

Public hearing – Canberra

30 April 2008

Time: 12.00noon - 2.00pm

Address: ACCC Office
23 Marcus Clarke Street, Canberra

Room: Hearing – Large Training Room – Level 3

Witness	Submission	Summons
National Farmers Federation Mr Charles McElhone Manager – Economics Mr Charles Burke Vice President	137	No

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TRANSCRIPT OF PROCEEDINGS

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

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

GROCERY PRICE INQUIRY HEARING

CONDUCTED AT: ACCC OFFICE, CANBERRA

DATE: 12.00 PM, WEDNESDAY, 30 APRIL, 2008

THE CHAIRMAN: Commissioner John Martin is going to join us in just a few moments. Although the NFF have had the pleasure or otherwise, having heard my introduction, I'll do it just for the record and once again apologise that we had to
5 mess up your timetable the other day when we were last in Canberra. But, my name is Graeme Samuel, I'm the Chairman of the Australian Competition and Consumer Commission and the chair of this public inquiry into the competitiveness of retail prices of standard groceries. I welcome you all and declare this hearing open. I will be joined by Commissioner John Martin when he arrives and Commissioner Stephen
10 King is here, who are the other two presiding members for the inquiry.

The inquiry is convened and this hearing is convened under Part VIIA of the Trade Practices Act. It is held pursuant to a request from the assistant treasurer and minister for competition policy and consumer affairs, Minister Chris Bowen, which
15 was received by the ACCC on 22 January 2008. The matters to be taken into consideration by the inquiry are set out on the ACCCs website and they are set out in the terms of reference and I won't repeat them here. I note that the ACCC has so far received over 180 public submissions to the inquiry, as well as confidential submissions. We'll endeavour to take into account all of the information that has
20 been provided and we do thank industry participants for the contributions that they've made.

The purpose of these hearings is to give the ACCC an opportunity to investigate, in detail, the issues raised as part of the inquiry with industry participants. In terms of
25 procedural issues, witnesses will have received a document that outlines how we intend to approach these hearings, so I won't go through the procedural points in detail. I just want to emphasise, though, that although we are not taking evidence under oath at this hearing, it is a serious offence to give false and misleading evidence to the ACCC. We're not using external counsel at the hearing, but
30 witnesses will be questioned by both commissioners and by the ACCCs internal lawyers.

For that purpose let me introduce to you, Mr Damien O'Donovan and Ms Catherine Freeman. I thank the witnesses from the National Farmers Federation for attending
35 today. Once again for the record I apologise for having thrown you out just through the length of our earlier examinations and I regret that we couldn't take your evidence at our last hearing in Canberra. So thank you very much for attending today and for being flexible with your schedules in organising this time to appear. We realise you are busy people and attending these hearings can be a significant
40 imposition on you and your organisation. I'll hand over at this stage to Mr O'Donovan.

MR O'DONOVAN: Could you just state for the record your full name, the
45 organisation you work for and your position in the organisation?

MR C. BURKE: Charles Burke, Vice President of the National Farmers Federation.

MR C. McELHONE: Charles McElhone, Manager, Economics, National Farmers Federation.

5 MR O'DONOVAN: Okay, now you understand that it's an offence under the Criminal Code to give evidence at this inquiry that you know is false or misleading or omits any matter or thing without which the evidence is misleading?

MR BURKE: Yes.

10 MR O'DONOVAN: All right. Now, did you have an opening statement that you wish to make?

15 MR BURKE: No, I don't think we really do. We've made a submission to the inquiry, as well as provided additional information and basically are here today to offer the opportunity to further expand on some of the questions and provide further information on issues that we've raised within our submission.

20 MR O'DONOVAN: Okay. Now, you raised in your submission the question of market power and indicate that market power issues can arise when the supply chain is rationalised. Do you have any specific evidence of misuse of market power by any major retailer in Australia?

25 MR BURKE: Well, no I don't think that we would have specific evidence. There is a lot of anecdotal discussion within our membership, but nothing that we would be able to provide as concrete evidence.

MR O'DONOVAN: Okay, and when you say "anecdotal discussion" does that form of any specific complaint by a specific member?

30 MR BURKE: A lot of discussion which varies across different commodities. As you're well aware the National Farmers Federation represents a number of different and individual commodities and while we can't speak about specifics there are a number of commodities where the discussion and the anecdotal evidence is that there are times when there are aspects of negotiations with major retailers and indeed some
35 wholesalers, can appear to be one sided in the discussions for contractual arrangements.

MR O'DONOVAN: All right, can you be specific about the commodity?

40 MR BURKE: Well, I think in some of the fruit and vegetable lines certainly there are some discussions within some of the meat – the red meat industries. There is also discussion, not necessarily about the technical definition of misuse of power, but certainly about aspects that are one sided.

