correct perception?

10 MR MORO: Well, I think from a consumer point of view, yes. It is probably 20 to 30 years that lychees have been sort of developing and they have got to the critical point now in the last 10 years, yes.

15 COMMISSIONER KING: Have there been issues getting the major supermarket chains to accept what is essentially a new product such as the lychee?

MR MORO: Generally the tropical fruit in general, if I can start from that point, because of the difficulties in handling, are generally not handled in a big way until a certain point arises where the consumers are looking for them, and it has taken a period of time for the supermarkets to gear up to look at that particular commodity and lychees is one, papaya is another which has similar issues. The bulk of their product is still basically being sold through the conventional grower and so is mangoes, actually.

25 The biggest per cent of it is actually through the independent interest, although the supermarkets again, because mangoes or slowly - well, slowly from our point of view, maybe rapidly from the consumer have been recognised - they have gained an interest in it and are pushing them in a bigger way, and also with the fact that some of the players in the industry are also trying to align themselves, are trying to position more product into the market because it is felt that that's where they can put large volumes of supply, in particular the managed investment schemes.

30 COMMISSIONER KING: Are there issues of in a sense educating the supermarket chains about how to handle, for example, mangoes which are obviously very easily bruised fruit, and paw paw as well is the same.

35 MR MORO: The industry, mangoes has always had issues and my understanding of tropical fruits is it is a common issue about the lack of understanding by the managers of the stores in how to handle the product but also the fact that the limited lifetime that that product may have by the way the fruit is moved to the distribution centres of each of the chains and then brought back out to the regions in some cases, and even in cities like Sydney and Melbourne, the fruit will get old and temperature variations will occur.

45 There is a great deal of difficulty and I know all three of those industries have spent their own funds trying to educate and promote better usage by the supermarket managers in how they handle their product. So it is an ongoing issue and it is an issue which frustrates the industry because you put a great deal of investment in

growing that crop to make it look as good as possible, and then, out of your control, issues or handling practices occur which damage that product or make it look pretty average in some cases.

5 I mean, I've heard comments that "It looks like pig food sometimes" because it has
been handled so poorly but I can assure you in most cases growers have done the
right thing and packaged it in the right way and got it into the market system as near
perfect as required but because of handling practices, things go wrong and by the fact
10 that they are very perishable, it has an impact, and the risk is borne by the grower at
the end of the day.

COMMISSIONER KING: The risk is borne by the grower because of a return from
the supermarket.

15 MR MORO: Yes.

COMMISSIONER KING: From your experience, which has in a sense a quicker
supply chain to get the fruit and vegetables in front of the customer; the major
supermarket chains with their distribution centres or the wholesale market going off
20 to the fruit and vegetable retailers?

MR MORO: There is no doubt that the direct approach should get your product in
the supermarket quicker. The only issue that growers sometimes have is that they, as
a grower, especially if they are dealing direct - I'm talking about here - would have to
25 condition the fruit to a point where it was near ready to eat and that would have to be
done on a farm. So although the distance to travel is quicker, what in some cases
occurs is that the product is held on the farm for a longer period to reach a certain
quality aspect.

30 COMMISSIONER KING: That was the major supermarket chains. They require
that, don't they?

MR MORO: That's correct, but in the wholesaler case situation where the
wholesaler will do that service for the grower and hold that product, but you lose an
35 element of control in that situation.

COMMISSIONER KING: Let's move on now to the whole market. Obviously there
is a range of issues of why the Horticulture Code of Conduct was introduced, mainly
relating to issues of transparency, making sure that growers receive fair treatment
40 from the wholesalers. It obviously defined two types of wholesaler; the merchant
and the agent. Let me first-off ask: to your knowledge of the wholesalers, what
percentage would be offering a true agency relationship?

MR MORO: I'm not aware ---
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COMMISSIONER KING: I'm happy for either.

MR MORO: I'm not aware of any at this stage. At this stage I'm not aware of any.

COMMISSIONER KING: I think in a week we have identified one.

5 MR MORO: No, I'm not aware of any.

COMMISSIONER KING: So essentially the Horticulture Code of Conduct has meant that we now have wholesalers formally acting as merchants. Let me put the broad question: has the code worked?

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MR MORO: Well, I don't think it has delivered the outcomes that growers expected. In that case it hasn't worked. Growers had higher expectations and if I can put it simplistically, most growers, what they wanted was an invoice that said "This is how much my product was bought for and who it was sold to", especially with an agency transaction.

15

Of course, no agency transaction - well, not many agency transactions have occurred and most are merchant transactions so, therefore, it is between the grower and the wholesaler. Therefore, they do know in that situation but the reality is that I would dare say that most of those transactions which are appearing technically to be merchant are realistically still agency transactions but not operating under the agency rules set out under the code.

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COMMISSIONER KING: We have heard mostly in confidential session about a variety of cases of non-compliance, to be quite frank. Is the issue with the Horticulture Code of Conduct that it is essentially not the - well, it is being ignored by a large number of wholesalers and perhaps not being enforced with the rigour that it should be, or is there more fundamental underlying flaws with the code itself?

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MR MORO: I think it is a combination of both. I think there are - the wholesalers have resisted it, and rightfully so in some aspects because it doesn't include the whole marketing chain, it only refers to the first point of sale between the grower and wholesalers, and then I guess it leads to the fundamental problems. It doesn't have the default mechanisms, in our opinion.

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That if you can't agree on I guess a contract that there is a default mechanism that says "These are the terms", and the other issue is the issue of how funds are held, and the other issue from the grower's point of view, the fundamentals, that is it doesn't deal with exporters, it doesn't deal with processors, and it definitely doesn't deal with transaction between the wholesaler and the retailer and also the retailer and the grower when it is in a direct situation. Although, there are less instances take place in that area between the grower ---

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COMMISSIONER KING: When you say "the wholesaler", do you mean the wholesaler outside the market environment? So, for example, consolidator in ---

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MR MORO: Consolidator or it could be a central market where the wholesaler is negotiating with the supermarket and enter into an agreement that also includes those - it should include those as well. It doesn't include those currently, the first point of sale.

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COMMISSIONER KING: Let me run through those just in order. The first point of sale, is there a fundamental problem with the horticultural code of conduct in that it only deals with the first point of sale, and it may be just my nasty suspicious mind but my immediate reaction is "Well, I can get around that code very quickly because whilst I'll buy the product, and yes, I have got the certain obligations, my mate Nathan sitting next to me, well, I'll just sell it on to him, and sure, we will have a recorded price and Nathan will hand me the bag of money afterwards". Whilst it focuses only on the first point of sale, it is really going to work?

10

MR MORO: Well, I think that has been our concern, that is you have a nasty suspicious mind, and from I guess experience and comments made back over by growers or by wholesalers, you get the feeling that some of that is occurring. I mean, I don't have any proof of that but you get this - I guess with the lack of transparency, you have this suspicion that arises, or mistrust, and the other issue is that if you look at the returns that growers are getting versus what wholesalers are getting themselves, they are doing very well in my opinion and I don't take that away from them.

20

I believe in capitalism, I'm not against it but I like to get a fair share of it and the growers that I represent also like to get a fair share of the profits because at the end of the day, if we don't, we can't make a return back on our investment and we can't stay functional in our regions and keep the economy going. So there is a lot of suspicion there. I mean, we are very suspicious ourselves of all the transaction that occur.

25

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COMMISSIONER KING: How do you get around that problem though? Just on that, because agency properly done doesn't necessarily seem to solve it either in the sense that I can be your agent and I will sell it to my mate Nathan and he strikes a hard bargain and again he gives me the bag of money later. Is there any way of actually getting around fundamentally there may be a lesson cleared wholesaler to wholesaler transaction?

35

MR DIXON: You have got to have a paper trail. Unfortunately, at the moment there is no paper trail at all, and sure, you can sell it to your mate but that is a paper trail. The ATO or whoever is going to check into this can go on to that person and check that he did pay X "and hang on a minute, he sold it for 10 times the amount", if that is what you are inferring, which I resume you are, right. But if, as we are looking for, what we are trying to get is an invoice as a matter of course.

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COMMISSIONER KING: Yes.

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MR DIXON: At the moment, the code states that we are not entitled to an invoice. It actually states we are not entitled to know what happened to our food. Now, that is ridiculous.

5 COMMISSIONER KING: Under the merchant arrangements.

MR DIXON: Yes, but even under the agent, we are not entitled to it.

10 MR MORO: You don't get an identification. The borrower is never identified in the transaction.

COMMISSIONER KING: Yes, you are quite correct, yes.

15 MR DIXON: And the only way you can find out if the price you received is the price you on-sold it for is to go to dispute. Now, the only way you are ever going to know every single consignment you sent off is to go into dispute on every single consignment because the one who does is the one he is going to get out, and the minute you do that the code actually states they will not stand for frivolous disputes, and if you put one in every time they are going to turn around and say "Hey - - -

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COMMISSIONER KING: There would be a fair bit of disclosing, yes.