45 MR McELHONE: Can I also just say on that, it's very important what Charles has mentioned, it's not just about the retail sector or the supermarket sector here and we have, indeed, spoken with the ACCC in the past about that occurrences with – about

potential misuse of market power, such as unilateral contract variation clauses and the like, which we have taken forward through that mechanism.

5 MR O'DONOVAN: Sure, do you have any specific examples of unilateral contract variations, any contract you could give us that includes such a term?

MR McELHONE: Again, the issue that we have raised with the ACCC in the past surround the wine grape sector.

10 MR O'DONOVAN: Sure.

MR McELHONE: And, you know, my understanding is that's with the ACCC and has gone through those formal proceedings, but that's the only one I have to hand.

15 MR O'DONOVAN: Okay, and in relation to the retail sector, I mean this is about the competitiveness of retail prices, there's no suggestion that there's any unilateral contract variation clauses in the contracts offered by the major supermarkets?

20 MR McELHONE: Purely what we have is regarding anecdotal evidence, but nothing that has – you know, that we could verify with any evidence.

MR O'DONOVAN: Sure, well, when you say anecdotal evidence in what sense is it evidence?

25 MR BURKE: What we regularly hear is people who have direct supply contracts for various commodities. We'll talk about in some cases the subjective measurement of some of the specifications, quality specifications that have been provided within contracts that allow for different interpretation. Some are more specific with how you measure some of those specifications. Others provide the opportunity for some, I guess, flexible interpretation.
30

MR O'DONOVAN: Sure and do you ever pursue those specific complaints?

35 MR BURKE: Having been involved at NFF for a number of years and dating back through various codes of conduct of operation it has always been the opinion of anybody who felt in that position that they weren't prepared to speak up because there would often be the ramification of never getting a supplier contract in the future, so there was always this concern of making a point of it, because there was always the prospect of losing a contract, the current contract and any potential for a
40 future one.

45 MR O'DONOVAN: Sure, but there would be no risk of them providing you with details of their complaint and you recording the details of the complaint confidentially?

MR BURKE: Well, again, I think by nature of what we're talking about some people would be very hesitant to put pen to paper to give specifics, because they would be concerned about where that may lead.

5 MR O'DONOVAN: Even to the NFF?

MR BURKE: Yes, I think – we have tried numerous times over the years to get more specific evidence, but people are always reluctant to because they're just concerned that they currently have a contract with an organisation and they don't
10 want to do anything to jeopardise that, even though at times it is not in the true sense of a two-way arrangement.

MR O'DONOVAN: Sure, but would it be fair to say that there is not a single identifiable, verifiable example of abuse of market power that you're aware of?
15

MR BURKE: No. It's fair to say that there is not.

MR O'DONOVAN: Okay, and your only explanation for that is that there is some reluctance about some form of retribution in bringing that forward?
20

MR BURKE: I think there's a considerable amount of reluctance for fear of retribution.

MR O'DONOVAN: All right. Now, in the context of this inquiry, we're offering the opportunity for people to provide evidence on a confidential basis, which would seem to provide a no risk opportunity to provide evidence of abuse of market power and we haven't had witnesses coming forward on that basis. Could you explain why it is that we don't have evidence of this kind of abuse of market power?
25

MR BURKE: I think, as we've already stated, that anybody who feels that there has been some unilateral variation or however you'd like to describe that is more concerned about not wanting to rock the boat because sometimes the options are very limited as to what they would be able to do.
30

MR O'DONOVAN: All right. Well, we've heard evidence from growers in public session that they are very happy with the treatment they receive from Coles and Woolworths.
35

MR BURKE: Yes.

40

MR O'DONOVAN: And that they are honest, reasonable people to deal with.

MR BURKE: Yes.

45 MR McELHONE: Yes.

MR O'DONOVAN: Who reject only according to the terms of their contract. Is there any reason why we shouldn't accept their evidence over the vague possibility that there might be some anecdotal evidence out there of misuse of market power?

5 MR BURKE: I would have to agree that in a good majority of cases most people are reasonably comfortable with supply agreements with major retailers but that doesn't mean that there could be cases where – and as I've pointed out, it's anecdotal evidence about what people are claiming is a problem to them. But again, we stress the fact that we're not making any claims of misuse of market power, we're talking
10 about in some cases the discrepancy between farm gate price and retail price and how there seems to be an apparent gap in that and we're not for one minute talking about technically misusing market power because we're aware that there has got to be a fine – there is a fine line and it's a very fine line between using your position in the market as one of strength as opposed to misusing market power.

15 MR O'DONOVAN: Now in relation to the gap between retail and - farm gate prices and retail prices, have you done any specific analysis of farm gate prices.

MR McELHONE: Yes, we have and we've provided that to the ACCC.
20

MR O'DONOVAN: That's in relation to the beef and lamb?

MR McELHONE: Beef and lamb are the only specific data that we have access to.

25 MR O'DONOVAN: Right, okay.

MR BURKE: But also bearing in mind that – yes. I was going to touch on the Whitehall and Associate study but that isn't necessarily drawing the direct correlation between the farm gate – that's more about a share of retail. So yes, we'll
30 leave it at that, the beef and lamb examples that we've provided.

MR O'DONOVAN: Okay, all right. You also in your submission indicate that there's been minimal interest in collective bargaining and suggest that the cause of that or – sorry, as a consequence of that that there should be consideration given to
35 changing the legislation to make it easier. Is it possible that the reason there's been so little interest in collective bargaining is that farmers feel that they're getting a fair deal for their commodities in their negotiations on an individual basis. Have you considered that?

40 MR BURKE: Well, firstly I must say it is a great disappointment to me personally and to the NFF that we haven't seen more farmers avail themselves of the opportunity for the notification process for collective bargaining. It has been a great disappointment to us that there hasn't been more use of that.

45 THE CHAIRMAN: It's been a disappointment to us as well. We were hopeful we were going to drum up a lot more business and it hasn't happened.

MR BURKE: Yes. It has been a great disappointment. I've been involved in NFF long enough to know when this first was talked about and I thought, "Well, this is fantastic", because I've been involved in grower cooperatives where there was opportunities to get some sort of negotiation control with contracts in direct supply in
5 the commodity that I'm involved in so it's a great disappointment. I'm not exactly sure that people are satisfied entirely with their current arrangements. I think more based on knowing the industries as they are and it's not necessarily just at the retail level, there is a reluctance by sometimes wholesalers, processors or retailers to, in fact, entertain dealing with bigger groups of collectives and there's always
10 opportunism on individuals that they would be prepared to negotiate away from a collective group to get in the door with a retailer, so to speak. So I think perhaps the lack of the use of the changes in collective bargaining is more one of education and a timing issue.

15 MR MAKEL: We did make note as well that there has been some take up of the authorisation process and we recognise that the streamlining of that process has increased the attractiveness of going down that path which also in part detracts from the attractiveness of the notification process as being another potential reason for that occurring.

20 MR O'DONOVAN: But have you specifically explored whether or not the reason that there has been this lack of activity is that farmers are actually happy with their ability to negotiate fair contracts on an individual level?

25 MR BURKE: No, no. We haven't explored that.

MR O'DONOVAN: Okay. That might be one of the reasons why?

30 MR BURKE: I wouldn't disagree but I would be sceptical that that would be the primary reason.

MR O'DONOVAN: Right. Why would you be sceptical?

35 MR BURKE: Simply because being involved in the industry I know how difficult it is to get a collective group together and then have a processor, wholesaler or retailer negotiate with you on a collective basis. They would much prefer to deal on an individual basis and if I got, for example, if I got together with a group of people in my commodity area and tried to deal with a processor I know that there are people who wouldn't necessarily be involved in that collective group who would be able to
40 negotiate something that may be 5 cents a kilo less to guarantee a supply. So there is plenty of opportunity in the market for opportunism and I think some people would be reluctant to enter into collective arrangement because of that.

45 MR O'DONOVAN: Presumably the most efficient producers would be reluctant to enter into collective arrangements?

MR BURKE: Well, that's right. A lot of the efficient producers think that they're able to do it just on their own and unfortunately has a detrimental effect to the commodity as a whole.

5 MR McELHONE: We should also note with the notification process there are some limitations there as well if you change that collective bargaining group there are cost impositions and restrictions and inflexibilities within that framework which may or may not suit specific industries. So let's say I acknowledge it as a whole priority of issues and considerations which farmers need to make but part of those is also the
10 actual framework in which collective bargaining is set up as well.

MR O'DONOVAN: Sure.

MR BURKE: Perhaps this is an area that the inquiry, you know, may be able to
15 acknowledge that we need to do more work with both – from all sides of the equation because as I said at the outset it's been a great disappointment to us at the NFF that having done so much work on collective bargaining and those sort of issues that there hasn't been greater uptake of it and we would like, certainly like to see that as a way forward for the future.

20

MR O'DONOVAN: All right. But the NNFs role is to represent the interests of farmers, is it not?

MR BURKE: Yes.

25

MR O'DONOVAN: As I understand it, you've not undertaken specific work yourselves to ensure that the suggestions you are making here are representative of what efficient farmers would like to see in terms of collective bargaining?

30 MR McELHONE: Suggestions in terms of - - -

MR O'DONOVAN: Changes to legislation.