25 MR DIXON: If an invoice was issued as a matter of course, that would also assist without having to instigate a dispute because if you instigate a dispute, what does that do to your relationship with your wholesaler?

COMMISSIONER KING: Yes.

30 MR DIXON: It kills it. But if it is a matter of course, he just has to give it to you no ifs or maybes, you don't have a problem.

35 COMMISSIONER KING: Now, what would be on the invoice? What would you be seeking on that invoice, if it is a merchant transaction, I mean. I will be the merchant. You have sold the produce to me. I have got 24 hours to come up with the price and we will come back to that one in a second. I then give you a price. Do I at that stage write out an invoice with the price I have given you?

MR DIXON: Yes, if you are merchant, you are purchasing it direct from me.

40 COMMISSIONER KING: So yes, I gain ownership.

45 MR DIXON: Now, if there is a default mechanism in the code that states ownership changes hands 24 hours, 48 hours after you receive it, if you and I haven't agreed to a price you can sell it for what you want.

COMMISSIONER KING: Yes.

MR DIXON: If I have agreed to that price, that's fine.

COMMISSIONER KING: Okay.

5 MR DIXON: But if you look at the central markets today, as we said, you said how many agents are there. I think you said you knew one. I was going to say, if you knew one per cent you would be lucky.

COMMISSIONER KING: Yes.

10

MR DIXON: But I would guarantee that 99.9 per cent are operating as agents.

COMMISSIONER KING: Effectively as agent.

15 MR DIXON: Effectively as agents. In other words, they have 14 days to give a price on your produce. In that 14 days they have on-sold them.

COMMISSIONER KING: Okay.

20 MR DIXON: I mean you talk to an agent now and and I say "What did you sell it for, what was the sale?" and he said "26, returned to your 24" or whatever. Hang on a minute. Straightaway he has just told you he has taken \$2 commission. He is an agent and, therefore, should declare GST on that.

25 COMMISSIONER KING: Okay. Now, if they are not giving a price for, say, a week, two weeks, then clearly that is a violation of the code.

MR DIXON: No, it is not.

30 COMMISSIONER KING: Sorry, a merchant has to give a price within 24 hours.

MR DIXON: No, he doesn't. Not in the code, to my knowledge.

35 MR MORO: Yes, I don't know the exact specifics but what I was going to say there ---

MR DIXON: He does in our code.

40 MR MORO: The point being it would still take someone to initiate the complaint and the problem being, in my opinion, there is no default mechanism. For example, if you asked the grower how he would prefer to do business, it would be agency transaction. The reality is there is no - the wholesaler won't enter into that arrangement. The wholesaler will say "Well, I'll pay when it arrives here at a certain price". Now, there is a variation of how that occurs but basically it is a merchant
45 transaction. But if there is a default and we couldn't agree, it automatically became an agency transaction whether the wholesaler agreed to do it or not. His other option is to refuse to accept the product.

COMMISSIONER KING: Yes.

MR MORO: That would go a long way to bring some transparency into the whole process but the other side-by-side of the equation has to be that someone has to
5 police it. There has to be legislation that talks about the issue of selling between your mates or between similar relationships and there has to be someone then that goes into that situation and makes sure that we audit that system.

COMMISSIONER KING: Yes.

10 MR MORO: Otherwise it won't work. If we work on a voluntary system, until a complaint occurs, it is all too late anyway.

COMMISSIONER KING: I think they are madly looking up the code to try and find
15 where it says 24 hours.

OFF MIC ACCC STAFF READS

COMMISSIONER KING: There is no time frame in the code. That will teach me to
20 read through the draft bill that you gave to me last night because that's clearly where I got the 24 hours from.

MR DIXON: All the current code really does is say you must put in writing what
25 you agree between the two of you. Now, that could be anything.

COMMISSIONER KING: Yes.

MR DIXON: And the agent has you or the wholesaler or whatever you want to call
30 it.

COMMISSIONER KING: Yes.

MR DIXON: He lays down his terms, you accept them and then you are done. If
35 there is no default, what we are saying is ownership changes hands within 48 hours but you can negotiate 24 hours.

COMMISSIONER KING: Yes.

MR DIXON: "Payment must be within 48 hours". You can negotiate two weeks.
40 You can negotiate under that but you can't negotiate outside.

COMMISSIONER KING: Okay.

MR DIXON: And it must cover every party.

45 COMMISSIONER KING: Okay. You killed my next line of question which is: why can't you actually have the price just done up-front?

MR MORO: On farm?

COMMISSIONER KING: Could be on farm or on delivery of the produce to the merchant.

5

MR MORO: In some cases it does occur, there is no doubt about it, and it depends on the season. It depends on what's happening. If there is a shortage of product, generally that can happen quite easily, but when there is a considerable amount of volume around and the show is on the other foot, very, very difficult to get that sort of arrangement. I'm aware of some growers, and it is in the minority rather than in the majority, that have got that ability on certain - well, when the product is in demand and supply is down for whatever reason, some growers can say on farm price.

10
15 COMMISSIONER KING: Yes.

MR MORO: But even though farmers, on a season, for example, like last year where we had a fair bit of product around, were not able to do that.

20 COMMISSIONER KING: Would it be desirable to have a system where either on farm or I was thinking actually on delivery so the merchants can check the products up to spec, but at that point in time, at the time the product was transferred, a price was agreed and payment then would be made or there would be some sort of trust account approach if there has to be credit.

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MR DIXON: There obviously has to be fairness. I mean, we are talking of perishable goods.

COMMISSIONER KING: Understood.

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MR DIXON: And they must be able to have a period of time to check that the goods are as described.

COMMISSIONER KING: Yes.

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MR DIXON: But the minute that the - and I think in our case it does say 48 hours from memory - you have got 48 hours to check that product and say "Fine, it is as described", the price it.

40 COMMISSIONER KING: So the only gap there should be to actually check that is that specification.

MR DIXON: Sure, and that's when ownership changes hands. They own it. Whether it is a supermarket or whether it is a wholesaler, they own it. They cannot
45 return it.

COMMISSIONER KING: Okay. Yes, I won't go into what the code says on that particular issue then. Now, there is a dispute resolution in the current code and you have said how that is limited. The funds, the proposal is that there be a trust essentially. Would the trust account be only under an agency relationship or also -

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MR MORO: I think it has to be both.

MR DIXON: Unfortunately.

10 MR MORO: Unfortunately.

COMMISSIONER KING: Because okay, so there would be a price agreeable with the merchant but payment wouldn't be for - could be in, say, 14 days, 28 days, something like that.

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MR MORO: Whatever is agreed upon. Just a comment on that. It was made in the early days - was it CIC?

MR DIXON: CIE.

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MR MORO: CIE. They were the consultants that went out and ---

COMMISSIONER KING: The centre for international economics, yes.

25 MR MORO: And one of the comments made - well, it was made in the Atherton meeting in the Tablelands, that the wholesalers were arguing that that was impracticable because they would then have to go and borrow money to do their ongoing business activities. I mean, I have to go and borrow money. I don't see why they can't as well.

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MR DIXON: They need money. As I said at that meeting, if they require our money to trade, they are trading a loss themselves.

COMMISSIONER KING: A good point.

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I want to get onto the breath of the code in a second but just again to keep me on the wholesale markets, the merchant and the lack of agents, are there other issues? We have talked about the invoice, the paper trail, the payment time, the point of time at which stock changes hand, issues to get around selling to your mates and so on. Is there anything that I have actually missed in that run-through? Are there any other issues that relate to the current code that need to be sort of fixed?

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MR MORO: I think the point I will go back to is the fault. The fault has to be because the reason why or one of the reasons the current code that we have has become so ineffective is that growers, when they are entering negotiations with the wholesaler or the wholesaler sends them the document - whether it is compliant or compliant is another story altogether - it is "Take it or leave it", a very similar

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situation in relation to the chains. The funny part about it, both parties still want to do business, so if the grower wants to do business and the wholesaler wants to do business and they can't agree on the price, there isn't any problem with the quality or the relationship it is just how they specify the terms. So there should be a default
5 which says it is an agency transaction, as simple as that in our opinion, and if then it is an agency transaction and they have to comply with the - unless they can negotiate either it being a merchant transaction, or - well, there is no variations, it is either one or the other, but at least the terms can be negotiated and we don't see any issue with that, as long as it doesn't go outside the spirit of what we are trying to achieve in the
10 overall thrust of the code.

COMMISSIONER KING: There may be legal issues associates with that.

15 MR MORO: I imagine there is.

COMMISSIONER KING: I'm not a lawyer but I know there is a huge amount of agency law out there which thank goodness this is a ---

20 MR MORO: One other issue which keeps being raised is the fact of bad debt. And even in a default mechanism, and I think we have placed it in our code as that if it is an agency transaction, one of the scares that is put out is that "You will have to collect the bad debt", but if it is agreed upon between the buyer and the seller, the bad debt can be protected or can be guaranteed by the wholesaler as well, and if they are also in relation to trust accounts, that would also move a lot of the issues where
25 the funds are put in that trust account and then there is no issue of bad debt as well.

COMMISSIONER KING: It has been suggested to us that the code needs to be tightened up along the lines of some of the suggestions that are in the draft bill that Mr Katter put before parliament last year but that there should be opt out options.
30 Rather than in a sense the default option you have said, there should be a criteria there that if the grower and the wholesaler agreed, then they can agree not to abide by either the code as a whole or bits of the code. Do you see an opt out arrangement being possible or workable?

35 MR DIXON: I can't see it working at all because obviously the agents would want to opt out every time.

COMMISSIONER KING: So there would be pressure put on the growers just to opt out. Obviously the wholesalers have said to us a number of issues with the sort of
40 changes that are mentioned here. For example, that they need a market price before they can set a price to the grower and we have actually discussed that with some other witnesses. If you have got comments to make on that, please make them, but one in particular, can I note, was the issue of what is called I think "unsolicited produce" where growers sometimes send produce to wholesalers which the
45 wholesalers haven't ordered, didn't expect, and the complaint has been made that growers need that flexibility and that that sort of flexibility can only be offered under

fairly much a trust base relationship with the wholesalers. Have you got any comments to make on the issue of unsolicited produce?

5 MR DIXON: I think it is definitely covered in our code or in the code that ---

COMMISSIONER KING: I noticed in your draft code.

10 MR DIXON: But if a grower sends in unsolicited produce, I mean, it is on his head. I mean, we have got telephones these days. It is very easy to jump on the phone and say "This is what I have got". It is a two second job and he says "yes", or "no". I mean, if he says "no". You've got to find somebody else.

MR MORO: But I think it is as simple as that.

15 MR DIXON: It is as simple as that.

MR MORO: That if it is unsolicited, it doesn't have to be accepted by the wholesaler.

20 MR DIXON: Yes.

COMMISSIONER KING: Yes.

25 MR DIXON: I mean, the wholesalers aren't the only people to blame, let's be honest. There is a lot of blame going on growers as well, there is no question about that. Growers do cause a lot of their own problems.

30 MR MORO: But I honestly do think - I mean, I've heard this comment made. I'm not really aware of - I know the wholesalers have made this comment a lot, that they are unaware that a product is sent to them, but I've talked to a number of growers, a lot of growers, and I still haven't found one that does that, but if it does occur, to me it is a straightforward matter. The wholesaler just says "I won't accept it", rings the grower up in Queensland and says "There is two truck loads of your mangoes here", for argument sake, "I don't want it, put it somewhere else".

35 COMMISSIONER KING: One of the other claims which has been made against the code is that under the agency relationship, and presumably if there was more of a paper trail required so it wasn't a merchant-type transaction, that pooling is possible, and pooling is desirable for growers because it means that the wholesalers are able to
40 bring together crop from a number of growers, possibly even a grower cooperative, and that pooling wouldn't be possible if you then had to follow every farmer's produce down to the purchaser but it prevents the wholesaler mixing and matching. What is your view on that one?

45 MR MORO: Well, I note the avocado industry is one of the industries that is very keen on pooling in some aspects of it remaining, or sorry, because pooling is able to occur under the current code. There is some mixed views on this one here, I have to

say. Amongst my growers there are people that are opposed to it because they believe it leads to the ongoing problems that they are currently facing where basically as an averaging, that product is rewarded versus good product, bad practices, or there could be a side of ending off between one grower or another grower to compensate whatever relationship, but it needs to be investigate. Hey, if you could possibly do it on a cooperative basis on a cooperative-style situation where the avocado industry is basically talking about where cooperatives work on behalf of their members to negotiate a price and they would average it out, but that's a difficult one for me to give a clear-cut opinion on it. Personally, I'm not in favour of it, that's my personal experience, but from an industry point of view I'd have to say that there is mixed views on that issue there, and it depends on the industry and it depends on the relationship and it is more to deal with marketing groups which are basically run by growers versus - and that's where it should be limited and not any further than that. Basically a lot of industries like avocados and including lychees have also said where there is this pooling aspect to a price mechanism over a week period, for example.

MR DIXON: Yes, it does in my opinion favour, if you want to call them a bad grower or a worser product - it does favour that.

COMMISSIONER KING: If you know you are going into a pool, then there is no reason to be better than average, let's put it that way.

Now, one of the other issues which has obviously come up is the extension of the code. Is it your opinion, Mr Moro and/or Mr Dixon, that the code should be extended to all sales by growers, including the sales by growers to the major supermarket chains direct?

MR DIXON: Has to be, otherwise it can't work.

COMMISSIONER KING: Why can't it work if, for example, it doesn't include the major supermarket chains or it doesn't include sales for export?

MR DIXON: If it doesn't include them, why do they have to adhere to any contract or contractors enter into. Mr McGoran actually brought this up for me and he said that the supermarkets currently operate under a voluntary code which is far more strict than the mandatory code. But my argument to that, if it is, why on earth did they want to stick with the voluntary one? If it is a lot stricter than the mandatory one, you would hop straight out to the mandatory one.

COMMISSIONER KING: I must suggest, it has also been put to the inquiry but almost all retailers would actually suffer the code under their current contracts.

MR DIXON: I believe most of them probably would.

COMMISSIONER KING: I mean, the reverse view which has also been put is in they do satisfy it or if they are operating at a higher level, why should they be

included in the code. If there is no problem, why are you requiring that they come under the code to fix ---

5 MR DIXON: If they are already doing it, what reason do they have not to voluntarily going into it? If you are doing the right thing, why are you frightened to go into it? And then it says - at the moment the code is discriminatory. It is discriminatory against the markets, basically. Every - as Joe said, whether it is processor, wholesaler, merchant, agent, processor, retailer, exporter, if they are doing the right thing, what are they worried about?

10 MR MORO: The other issue in relation to the retailers is that it should also pick up the relationship between intermediaries and that's where the anomaly - what I think also is there is no reason why the code won't work out so well is because there are a lot of transactions which are occurring between I'd say grower and retailer but it comes down to who is acting for who. If the wholesaler is acting on behalf of the chain, then he doesn't have to comply with the code, but if he is acting on my interests, well then he does comply. So I would say most times he is going to be acting on the interest of the chain and be commissioned by the chain to work on his behalf and, therefore, get outside the code and I think - well, I know those transactions are no different from any other transaction so they should be picked up by the code, and there are a number of problems also with processors as well with payment as well, which I know are not covered - this issue of trust accounts are not covered by the current code but I know of payments not being made to mango growers for lengths in excess of 12 months with processors, and I know of one hot processor also that has gone into liquidation in the last three or four months owing substantial amounts of funds not only for this season but for the season prior because he hadn't paid payment. So there needs to be a tightening up of this whole process, in our opinion.

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30 COMMISSIONER KING: The last question I have on the code was grandfathering of existing contracts. That is allowed under the current code. Should it be allowed?

MR MORO: I don't think they should be. I think everyone should comply or - everyone should comply.

35 COMMISSIONER KING: That is all of my formal questions. Was there anything else that we haven't covered that you want to respond to?

MR MORO: Well, I was just going to ask, I haven't forwarded this submission of Joe Zappala, who is a paw paw grower in Innisvale, asked me to forward some information to the commission because he couldn't come today.

COMMISSIONER KING: Yes.

45 MR MORO: It basically is a study which he conducted when he was president of the Queensland Paw paw Industry Association 10 years ago but he still states in his

email that it is still relevant, which shows mark-ups of 300 per cent from what the grower was paid and what was the product selling in the supermarket.

COMMISSIONER KING: That is public?

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MR MORO: Public. There is also some disks.

MR DIXON: There is a couple of disks there that we have dug up. I don't know if you have heard of that before, which was done in 2003, I think, and which really, none of that report was ever carried out by the then government, and there is also a program which was on Landline which I actually found on a farm I took over and I put it on disk for you, and that is 21 years ago, and nothing has changed, it is exactly the same, but it is interesting to watch.

COMMISSIONER KING: That always worries me when I see things haven't changed in 21 years.

Mr Moro and Mr Dixon, that you very much.

MR MORO: My pleasure

THE WITNESS WITHDREW

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ADJOURNED [3.40pm]

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RESUMED [3.52pm]

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COMMISSIONER KING: Let's get started again and apologies for running fairly significantly late, Mr Kanowski. Thank you for your patience.

Mr Kanowski, thank you for attending the hearing. I note that it is a criminal offence under the 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. So Mr Kanowski, do you understand that?

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MR KANOWSKI: Yes, I do.

COMMISSIONER KING: Mr Kanowski, you were summonsed to this hearing?

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MR KANOWSKI: I was.

COMMISSIONER KING: You are here representing the North Queensland Banana Growers? .

MR KANOWSKI: Correct.

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COMMISSIONER KING: Could you just outline for the record what is the North Queensland Banana Growers, who your members are, who you represent and so on?