MR McELHONE: Yes. What we're talking about there is increasing the flexibility
35 of that system to make it more attractive for farmers to engage with collective bargaining. We're not definitively saying that all of a sudden we'll see a massive rush but we're saying that the more opportunities the farmers can engage in in that type of trading mechanisms, you know, if they wish, the better.

40 MR O'DONOVAN: Sure. But if farmers themselves are, in fact, content and happy to pursue individual negotiations even against large buyers - - -

MR McELHONE: Sure.

45 MR O'DONOVAN: Surely the NFF should be representing that view?

MR McELHONE: But this is, by increasing flexibility within the collective bargaining and notification process isn't taking away from producers' choice to go down that route if they so wish.

5 MR O'DONOVAN: All right. Now in relation to the horticulture code, the NFFs position is to extend it to retailers. Do you have any specific examples where retailers' ordinary terms of – sorry, the ordinary terms on which retailers trade would not comply with the horticulture code in its present form?

10 MR BURKE: Well, that was always our view that the retailers probably had nothing to fear by being included in a mandatory horticulture code because we were always the most concerned that having a mandatory horticulture code was simply about ensuring contractual clarity in the environment and we were always very strong advocates of basically first point of sale, whether that be a wholesaler, a
15 processor or a retailer. So in our view from what we can understand the simple facts of a mandatory code if they're applied most retailers with their contracts would pretty well comply.

MR O'DONOVAN: Right. But if there is already that transparency there?
20

MR BURKE: Yes.

MR O'DONOVAN: Why would we regulate an industry that's already working
25 appropriately?

MR BURKE: Well, it would appear that it's segregating sectors at the market when in some cases it would appear to us that if you produce a horticultural product that if you're dealing with a retailer or a processor or a wholesaler you should expect the same type of things and a code should just cover the whole first point of sale.
30

MR McELHONE: Can I also say, it's also about the administrative effort that actually goes in also by the ACCC in administering the horticulture code, and what we have highlighted is that by segregating part of the market as being bound by the code, it is adding additional complexities within the wholesale markets to actually
35 administer that code. So if you have people working within the wholesale markets who are acting on behalf of a retailer, they are not bound by the code, demonstrating that, you know, actually providing verification that that is the case or it isn't the case, it becomes a bit of a mine field from that perspective, so it's about streamlining the process, and it's about providing producers as well as wholesale markets with clarity
40 when they're actually doing business through that, about what kind of responsibilities they're actually involved.

MR O'DONOVAN: So does that cover the circumstance where a person is acting
45 as an agent for e retailer?

MR McELHONE: Yes.

MR O'DONOVAN: The grower doesn't – can't - - -

MR McELHONE: Or a retailer, it might be a retailer, might be an exporter, or a processor, technically, they would not be bound by that code, and so you have
5 multiple levels of transactions happening within the same wholesale market
potentially. Now, as Charles said, you know, we believe that that is, you know, in
terms of contractual clarity, the retail market in particular, the retail sector is – it's a
real strong point of the retail sector, and therefore the requirements under the
horticulture code would already, we believe, already be met by the supermarket and
10 retail sector.

MR O'DONOVAN: Okay. Now, again, do you have specific complaints from
farmers that they're unable to determine whether or not they're dealing with an agent
of a wholesaler or an agent of a retailer that prompts this concern?
15

MR McELHONE: A lot of this is coming through from the administrative
committee, that is being dealt with, you know, separately, to look at the horticulture
code, and bedding it down, and our understanding from those discussions and from
some of the feedback that's coming out of those discussions, is that that is one of the
20 areas that is being looked at.

MR O'DONOVAN: So has the administrative committee received specific
complaint?

MR McELHONE: That is the – the feedback that we are getting from out of the
industry participants within that administrative committee, are that – that that is one
of the areas that they're trying to bed down.
25

MR O'DONOVAN: Okay. Now, the – is the administrative committee basing that
30 view on actual evidence that they have received, or are we getting back into - - -

MR McELHONE: You will have to speak to the administrative committee about
that, or the code administration committee.

MR O'DONOVAN: All right. Now, in relation to farm gate prices, just what I
wanted to go through was looking at how – from the preliminary work we've done so
far, how these prices are set, and determining whether or not you have any
disagreement with the preliminary views we're starting to form on a commodity by
commodity basis. So if you look at milk, first, that seems to be a competitive of the
40 trading commodity, where the price set is based on supply and demand at the farm
gate as a result of competition between processors. We've seen the price rise
dramatically in recent months as a result of shortage of supply, processors are paying
more, and it seems to be a competitively traded commodity. Does the NFF have any
reason to think that that's – that farm gate prices are set in a different way, or that
45 they're manipulated in some way by any factor within that market?

MR McELHONE: We would be looking to the ACCC to verify those claims, it's – I mean, we're not saying any differently to that, we're saying it's prudent to have a look at whether that is occurring through not just dairy but the whole cross section of commodities, looking at the transparency in that supply chain.