MR KANOWSKI: Okay. In brief, I'm the CEO for the NQ Banana Growers Cooperative. We have approximately 20 members and take fruit off 40 different people or growers. This is all marketed through the wholesalers. We do not do anything direct with the chains and one of our areas of concern, other than I know you want to ask about bananas, but it is about the code and how we have been, I guess the words would be, prejudiced against it because to us, the code hasn't actually done a thing for us. Because the cooperative that we run does not - I think there is a misconception out there that cooperatives all pool. We do not pool products. We do not pool prices. Each member is treated on their own individual basis for a small fee.

COMMISSIONER KING: In fact, why don't I start with the code, seeing as you have actually already raised it? From the code's perspective, when the growers deliver their produce, what is the status of North Queensland Banana Growers under the code?

MR KANOWSKI: Under the code we are an agent.

COMMISSIONER KING: So when you then sell the product on to a wholesaler, do you deal with wholesalers - sorry, let me step back. The wholesalers you deal with, are they only wholesalers who deal with the supermarket chain or it is a mix of wholesalers?

MR KANOWSKI: It is a mix.

COMMISSIONER KING: And approximately how many wholesalers do you deal with?

MR KANOWSKI: 19.

COMMISSIONER KING: About 19 wholesalers?

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MR KANOWSKI: Throughout Australia.

COMMISSIONER KING: And are there significant differences in the way those wholesalers operate?

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MR KANOWSKI: They are all different. To say "significantly", no, the transaction is basically the same.

COMMISSIONER KING: And can you just describe what would be a typical transaction between your organisation and a wholesaler in the sense that how would the price be organised, how would the product be delivered, what would be the specification requirements on the product and so on?

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MR KANOWSKI: Okay, because we have got 40 different growers, it is basically 40 different qualities. We try and get them to the highest level possible. We have got one grower who is exceptional and as we said in an earlier hearing that that fruit doesn't even come near chain standard. It is way, way above. So what physically happens is the grower packs the product, we inspect that product, try and do it weekly. The grower then puts it to transport. It goes to that particular market. Under our current operation, that wholesaler inspects the fruit, ripens the fruit. At that stage of ripening is when we start discussing price on how the market is travelling, whether there is a lot of fruit or not, quality issues, et cetera. We then come to an approximate figure. When I say "approximate", plus or minus usually 50 cents and then the wholesaler sells the fruit.

COMMISSIONER KING: And the arrangement - because you are acting as an agent under the code, the arrangement with the wholesaler, is that covered by the code at all?

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MR KANOWSKI: No.

COMMISSIONER KING: And you have already said that you don't pool bananas at all so an individual grower's product is associated with the specific wholesaler and the specific transaction so there is no great problems - or I shouldn't put words into your mouth. You can tell it is getting later in the day. Is there any problem satisfying the agency requirements under the code?

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MR KANOWSKI: Under the code, the code stops at me because it is between the grower and myself - or sorry, I won't say myself, the Co-op, because of the small fee that we charge. The transaction under the code, after that, is anybody's guess.

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COMMISSIONER KING: So the code essentially ceases to be relevant.

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MR KANOWSKI: It ceases to exist. How do you find - and again I should say, if you need to have any answers in confidence, please let me know and I will reorganise the question. How do you find the current relationships, the current arrangements with the wholesalers. Do you find them overall satisfactory? Do you find the process works or are there any problems with it?

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MR KANOWSKI: The system we are operating under at the moment works. It has been something that the system has had a little bit of finesse put in it over the last 20-odd years. So the weak ones, the ones who don't - I will use the term "want to play ball" - we don't deal with. Anybody who is a little bit questionable on their operation, we don't deal with. We only deal - that's why we only deal with 19 of the wholesalers.

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COMMISSIONER KING: Do you find the fact that you deal with the 19 wholesalers allows you to in a sense spread the risk across the wholesalers in the sense that if one wholesaler perhaps isn't performing as expected, you can reduce the flow of product through them and move more product through the other wholesalers?

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MR KANOWSKI: Yes, yes.

COMMISSIONER KING: That's possible.

10 MR KANOWSKI: That is our flexibility.

COMMISSIONER KING: The processors or the transactions as you have outlined it seem to put a lot of the risk on the growers. Is that a fair analysis? It seems like the price risk is on the growers. I presume the actual quality risk is on the growers even though the ripening is carried out by the wholesalers. It seems like there isn't much risk on the wholesaler but it all seems to be channelled back to the growers. Is that correct or have I got that wrong?

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MR KANOWSKI: You have probably got half of it correct. Because bananas are an evaluated product as it is ripening, if something goes wrong in the ripening process, the guys who I deal with actually tell us if something has gone amiss and that is why I deal with a limited number. I know other products that are value added because they go through banana rooms a lot of them and I know those people who handle them and I often hear what goes on and I can understand why there are problems, but it is a matter of having a good relationship with that wholesaler.

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COMMISSIONER KING: If there is a problem at the ripening stage and it is clearly the wholesaler's fault, does the wholesaler compensate the grower or does the wholesaler say "Well, look, sorry. The guys out the back just happened to drop your entire consignment from the third floor", you know. What happens?

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MR KANOWSKI: Most of the time the wholesaler compensates. For argument sake, like last week in Melbourne, there was massive power failures around the markets. Quite a few rooms generated a little bit too much heat so some fruit got away. Yes, not concerned by that.

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COMMISSIONER KING: So when the wholesaler then on-sells the fruit, do you receive any information about either the identity of the buyer, the price the wholesaler receives, any other information about the wholesaler's transaction out to the final customer, whether it is a supermarket chain, a fruit and vegetable store or whatever?

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MR KANOWSKI: I get a limited number of those, not in writing but just via a phone conversation that "So and so's fruit we used for the chains today" or "So and so's fruit has gone to Chatswood" or whatever. Yes, so a limited amount. Not everything because I would go silly otherwise.

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COMMISSIONER KING: What check do you then have that the price that you are getting from the wholesalers, which is essentially only determined at the time of they get the price - how are you assured that the price you are getting is fair?

5 MR KANOWSKI: Basically by dealing with a couple of people in each market, and I know Australia is a big place but there is not that much distance between markets because there is product transfer, particularly along the eastern seaboard, but all the markets are usually pretty relative to each other so I can't - you know, if somebody - if one is out of the 19, it stands out clear.

10 COMMISSIONER KING: So essentially, because you have got 19, you can benchmark them against each other.

MR KANOWSKI: That's correct.

15 COMMISSIONER KING: Do you ever use the wholesale market price of bananas as a benchmark?

MR KANOWSKI: What are you referring - sorry, Mr Commissioner. What do you regard as the wholesale?

COMMISSIONER KING: Sorry, as opposed to the transactions you have with wholesalers. Do you ever try and get information on, for example, the bananas, what they are moving for through the markets in Melbourne or Sydney or Brisbane?

25 MR KANOWSKI: That's one of the day-to-day occurrences, yes, and to elaborate a little on that, we have a fair idea on exactly what the chains are paying for their greens so that is usually in relationship to the market, and then if they want top-ups or emergency supplies, we know exactly what price they are paying for them as well.

30 COMMISSIONER KING: And how do you get that information?

MR KANOWSKI: Verbally from the wholesalers.

35 COMMISSIONER KING: And they are the same 19 wholesalers or do they tend to be different wholesalers from who you would get that information?

MR KANOWSKI: I have got two others who I have a working relationship with.

40 COMMISSIONER KING: It is fair to say that the system works between your cooperative and your wholesalers because it is a long-term ongoing relationship. It is a trust base system?

MR KANOWSKI: Yes, that would be a - yes, that's correct. After, you know, 25
45 years around the markets, you start to get a nose for who is good and who is not.

COMMISSIONER KING: If I can characterise, and I'm not sure if you have been here all day, but if I can characterise some of the evidence, my characterisation is the evidence has been given but my characterisation of the evidence as I take it, it seems that at one end of the market things work but they work because of trust. At the
5 other end of the grower wholesaler retailer spectrum, things don't seem to be working nearly as well but it seems to be that that's because there is not the trust there and it appears that the Horticulture Code hadn't been able to replace that by putting a processor in place. First off, is that a correct characterisation; that their tends to be a spectrum from transactions that have gone bad where there isn't the ongoing
10 relationship across the board to transactions that are working because there is an ongoing relationship? Is that a reasonable characterisation of the industry?

MR KANOWSKI: Yes, Mr Commissioner, that is. You know, the thing is, in my situation, I hear about the odd bad situation. You never hear about the good
15 relationships. You know, I think, if I can use the previous participant ---

COMMISSIONER KING: Please.

MR KANOWSKI: --- you know, he said that there was this one - I think it was
20 \$2,000. If that is the only bad debt from the Tableland, which I'm not saying it is but if it is just one of them, the percentage of fruit - sorry, compared to the massive amount of fruit that comes out of the Tablelands, I think we have got to get everything in proportion. It is the same as if you go and buy a new used car. Someone is going to get a lemon somewhere. Even if you get a new car, you get a
25 lemon, so I don't know how we protect everything 100 per cent.

COMMISSIONER KING: Obviously at the protection end of the spectrum the code is meant to be there fulfilling that role as a protective mechanism. In your view, the code as it currently stands, is it an effective protective mechanism for growers or
30 not?

MR KANOWSKI: No, it's not.

COMMISSIONER KING: Why is it?
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MR KANOWSKI: Basically every reason that the participant before gave. I won't rattle through them all.

COMMISSIONER KING: No, that's fine.
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MR KANOWSKI: That's basically it.

COMMISSIONER KING: Yes. Do you agree then with the views of the previous participants, Mr Moro and Mr Dixon, on the sort of changes that need to be made to
45 the code? Would they be the sort of things that your cooperative would support?

MR KANOWSKI: Mr Commissioner, I'm not 100 per cent clear on the changes that they would like.

COMMISSIONER KING: All right, yes, that's fine.

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MR KANOWSKI: So I would rather steer clear of that.

COMMISSIONER KING: In that case, is it possible to summarise the sort of changes that you think the code needs to make it work, just very briefly?

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MR KANOWSKI: Very brief, it has got to be all encompassing of all participants in the industry. In other words, it would have to include the major chains, the exporters, the intermediaries that are in between. It would need to cover everybody.

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COMMISSIONER KING: In the situation with your cooperative, the relationship you have with the wholesalers and then their relationships with their retailers, the code would add then in the sense an extra layer of bureaucracy on top of that. Some of the things that you are currently doing would obviously have to change under a modified code. If a code had to follow that transaction all the way down, so, for example, if you are acting as an agent and then the wholesalers were also acting as an agent, there would have to be a paper trail that allowed the individual process to be followed. If you are acting as an agent but then the wholesalers is acting as a merchant, then there would have to be the relevant relationship there with a price settlement. It has been suggested say within 48 hours. Obviously that would change the price setting system that is in place. Do you think that the a modified code that applied to your own farm's chain, would it actually add bureaucracy that would harm the way that chain works?

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MR KANOWSKI: Yes, it could harm that chain the way it exists at the moment, yes.

COMMISSIONER KING: Where would the big risk be, do you think? Where would be the risks?

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MR KANOWSKI: The first risk I think would be the cooperative itself because it could be seen as a superfluous step along the way, so some people would possibly see that basically treating this as a middle man, so to speak, so that would be the first. I think we could be the first casualty. After that, I don't think there would be too many changes in relationships.

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COMMISSIONER KING: Okay. Would you be worried that the formalisation though that would be required by the code could undermine the current relationships that you have got? At the moment you have got relationships based on trust and presumably that allows for a fair degree of flexibility and give and take on both sides. Would trying to formalise that relationship actually potentially harm that relationship?

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MR KANOWSKI: It is a very difficult question to answer. At the end of the day, I don't think it should because I think we have got a strong enough relationship that we would get through it.

5 COMMISSIONER KING: Let's change the topic from the code. Was there anything else that you wanted to add on the code before I change the topic?

MR KANOWSKI: No, the only thing I would like to add is that we are not unique as the NG Banana Growers Co-op, having this problem with the code. There are a lot of other cooperatives throughout Australia who have exactly the same problem and if I just could add a little bit, and that is the governments over the years have encouraged grower groups to get together to get strength, to get some organisation in their marketing. They have spent millions and millions of dollars on it and the way the code sits right at the moment and the impact is that all that money that the feds have put into it over the past 20 years is down the chute. That's all I would like to say.

COMMISSIONER KING: Can I just change the topic a little bit? As a representative of banana growers, in some ways you should probably have the black hat on because it seems like, as I noted this morning, one of the driving forces behind this inquiry has been the rising price of fruit and vegetables and in a number of submissions that have been made to this inquiry, it has been said "That's bananas in Cyclone Larry". Do you think that such comments are justified? Is it Cyclone Larry and the damage to the banana crop that is really behind the sort of figures that we see put forward for fruit and vegetable price inflation in the last five years?

MR KANOWSKI: I think bananas have been the easy scapegoat, particularly when I find out now, only the other day via the press, that as soon as the price of bananas went up, it was blamed for the CPI et cetera and then I found out that no, all these prices are supposed to be averaged over two years so I don't know how the dickens that first month of high prices was blamed for the problems in the Australian economy because it was supposed to be over the previous two years with the average. So I think we have been a scapegoat.

COMMISSIONER KING: From the grower's perspective, how do they see the price of bananas? Obviously the price of bananas at the time of Cyclone Larry went up considerably. I must confess, I stopped buying them when I saw them at about \$12 a kilo and I told my daughter that she could eat something else. From the grower's perspective, obviously there has been a recovery phase from the cyclone, at least from an outsider's perspective. It seems like the industry has recovered. I mean, obviously growers, you never really recover. You never really get the money back.

MR KANOWSKI: That's correct.

45 COMMISSIONER KING: But from the retail perspective, do growers now look at the retail price of bananas and say "Well, that seems to have returned to about the relativity it was before", or has it remained higher or has it gone lower?.

MR KANOWSKI: We went through the recovery phase from Larry and in that recovery phase we had a shortage of supply again which caused the prices to increase. Currently we are going through - we have just been through and are going to head into more supplies, so we are back to where we were price-wise prior to
5 Cyclone Larry, yes.

COMMISSIONER KING: That is price-wise at the retail level and at the wholesaler level and at the grower level, or are they different at those three levels?

10 MR KANOWSKI: We are basically back all around, the same.

COMMISSIONER KING: In terms of the three levels, is there or do you have an opinion on the relative take of each of those levels? Is the relative take in line with what you would expect in where there is competition at each of those stages, at the
15 growing stage, the wholesale stage or the retail stages, or are the prices as you see them reflecting something else?

MR KANOWSKI: The prices that the growers are receiving is certainly reflecting the heavy supplies that they are putting out and with that, of course, the demand
20 hasn't really changed that much but our supply has increased so we are at our break even point for production. The wholesalers, I think, basically are still doing exactly the same as they have been in those situations. Retail I get a little lost and I don't want to take sides but I personally get very confused with the likes of the three majors that they price according to the socio-economic areas that they are in. So
25 suddenly retail prices for bananas, this last week, can be somewhere from \$1.49 to \$3.49 depending on where the outlet is.

COMMISSIONER KING: One of the things we are hoping to achieve through this inquiry is to actually get data from the supermarkets to be able to work out exactly
30 what the prices are of a basket. Obviously it would be a basket of where and when and what is actually causing those price variations. The retail variations that you see, if you were going to say "Well, given a reasonable mark-up at the retail level, allowing for spoilage and so on", do the supermarkets, particularly through three majors - do they tend to be at the high end? So if we take that variation, does that
35 variation go from what you would say was a bloody good price through to "That's a bit extensive", or was it starting off "That's a bit expensive and that's outrageous", or was it going from "Gee, that's cheap" to "That's about fair"? With those range of prices, how do they fall in the spectrum?

40 MR KANOWSKI: Well, actually, it goes from "Gee, that's cheap" to "That hurts". There is the full range there. I suppose I should also add in that it is not just the socio-economic areas that the retail outlets are in, it is whose in competition with them and the one thing I will state is Aldi. Where Aldi is, the other two have got their pens very sharp.

45 COMMISSIONER KING: Do you know if any of your wholesalers supply Aldi?

MR KANOWSKI: Yes, there is one.

COMMISSIONER KING: Are you able to make any comments from that about the quality of bananas that would go to Aldi compared to the quality that would go to the other supermarkets, or is that not possible?
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MR KANOWSKI: Not really possible, Mr Chairman.

COMMISSIONER KING: Okay, yes. I probably can't push down that path any further.
10

If banana growers are at a break even point now, the North Queensland ones' anyway - the Coffs Harbour ones have probably still got big grins on their faces - but if the North Queensland banana growers are at break even point now, they have obviously had the cost of Cyclone Larry. There is a problem in the industry. There is just, you know, presumably Cyclone Larry led to a build up of debt by farmers. Are they struggling to pay back that debt? What is actually happening at the grower level?
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MR KANOWSKI: I think most of them had a lot of energy. They had access to good government assistance. The price on the swing on the recovery was quite good for bananas. So because the farmers haven't had to put all their energies into the whole aspect of banana growing, they didn't have fruit for so much of it, they actually looked after their plantations better, and consequently, we have had an increase in production because of that as well as a couple of the bigger ones have actually increased their acreage or hectareage that they have planted.
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COMMISSIONER KING: So probably the fall from the grower perspective in terms of viability, there was a fall during Cyclone Larry and there was essentially a recovery phase which probably, did it even out, or it is still a bit behind the eight ball?
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MR KANOWSKI: Mr Commissioner, that is a hard one to answer because we have got so many growers, but yes, they probably all had a good feeling at the end of that first cut in the price. Whether they were really - yes, it might have been just a good feeling in some ways.
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COMMISSIONER KING: Hopefully a good feeling related to a good bank account.