5

MR O'DONOVAN: Okay. But there's no specific evidence you can provide to us that says that that market works any differently to that?

MR McELHONE: No.

10

MR O'DONOVAN: All right. In relation to grain, it seems to be an internationally traded commodity where the price is set internationally, and farmers receive the price you would expect for an internationally traded commodity, would you agree with that?

15

MR BURKE: Yes.

MR O'DONOVAN: There's no reason to think that concentration of the whole – at the retail level or the wholesale level is somehow causing farmers not to get the market determined price at the farm gate?

20

MR McELHONE: No.

MR BURKE: No.

25

MR O'DONOVAN: All right. In relation to fruit and vegetables, these appear to be nationally trade commodities, the trade through capital city wholesale markets where prices are published on a daily basis by Ausmarket, and any farmer can verify the range in which those commodities are trading, and again, set – by reference to supply and demand within the market for the particular commodity?

30

MR McELHONE: From our information, we must remember here that – well, we would encourage the ACCC to speak with the specific marketing agencies who have access to the retail and farm gate, you know, price data to actually verify that these are taking place, but from our perspective, that is exactly what we're looking towards the ACCC to verify. From our perspective, we don't come with specific issues along those lines, we just say it's prudent to look at the competitive dynamics through all those sectors.

35

MR O'DONOVAN: Okay. That's true in relation to meat and eggs, you have no reason to think that they're not competitively traded commodities?

40

MR McELHONE: I think it's fair to say, we just don't have access to the full range of data that the ACCC will have access to, to actually be able to verifiably make that call.

45

MR O'DONOVAN: Sure. But do you have access to specific evidence, any specific evidence that suggests that there is market manipulation going on, abuse of market power, unconscionable behaviour happening at all?

5 MR BURKE: Nothing specific.

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

10 THE CHAIRMAN: I want to go over what you've been telling us, and we had similar discussion with a couple of your representative members, the South Australian Farmer's Federation and the Western Australian Farmer's Federation. If we look at the purpose of this inquiry, I can probably summarise it in three lines. The government has asked us to find out what's happening in the whole process line from farm gate to check out counter in relation to grocery products. It's then asked 15 us to find out what's wrong, and then finally it's asked us to tell them what should be done to fix it. Now, if we were to go over what you've just been telling us for the past half hour, you could tell us what's happening based on anecdotal information.

20 Yet, if I was to ask you what's wrong, I don't think it – at this point in time, you've identified anything that's wrong, and therefore I'm finding it a little bit difficult to understand what should be done to fix it, and that's a real problem for us, because you do represent all the growers, one way or the other, around Australia, and yet the information that you're providing us is suggesting that there's nothing really that's wrong in the way the market is working at the moment, but you'd like us to verify 25 that that's the case, and that it would be good to see a few things done, for example, in relation to collective bargaining, but you're not sure that it's a problem with a law, the way it's being administered, but it's a problem with the farmers, not wanting to collectively bargain, and I'll come back to that in a moment.

30 In terms of the horticulture code, well, you don't think that there's any either actual or hypothetical non compliance, particularly by the major retailers, but it would be a good idea if they were joined into the code, even though it would make no difference to the processors of transactions between those retailers and growers at the present time. Now, if I – I don't want to sort of verbal you, but have I summed it up 35 correctly at this point in time?

If we can go back, because that's – I have to say that that's reconciling with information that we're obtaining from your representative members, although there are various claims that are being made based on anecdotal information as described 40 are those giving to us – and I'm talking about those representing, you know, the South Australian Farmer's Federation, for example, are saying, well, they're pretty sure that something's happening, but they've got no evidence of it, and that probably it should be happening this way, but they've got no evidence of it, and you'll appreciate that if we're going to be providing recommendations to government about 45 what's happening, what's wrong, and how to fix it, governments are first of all going to want to know whether those at the coal face or at the farm gate can actually tell them that there's something wrong.

At this point in time, we're not having any information being put to us that's suggesting in any significant form that there's something fundamentally wrong. Now, I'll leave the horticulture code alone for the moment, because I think all the evidence that we've had so far from both representative bodies, that is, members of
5 the NFF and from growers, is saying that in their dealings with the major retailers, if the horticulture code were to apply to them, there would be absolutely no difference in their dealings. That the dealings that they're currently undertaking are in accordance with what the horticulture code requires. So therefore when you apply a regulation to a party that is already complying with the regulation, you have to ask
10 why would you be doing it?

MR BURKE: Mm.