The last thing I just wanted to touch on was exports. Now, do any of your growers export commodity or does your Co-op sell to wholesalers who export?
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MR KANOWSKI: Mr Commissioner, the simplest answer to that is Australia is not an exporting banana economy.
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COMMISSIONER KING: That is the easiest answer, yes.

MR KANOWSKI: There have been the little lots of 50 cartons here, 100 cartons there once every blue moon.

5 COMMISSIONER KING: But it is not a big export crop. There are some imports of bananas though.

MR KANOWSKI: No. No, there are no imports at this stage. APIS(?) Is being kept on its toes.

10 COMMISSIONER KING: That finishes that line of questioning. I think that is actually all from me. Any other questions? No. In that case, my apologies again for being late but thank you very much. That was very useful.

15 **THE WITNESS WITHDREW**

COMMISSIONER KING: I was about to ask, is there anyone else who would like to make a statement.

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MR O'SHEA: My name is Bernie O'Shea.

COMMISSIONER KING: Please come down here, Mr O'Shea.

25 MR O'SHEA: I am a small businessman and I have a property on the Atherton Tableland.

COMMISSIONER KING: Mr O'Shea, just before you start, I do have to give the formal statement.

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MR O'SHEA: All right, I understand what you said.

COMMISSIONER KING: Mr O'Shea, thank you for attending the hearing. I note 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. Do you understand that, Mr O'Shea?

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Thank you. Now, for the record, Mr O'Shea, if you could state your full name or the context in which you are addressing the inquiry?

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MR O'SHEA: My name is Bernard James O'Shea. I live in Mareeba. I am a small businessman who owns 250 acres - I used to own 450 acres of land in which the predominant crop is sugar cane. We have now diversified into heavy produce, ie seedless watermelons and pumpkins. I have been the secretary of a small group in our area called Rural Action who have been trying to highlight to government the impossibility of farming today under the current policies and so that's our background, and I have survived by owning a small wholesaling business in Cairns

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which wholesales confectionery and small goods and drinks and all the things that people should eat and drink.

COMMISSIONER KING: So not a wholesaler in fruit and vegetable?

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MR O'SHEA: So what I want to talk about to you, what I am concerned about is - and I see you have raised it just slightly a couple of times - the parameters of the government policy has always been a problem for agriculture. There is a view which we feel, our group particularly in the Tableland felt, that agricultural policies are predicated on the basis that Australia should only and only be an export market. We should be exporting all our primary produce to the rest of the world, which, as everybody knows after 20 years of detariffing and everything, is a failure.

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Now, I wanted to raise to you a study for your benefit, Commissioner, that was done in Queensland some years ago by an economist of the Queensland University of Technology called Mark McGovern in which he did a study on, first of all, what is the total value of Australian agriculture, and secondly, where, in fact, does it go? And his study - and it was put to a test at a thing which is now in the hours of certainly national part history called the Customs House Agreement where some members of the National Party, who were pro agri council obviously, brought members from to a place in Brisbane called "The Customs House" and the members of the bureaucracy tested McGovern in relation to his study.

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In that study, he valued at that time the gross value of agriculture in Australia at over \$50 billion dollars but the interesting factor of it was that 70% of that agriculture was sold on the domestic market. Okay. Now, that is very important to understand when you are making any forms of agricultural policy. 70 per cent is sold on the domestic market. So if you think about the fact that we export all our agriculture, we are an exporting company, it is nonsense.

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And that is why the members are trying to bring oranges, grapes and everything else they want to bring here. The Chinese, the same thing, and it needs to be rammed home to anybody who is doing any study in relation to that, and I think that, you know, you were sort of trying to hear about the banana farm and also with Joe Moro, our fruit and veg. man, trying to say "Look, what about export? What about export?", particularly in sugar. The demise of the sugar industry is now apparent to everyone because what you are doing, you are exporting a product in a market, right, which is highly subsidised in a corrupt market where people like the Americans, the people like the Europeans, are saying subsidies for their product, okay. It is only the people who are the biggest producers in the world, which is the Brazilians, and there is a subsidise by and from our point of view, we used to have a premium.

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Those of us who grow sugar used to have a premium in the domestic market but once the government, following its free trade mandate, deregulated the sugar industry, we were mandated to sell even into our domestic market at the world corrupt price. So the people like Cadbury, Nestle and Marg were buying sugar far below the price

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what it was to produce it at so this was our attempt to try to prove to the rest of the world this is how we should trade.

5 Now, that is essentially the problem for agriculture. That is what is driving
agriculture into the drain. If you come along to any agricultural meeting and see the
average of average farmers, I have two boys that farm my property, two Calabrian
boys, and I have begged them to give the property away so that we can sell the
property and machinery and go away. I said to them they are so capable, they could
10 make money on any mine in Australia, \$150,000 a year, no problem, and they sit up
there year after year hoping that they are going to make money out of sugar cane.
They are going to make money out of growing seedless watermelons and make
money. They fluked some money last year, as Joe Moro intimated.

15 They fluked some money with pumpkins because there was an over-shortage in the
market, okay, but other than that, we sell our seedless watermelons on an average
price of about 40 cents a kilo, whereas you people in the cities are paying anything
between \$1.98 to \$3.98 per kilo for seedless watermelons and you say "Where is it
all going?".

20 I cannot understand how we have so many inquiries, Commissioner, but the fact is,
who has the equipment power in this whole thing? Who has the economic power?
They changed things and do they use it? Yes, they did. Why do we need an earn
inquiry into that? Simply tell me why, if we need to have to do a deep study about,
"If I've got more power than you, you are going to pay whatever I want you to if you
25 are going to sell the meat", and that's exactly what happened and it doesn't matter
about product.

30 There might be a fluke here and there where you have a shortage in one product or
you might have a niche market for a time if you are selling dragon fruit or something
else like that, but if you are in the mainstream selling, like big industries, the sugar
industry is about 140 years old in this country. It built Cairns. It built the whole east
of the eastern seaboard. It is finished. It is simply finished because it has been
deregulated and now you have the mills competing against each other on the world
35 market, cutting the price of sugar down because they are all trying to sell into the
same thing.

40 We used to have centralised selling through QSE called single That's one thing
that's had to go, okay? So I cannot understand why we have got to have an inquiry
when it is totally obvious to everybody else that if you have the power, and it doesn't
matter what business you are in, if you are wholesaling like I am and I'm buying off
Cadbury, Nestle and Marg, if they want to deal with the chain stores, they sell to me
a price that the chain stores sell to the public at and I've got nothing. I have written
to you. My company has written to you because we are trying to get a case built, A,
on the basis of predatory pricing, and secondly, the biggest problem for us has been
45 the impact of the South Africans coming into Australia through METGAS, the big
South African wholesaler, you know, who are using their market power to destroy
small businesses like my own.

COMMISSIONER KING: Okay, hang on, because I want to follow up on a couple of issues. I think I understand the sugar cans. I seemed to have spent some time in the US and the amount they subsidise their sugar beat is simply outrageous but I won't comment further on that at the moment.

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Firstly, Mark McGovern's QUT study, was that published?

MR O'SHEA: Yes.

10 COMMISSIONER KING: Do you happen to know where? We will try and chase that up.

MR KATTER: Queensland University of Technology.

15 COMMISSIONER KING: Yes, but was it a working paper from the Economics Department or did he publish outside that?

MR O'SHEA: All I know is I got it off the net, a copy of it.

20 COMMISSIONER KING: So you have been able to get it off the Internet?

MR O'SHEA: Yes, but if you just rang McGovern, he will ---

COMMISSIONER KING: He is not someone I know personally.

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MR O'SHEA: No, but I'm saying he will speak to you. You just tell him that you are an ACCC Commissioner and I tell you what, he will jump overboard to try and help you. He is a very, very easy intellectual to talk to. He talks to dumb farmers like me.

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COMMISSIONER KING: On the 70 per cent domestic, the key thing I would have thought to understand on the export on the 70 per cent domestic is not that it is so much 70 per cent but for most fruit and vegetables it is 100% domestic.

35 MR O'SHEA: Exactly.

COMMISSIONER KING: And if you are looking at meat or wheat or ---

40 MR O'SHEA: Okay, the three other ones. The meat and wheat, we export a great deal of that but there is a lot of meat sold in the domestic market.

COMMISSIONER KING: That's true. In fact, I was thinking if you went down the spectrum at one end, you have got fruit and veggies which are essentially 100% domestic. If you move up you have probably got meat next on the line. Then on the
45 far end you have got the grain crops like wheat ---

MR O'SHEA: Let me just give you an example of sugar. We have an overall annual crop of 4 million tonnes of sugar: a million tonne of that is sold on the domestic market.

5 COMMISSIONER KING: Okay, so it is still 3 million tonnes export.

MR O'SHEA: Yes, of sugar, but that, as I say, is at the world corrupt price.

10 COMMISSIONER KING: Yes, I've got to admit, I'm not sure how you guys make any money on ---

15 MR O'SHEA: No, they don't, and that's why the member for Kennedy has been fighting embassy for ethanol because it is the only possible way out, but having said that, let's talk about how hard it is dealing with them. Just to give an example, what corporate Australia is like to deal with, we had a meeting through the member for Kennedy with the main ethanol producer in Australia called Daconan and Vanilla, okay.