THE CHAIRMAN: The other issue that we have raised on a couple of occasions is
15 collective bargaining. You will be aware from various comments that I have made in the public arena and Commissioner Martin made in the past, we are both, let me say, bewildered and frustrated at the lack of response by groups, particularly those who complain that they are in a relatively weak bargaining position in dealing with larger business. In terms of dealing with larger business, I am talking about in terms of
20 growers dealing with processors, manufacturers; packagers and, of course, in some cases, dealing with the major retailers.

We are bewildered and frustrated that growers are not taking advantage of the collective bargaining processes. I think there would be many in the current
25 government and in the former government that would be expressing some very real frustration because they went through a lot of agony in bringing those changes through parliament and then to find that they are largely being ignored. I think in the past 12 months we have had - correct me, Commissioner Martin, but I think we have had about seven notifications under the collective bargaining when, in fact, it was
30 promised - I say promised by representative groups that they had several hundred lined up. So, we staffed up accordingly and a hell of lot of staff having nothing to do. We have allocated - we have actually allocated them elsewhere. Don't worry. They have got plenty to do. So I am trying to understand what it is.

35 If you were to say now as the representative of the vast majority of farmers in this country that we want this inquiry to recommend to government that certain things specifically should be done that are not being done at the moment and that they will fix certain specific problems that we are quite clear exist at the present time, what would you say? How would you draft the recommendations of the inquiry report?
40

MR BURKE: I think you are right in what you say, that there is a lot of discussion about the problems that we perceive. It is very difficult and we - I think that the NSF have certainly attempted to make sure that we don't make any claims or any accusations that are unfounded. We are not actually pointing the finger. All we are
45 concerned about is and I think the evidence is there that the farm gate price of many commodities in Australian agriculture, if they haven't stayed stagnant, they have only just increased a small percentage. Now, I think our evidence talked about

ABARE figures. Beef decreased since 2005 by 13 per cent. That is at farm gate.
Lamb by 18 per cent.

5 The problem is that at a retail level, those prices have gone up in most cases. As an
example, last year in September/October, and I speak about this because – I am
involved in beef. The saleyard price of beef went down 20 cents a kilo over a
two/three/four week period. Now, that could represent in the vicinity of \$100 per
10 beast less over a period of time. In that same period the wholesale price of meat
actually went up. Now, also obviously the retail price of meat went up. There was a
lot of discussion in the press about the prices needing to go up at the retail level
because of the drought.

15 Now, that sets bells ringing, that – well, how come that is that the price we are
receiving at the farm gate has gone down. Our input costs have gone up, yet the
retail price has gone up. I guess we don't have the answer as to know what the
solution is. We are most concerned about the transparency of why that happens.

THE CHAIRMAN: Can I test you on that because you are a beef grower?

20 MR BURKE: Yes.

THE CHAIRMAN: You have raised that very issue. You would be aware of the
analysis, the research, that the ACCC did last year into the meat industry?

25 MR BURKE: Yes.

30 THE CHAIRMAN: You would be aware that the – without wanting to over-
summarise, if you like, the outcome of that report but what it effectively said was
that the meat that is stocked on the supermarket shelves does not necessarily – in fact
generally are tending to represent the sale of drought distressed stock whereas what
is being sold on the supermarket shelf is the result of some fairly expensive feedlot
development; that is, the special feeding of stock by grain. It is contracted by the
35 major retailers from the farm, all the way through the processing line, and it is not
representative of what is being sold at the saleyards which is obviously experiencing
the decline in values because of drought distress.

40 MR BURKE: That is true to a certain extent. That meat on that shelf would have
been contracted through the retailers, direct consignments from feedlots - - -

THE CHAIRMAN: Absolutely.

MR BURKE: - - - six and 12 months prior.

45 THE CHAIRMAN: Correct.

MR BURKE: So, therefore, the drought had absolutely no impact on the price of that meat on the shelf.

5 COMMISSIONER KING: Sorry, can I just test you on that. If there is an increase in grain prices, can you be sure that those contracts with the supermarkets do not allow the feedlots to go back to the supermarkets and say, well, grain prices have gone up 100 per cent. We can't feed your cows.

10 MR BURKE: Nice try. People last year were - - -

COMMISSIONER KING: Sorry. So, your understanding is that they would not be able to do that?

15 MR BURKE: They can try but I can tell you what the answer will be. I fed a lot of cattle last year at feedlots in Queensland and I was targeting the export market, the ~~market is specific~~ different to what you would have for Woo

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Coles and Woolworths
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MR BURKE: Certain not on the grain prices. If they did, it might have been a few cents a kilo. I don't have evidence of that but when you speak to these feed lotters and sometimes if you have cattle consigned into a feedlot, they might say to you, look, I am short this month for supply. Can I take some of your cattle to fill my
5 order because if I don't fill my order and I don't provide X amount of trailer loads of cattle of week, then I will lose that contract. So, I never heard of anybody

MR BURKE: So I never heard of anybody offering more at a period when the grain prices effectively doubled in about four months.
10

THE CHAIRMAN: I don't want to sound unsympathetic to the issues you've described, but how would you distinguish that from someone that's gone into an import or an export contract but hasn't hedged against dollar movements? Exchange rate movements?
15

MR BURKE: I don't distinguish that, but the thing that I see is the retail price goes up and the claims are that it's because of these factors, when those factors that they're claiming had no bearing on it, and you're exactly right, the price negotiated for that meat on the shelf today in Woolworths, or anywhere around town, has been
20 set by the retailer with its contracted price to a producer, and it doesn't matter what issues the producer has, my argument is, and the questions that we're asking you, and it's not only in beef, is the transparency within the whole chain, where are those extra costs going if it's not at the farm gate? When the farm gate price hasn't alternated.

THE CHAIRMAN: They're the questions we'll put to Coles and Woolworths and Metcash once we proceed to - - -
25

MR BURKE: Yes, so they're the drivers of why we're making the submission. We're trying to stick to some of the facts of, you know, pointing out that I think our
30 evidence from MLA shows graphs quite clearly, talking about retail prices of lamb and retail prices of beef, and it's very difficult to get down to a cents per kilo for a primal cut and how that equates back to a conversion for a carcass weight, but these are the figures that they've done, and the gap is growing, and they're the sort of transparency issues that we're hopeful that we can get a handle on, but as far as a
35 recommendation, a one paragraph recommendation, I don't have that answer.

THE CHAIRMAN: Okay.

COMMISSIONER MARTIN: Just two – I don't know who will answer this, but on
40 – in relation to the horticulture agreements, the HPAs, it just seems a little confusing about where there's an agent acting for one of the supermarkets, I would have thought under the horticulture code, any agent has to have a horticulture produce agreement, whether they're a merchant or agent, but you seem to be suggesting that's
45 either unclear or fulfilled in the breach.

MR McELHONE: I stand to be corrected, John, but my understanding is that when an agent is working on behalf of someone outside the wholesale sector, that they are not bound by the terms of the code. That is my understanding.

5 COMMISSIONER MARTIN: The other – the point you make, you’re wishing to
make about the – whether the retailer should be in our out, it’s a bit like a glass half
full or half empty, the claim is well, based on what they’re doing, at least in the
spirit, they’re fulfilling most of the requirements of the code, or there are written
10 terms of trade, even though they don’t have written agreements necessarily. You’re
taking the glass half empty approach which is, well, what would be the difference?

MR BURKE: Well, I think the issue here is one of consistency and equity, and if
the retailers are – and it’s certainly – the feedback we get, and I speak to people who
have contracts with retailers, and, you know, they’re quite elaborate in some
15 instances and adhere to all the things that we wanted in a mandatory code. It would
seem that it would just provide equity for all involved in the entire produce
marketplace, that all those who participated adhered to and basically had to have a
supply agreement which had to tick off on a number of boxes. The retailers in
probably 99 – well, 100 per cent of cases are doing that, and they freely admitted
20 that.

MR McELHONE: Can I also add to that, and it’s also about administrative
efficiency and I would hope that there would be some feedback coming out of this
inquiry as well as to how simple or otherwise it is for the ACCC to administer the
25 code in the wholesale markets when you have different people within that market
acting under different responsibilities and requirements. That’s the heart of this
issue, it’s about giving surety within the market place, about what you can
legitimately expect and the terms in which you can expect to trade.

30 MR BURKE: The code, in our view, always was never about price. It’s simply
about contractual clarity, the retailers already have it. It would seem to us that, for
equity, it wouldn’t cause them any concern to include them. Our argument always
was first point of sale.

35 COMMISSIONER MARTIN: Okay, I had another – did you want - - -

MR O’DONOVAN: No, no, keep going, John.

40 COMMISSIONER MARTIN: Well, my question was on a different issue about
some of the anecdotal indications you’re getting beyond – that may conflict with
some of the other indicators we’re getting off growers who are very happy. Have –
one of the other things that has been suggested, however, is that some growers may
have been told, don’t talk to the ACCC by retailers. Is that something that’s been
suggested to you? Not Charles Burke and the ACCC, but - - -

45 MR BURKE: Personally, I haven’t – I’m not aware of that.

COMMISSIONER MARTIN: Thanks.

THE CHAIRMAN: You've talked about growers being concerned to come and talk to us etcetera, I guess as we've said to the SAFF and the Western Australian
5 Farmer's Federation, we'd say it equally to you, if you've got a means of communicating with all your growers, you ought to tell them that they can put submissions to us in confidence, they can come and give evidence to us in confidence, all suppliers, all growers have been summonsed so that no one knows those that have volunteered to come forward and those that have been summonsed to
10 come forward, because all of them have been summonsed, and we've taken a lot of information in confidence, but unless our inquiry team have been highly selective in their choosing of witnesses, I'd have to say, at this point in time, we're not finding too many growers that are prepared to come in and give us some concrete evidence to suggest that they are being oppressed or being dealt with harshly by those that
15 they're dealing with, whether they be the retailers or the processors or manufacturers. So if you've got some, we'd love to hear from them.