20 He was explaining to us that they have compulsory or mandatory ethanol in New South Wales, the 2 per cent fill of ethanol. That is mandated by the Australian government. I think the figure he quoted us was .003% is all the oil companies are taking, and what they are doing is they are prepared to pay the 1,000 fine rather than take the required amount of ethanol and put it into their product, which everybody knew that was going to happen, because there is no other way you can get it unless a
25 government regulated it. A government regulated it. They will turn up their noses, that's their way, and that's exactly what Coles and Woolworths -- you know that yourself, that's what they do.

30 COMMISSIONER KING: You mentioned METGAS though. I wanted to follow it up on METGAS.

MR O'SHEA: METGAS bought the Australian ---

35 COMMISSIONER KING: Yes, they bought out Davids, which was meant to be the famous horse in grocery wholesaling.

MR O'SHEA: That's right.

40 COMMISSIONER KING: Obviously with Franklins being in there at the time. You said the METGAS, since they bought our Davids, there has been problems with that.

MR O'SHEA: Well, they are just a small business operator, A, because they wholesale obviously to their brand name, IGA, okay. They wholesale publicly, okay.

45 COMMISSIONER KING: Yes.

MR O'SHEA: They have a variety of things.

COMMISSIONER KING: They have got Campbells ---

MR O'SHEA: They have their own distribution unit and they have a place called
Campbells Cash and Carry. You know what they do with that? They buy from the
5 manufacturers, A, on their grocery chain side. They get special buys for their
wholesaling business and also for Campbells Cash and Carry. By the time they put
all that together, there is a view in the manufacturing industry that people like
ourselves --- now we employ in Cairns 25 people.

10 We have a share in a business in Townsville and then in Mackay and Rockhampton,
and what they do is, because of their capacity to buy sometimes between 8 and 10
per cent better than we can buy, they just go into our calls and offer prices way
below what we can offer. So we have taken the view - we took a view from a New
South Wales intellectual called Frank Zumbo to see if we could take them to your
15 body and see if we could get justice.

COMMISSIONER KING: That is in your wholesaling business?

MR O'SHEA: That is a different issue.
20

COMMISSIONER KING: Okay.

MR O'SHEA: What I am trying to bring to you is the impact of the corporate power.

25 COMMISSIONER KING: I just wasn't following, because I was still trying to think
how that was on the agricultural side. On the METGAS side, you are simply saying
you are simply not able to get a wholesale supplier from manufacturer prices that are
anything like METGAS is selling?

30 MR O'SHEA: No, they just lock you out. The one person that we get some support
from is Cadbury. Nestle and Mars give us nothing. Smiths give us nothing.

MR O'SHEA: When you go to them and you say "Look, these prices, I know I can
go down to Campbells Cash and Carry and buy it cheaper", what do they say to you?
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MR O'SHEA: Well, what we do is we try to do that. The fact that we will deliver
probably the same day. We will also take back - in relation to our single business,
we take back anything that goes out of date. We give them a credit for that and take
it back, which the main - the big bloke METGAS won't do that. And METGAS have
40 a problem with the delivery. Obviously they don't have that - I spent 30 years in the
business.

I was in a fuel distribution business so service is what it used to be. Building a
relationship with your customer was everything. It used to be. That used to be how
45 business was done. The big corporates don't operate like that. They just simply put
out a price. If you want to see an interview on Business Sunday with Roger, the
head of Woolworths, he told people how they operate. They just screw the

manufacturers to death, right. That's their bottom line. What they get from manufacturers is their bottom line and they can sell whatever price they want to sell. They have got a second thing now because they are in fuel and they think that people think because they are getting forced into fuel, they can cop anything they want
5 through them. I mean, they are the greatest roads of all time. They have corrupted the fuel market.

There is very few independents left and the oil companies are happy with that. They seem to be the co-operates because there is no regulation in the country in relation to
10 it. The corporates just want to do business with the corporates. Shell wanted to do business with Woolworths or Coles or Caltex wanted to do business with Woolworths. They don't want to do it. Cadbury don't want to do business with METGAS Gold and anything, that's all.

15 COMMISSIONER KING: With your wholesale business, who do you tend to supply? Mainly convenient stores and so on?

MR O'SHEA: Well, we hit the bottom end of the grocery market in the mums and
20 dads' stores and some petrol and convenience, and our biggest business is remote business, where they want to go. The islands. India, you would understand that up as far as TI and further than that, or even the mid west, they don't go there.

COMMISSIONER KING: You would actually deliver up in the Cape.

25 MR O'SHEA: Well, we arrange for it. We use ships to go to the thing or we use transport.

COMMISSIONER KING: So that is how you are able to differentiate yourselves
30 even though you are paying more at the buyer level?

MR O'SHEA: Yes.

COMMISSIONER KING: Just returning to the manufacturers, when you go to the
35 manufacturers and you say "Look, how can you be quoting me a price that I know is less than the wholesale price?", what would you say?

MR O'SHEA: The first time they say to you for the first five or six years we had the
40 business, they said "No, that's not true. We sell them at the same price". They just do - what do they call it when Coles? Chucks out something at the low price, the other cost price. They just say that's lost litres, they call it, lost litres, but now they have given that away. They simply don't deny the fact that they do fund the bigger
45 blokes because they think the only future - when I started in this business, the wholesale business, the proportion of wholesale to grocery is 60 to 40. It is now the reverse. So in the last 10 years the chains have simply just slumped 25 to 30 per cent of our business. I'm talking about the wholesale business right around Australia.

COMMISSIONER KING: Yes. Any other points that you wanted to make or that I have missed, Mr O'Shea?

5 MR O'SHEA: No, I appreciate, and I'm sorry if I speak with a bit of passion, I can't help it.

COMMISSIONER KING: No.

10 MR O'SHEA: What I am saying is you don't need an inquiry, Commissioner, to understand what is happening. It is just simple. And the thing is that what we can't get around with agricultural people is that the settings and the policies are wrong. They are wrong but either they are the current orthodoxy in the economic world. It is funny how, like, subsidies have got to be dismissed for agricultural people yet you see the latest fall in the chair market? I was saying to somebody the other day. It is like the old days. There were the wagons and there were the Indians circling. Well, 15 that's how the market blokes were circling the supermarket bankers.

COMMISSIONER KING: So you just need to be called best terms and then you could be bought out.
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MR O'SHEA: Exactly right. Do you see how much free marketing ideology doesn't mean a thing when the elites are in trouble but because the agricultural people have no power, except possibly through your commission, possibly through your commission, because we have got no future with the productivity commission, but 25 possibly through your commission we might get some justice for our product that those of us who grow a watermelon are not bound to take 40 cents for it because there is nothing else we can do and then let them sell it for \$3 bucks and make all the profit.

30 Whoever is on the --- it doesn't matter. Sugar, 16 cents a kilo. You will pay \$1.65 to \$6. If you are buying sachets of sugar, you will buy over \$6 a kilo. Now, I tried to explain that to the former Prime Minister when Mr Katter brought him up here - he was up here for a cabinet meeting. Mr Katter took us to a meeting with him. I just tried to explain that to him, that we just want our share in the market stream. 35 Everybody in the income stream is getting money. The manufacturers get money, the wholesalers get money, the retailers get money but those of us who are at the end in agriculture, we are price taken. We need you to try to honestly and morally do something about it.

40 Thank you for your time.

COMMISSIONER KING: Thank you, Mr O'Shea.

THE WITNESS WITHDREW

45 Mr Katter, did you want to make a statement?

MS SERRA: My husband is a fourth generation farmer in North Queensland.

COMMISSIONER KING: Sorry, I didn't get you ---

5 MS SERRA: Serra, S-E-R-R-A.

COMMISSIONER KING: All right, Ms Serra. Thank you for attending the hearing. I note 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 without
10 which the evidence is misleading. Do you understand that?

MS SERRA: I do.

COMMISSIONER KING: Would you be able to state just your full name and the
15 reason why you are before the inquiry?

MS SERRA: It is Mrs Anne Serra. My husband is fourth generation farming in the region of the Atherton Tablelands so it is near It is what they call the Golden Triangle. It is on permanent water supply to Tinaroo and my people too are also
20 fourth generation farmers from the region.

It is probably a personal testament. I heard this morning the ACCC were having a public inquiry. Okay, so traditionally my husband's family have grown peanuts, maize, potatoes, all of which were regulated industries right up until - so they had
25 growers' co-ops and bores, they had directors, farmers representation and it was a good system. It worked well. The Atherton Tableland potatoes in particular also always had a very good call on the markets right around Australia.

So we had five sons. We sent them off to educate them well and they all decided that
30 farming had something in it and we have three of them back, two engineers who are also talking about coming back into farming. We were working together with a brother-in-law up until recently, went out on our own and made a move 10 years ago to go into sugar cane, a very bad move, lost a lot of money and got out of that very quickly. At the same time the marketing was falling through with the peanut
35 industry and the potato industry and the maize industry was no longer regulated and so we made a decision, with our second eldest son, to go into gourmet-use potatoes, mainly keflex. So we are lucking if we get - last year I think the maximum we could get in these eastern states was - I couldn't quote on that but probably about \$2 a kilo. We packaged them, bring them in from harvest, washed.

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COMMISSIONER KING: Washed them and packaged and in plastic bags.

MS SERRA: And placed them into 10 kilogram boxes and it is a refrigerative transport. So what happens, for the five years we have gone around Australia to the
45 different wholesale markets and we have picked up merchants whereby we have had an agreement with them that they will give us a set price for the produce and as we - they put in an order. Some of them a written purchase order but most of them not,

and what we do is send them produce, and the day it leaves the farm we send an invoice with an agreed price on it.

COMMISSIONER KING: Yes.

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MS SERRA: When it hits the market, two of the 12 merchants that we are dealing with are Asians because we are also growing yam beans but I will just stay on the potato truck. When the potato hits the market they pay when they feel like it, basically. Now, on our invoice we have got 14 days term of trading as a turnaround.

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We have got one merchant in Melbourne and one in Western Australia that we get our potatoes to by security. We get them across to Western Australia and they pay within a two week period. The rest, I'm still waiting for payments from last October on one particular merchant and that is not uncommon for that to happen. We have got, I think, now 12 merchants or so-called merchants that we are doing this with and the majority would be not paying within three months if we are lucky.

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COMMISSIONER KING: Sorry to interrupt, but they do pay the price that you invoice them at so it is a true fixed price.

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MS SERRA: No.

COMMISSIONER KING: Because we had a lot of evidence today about prices being ---

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MS SERRA: No, I wish. We always go from the top, which is what we agreed on to the trips that we take each year, and quite often we go throughout the year as well and we will see them like in Brisbane or Sydney in it is the Eastern States and we will talk with them and "Yes, that's the price you are going to get". You talk with them when they ring you with an order, "Yes, that's the price we are going to give you". You send off that invoice with the term of trading, and as I said this morning, at 5.30 I was sending invoices back that are dated back to October last year, and there is inquiry all the time on pricing. They are always changing the pricing. It is never ever or very rarely is it what you have sent off on that invoice.

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COMMISSIONER KING: Do they ever give an explanation of why the price ---

MS SERRA: "No, it is not the quality, it is not a size". We go through all these issues. I have tried once a month sending them off a report that they can fill in to say "Are you happy with this? Is this the wrong size?". They don't comment. We have built up a rapport, as Joe was saying earlier, with these merchants that they will take the produce in the first place. It is a very select market and it is a very small market, a niche market so to speak, and we actually have to accept that that's the way they are going to do business.

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We don't have any control to say "We want that or we won't send you any more" because they will then go to the next grower who is growing the same thing wherever and take theirs. We used to supply Smiths. We used to supply Arnott's and that was

on contracts and that used to work quite well. The Potato Marketing Board worked extremely well when we had it.

5 COMMISSIONER KING: What has happened with the Smiths and the Arnott contracts? You have moved away from them?

10 MS SERRA: We actually moved into sugar cane at the time we split up with the brother-in-law because our sons were getting older and we were all sort of going our own ways. Also, we have got three sons back in the business now. They have finished study and worked and they have come back into the business. We are moving into garlic, dragon fruit and yam beans. We have two Asian merchants in Sydney and Melbourne who take our yam beans. They are like a water chestnut.

15 COMMISSIONER KING: Okay, yes.

MS SERRA: They are something like a water chestnut for use. They are highly nutritious and very, very popular amongst the Asians in Sydney and Melbourne, some into Brisbane. Now those merchants send us a purchase order. We send them an invoice. Within 24 hours I have a reciprocated invoice back from them and if
20 there is any issue on any price, within 24 hours we are on the phone and they ask me to put another invoice into the system, send it down to them immediately and you pay within two weeks.

25 Now, my question is: why isn't this happening in the potato industry? We have gone from a regulated industry that works so damn well. I mean, I saw my uncle work in that industry and his father before him, 1911 they come to the Tablelands, and in those days it was absolutely, the black market tearing and the things that were going on with the so-called merchants in the marketplace. So what has happened that we had these regulated industries, the peanut industry, the potato industries, the
30 maise's Statutory Marketing Board? What has happened? Where has it gone? Why haven't we got it now? When in Western Australia we were over there last year seeing our merchant. We spoke with potato growers all throughout Western Australia down south of Perth and out west as far as they can go before they run into salt lake problems and they have a regulatory marketing system over there that works
35 extremely well, extremely well.

COMMISSIONER KING: That is in WA?

40 MS SERRA: In WA. Virtually having a licence to grow potatoes over there is a licence to print money. Everybody is happy with their systems except Woolworths and Coles, the grocery chains, and they are working very hard to break it with some of the wholesalers, as you can imagine.

45 We are growing dragon fruit at the moment. We have just started our first season. We are selling locally because we don't have a great supply at this stage, it is just coming. It is a market that we are building up and we are selling them for \$3 a kilo. I don't know if you have seen dragon fruit in the supermarket but they are nothing

under \$20 a kilo. If you go and look at the supermarkets around the place, I think I have seen them \$16.95, and that may have been seconds in IGA, I don't know.

5 Peanuts, my husband's family has grown peanuts since 1927. My uncle grew
peanuts, the first peanut grower in the Tablelands. We can't grow peanuts with our
three sons back on the farm with four incomes to support. We can't afford to grow
peanuts. We have equipment sitting in the chair that we have just paid off on lease
10 that we can't work to make those leases to make them viable because we are now
getting the same price that we were getting when my husband left school 40 years
ago.

COMMISSIONER KING: With peanuts, is that a case where it is a domestic product or is there some imported nuts

15 MS SERRA: There are imported nuts. It is understood that the imported nuts in this
country coming from China were a problem, and I wouldn't be quoted on this, but
my understanding was that the academy onion level for peanuts was raised so that we
could have imports taken into this country to subsidise our ---

20 MR KATTER: Mr Chairman, I don't know if I am allowed to make a comment, but
yes, the academy onions levels were raised and they actually said that the peanuts
were coming from Texas and from China.

COMMISSIONER KING: Thank you, because I was just a little bit worried about
25 the normality of that. That's good that has been clarified, Mr Katter. I should just
point out for the record that that is Mr Katter.

MS SERRA: Yes, sorry to bring it up when you are not sure on that but sometimes
30 you hear a lot of things as farmers and you can never be sure, if you are not involved,
that it is something to say in front of a commission.

COMMISSIONER KING: I must confess, one of the things that struck me during
this is certainly that wholesale level in fruit and vegetables, it seems that their
35 businesses don't run like any other businesses I have come across.

MS SERRA: No, I have family, my direct family. My brothers and sisters are all in
business. I have got a brother who owns I don't know how many Super News in
Brisbane and even in the southern states and he said he could never work with the
variables in this industry, in the agricultural industry. It is just appalling. You have
40 five years that we have worked with these merchants trying to get some sort of a
rapport that we can trust that we can afford to grow it. Especially the fact that
fertiliser has gone from \$1,000 a tonne to \$1,400 a tonne, let alone the leasing that I
was signing this morning that I couldn't get here in time to come to your public
hearing this morning. It is just one third debt, you know. You are running on
45 virtually half what we own in assets.

Yes, we are in debt and with three sons coming on and maybe even five and trying to sound enthusiastic about it all, our enterprise is only surviving because my husband is a class 2 water driller, and that, I can tell you, is heavily subsidising the farm. The farm is not pulling its own weight and we own the land and it is in, presumably, one
5 of the very best parts of Australia, what they call the Golden Triangle. A farm on the corner of our road sold the other day for \$15,000 an acre and that is not on the channel. So it is with a water ball. So if you think about that, that's - yes.

10 COMMISSIONER KING: It must be good farmland.

MS SERRA: It is really a personal testament.

COMMISSIONER KING: No, no, I appreciate that, Mrs Serra. It has been very useful. One of the reasons why we are here is so that we can hear from the people.
15 Thank you very much.

MS SERRA: No, it is just absolutely appalling.

20 COMMISSIONER KING: Thank you

MS SERRA: Thank you very much.

25 **THE WITNESS WITHDREW**

COMMISSIONER KING: We are pretty much out of time.

30 Mr Katter, did you want to make a statement here or we talked about possibly Shepparton.

MR KATTER: Yes, I'm chasing some information, Mr Chairman, and I would appreciate if I could make a formal submission at Shepparton.

35 COMMISSIONER KING: If you could provide a written form in advance because that obviously then means - it makes it easier for us to ask the relevant questions, but that being the case, I will see you in Shepparton.

40 I will formally bring the hearing to a conclusion. Thank you all very much for participating. I thank you very much for attending and being here today.

HEARING ADJOURNED AT 4.57 PM

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