MR BURKE: Well, we certainly would too, because as I've already stated, we're at pains to point out that we're not in the place of pointing the finger at anybody,
20 claiming misuse of market power, we're only stating the facts that we know, which we can verify. We do hear anecdotal evidence, and sometimes we have to try and determine what's actual noise and what's realistic, but we just make a point of the discrepancy between the farm gate price as virtually no movement, and nominally not a lot of movement, but in real terms, going backwards in some instances, as
25 opposed to the retail level. At the end of the day, I think we're concerned that we don't raise consumer's expectations about price reductions or price increases, we just would like to think that they also are aware that, you know, there is a transparent processing chain from paddock to plate that people are comfortable with the entire system being equitable and transparent.
30

THE CHAIRMAN: Well, certainly sorting out the fact from the fiction and the myth from the reality is one of the primary tasks of this inquiry, and if you can assist us in doing that, we'd be very appreciate.

35 MR BURKE: We'd certainly agree with that, and we have endeavoured to get concrete evidence, but as we've said, it's very difficult to get a farmer to share certain things with you.

COMMISSIONER KING: Just if I can take you back to the collective bargaining
40 issue for a minute, your evidence to us is that there are two reasons, two things that you see as being probable causes of a lack of collective bargaining, one is that the retailers and wholesalers prefer to deal on an individual basis, and secondly, at the farmer level, it's sometimes hard to convince the farmers themselves to act in a collective group.
45

MR McELHONE: as well, Stephen, about the actual make up of the collective bargaining system itself, and inflexibilities within - - -

COMMISSIONER KING: Yes, the rules – sure.

MR McELHONE: Sorry.

5 COMMISSIONER KING: I just wanted to take you back to the first of those, the
preference by wholesalers and retailers to deal on an individual basis, because that
seems to be almost the opposite of some of the information that's been given to us,
and in particular, actually the South Australian Farmer's Federation said almost the
10 opposite to us the other day, where they said that the retailers have a preference to
deal with the larger groups, and in fact, that was causing an aggravation of
wholesalers, a reduction in direct dealing between farmers and the retailers, because
the wholesalers didn't want to have to worry about a whole bunch of little farmers,
they wanted to deal with just a couple of wholesalers and they gave potatoes as the
15 example, where they felt that was a problem. Now, that seems to be exact opposite
of what you've said, and I wonder if you could just, you know, how are we meant to
take that?

MR BURKE: I think we raised the point that perhaps retailers, processors and
wholesalers would prefer to deal on an individual basis. I'm not exactly, you know,
20 100 per cent sure that that would be the case but in a lot of instances they like to
maintain control over product quality and all of those sorts of things and if they know
that an individual is meeting their specifications, then they'll probably be happy to
deal with that. I guess there's some unknown at this stage for them as well as to how
a collective arrangement would work where there is a cooperative group. I know it
25 works in other countries.

I know in New Zealand potatoes are a prime example. You know, some of the
production capabilities of a handful of farmers exceeds in Australia, you know, 200
30 producers out of Tasmania so that's created issues and processes like the fact that
they can deal with just a couple of producers that will give them an economy of
scale. I'm not sure that that is the primary reason or, in fact, the major reason but I
would still suspect that in some of our agricultural commodities here in Australia that
the processors, retailers and wholesalers would still like to deal on a one on one basis
where they can cut contracts to suit their means.

35 COMMISSIONER KING: Just on another issue then, I'm going to abuse the fact
that you're a beef farmer or cattle farmer and get some information out of you on
that. You said that you personally grow cattle for the export market, Japan.
Obviously beef is a major export industry from Australia but there is a difference
40 between supplying to the domestic market and preparing cattle for the domestic
market as opposed to preparing cattle for export. I wonder if you could just give us a
bit of a rundown of the sort of differences and, in particular, how quickly is a cattle
farmer able to shift between preparing their cattle for export as opposed to preparing
for domestic and vice versa and what are the barriers to them doing that? What's the
45 timeframe for them doing that and so on? Would you be able to give us a bit of
background on that?

MR BURKE: Yes. The Australian domestic market in most parts demands a younger, lighter animal so therefore we're talking sometimes one to two year gap between a beast that's prepared for the domestic market as opposed to the export market. The export market can take a number of different faces. We export cattle
5 into Japan which apply the narrow specification. They have to be a hot standard carcass weight of between 280 and about 350 kilograms, so you're talking about an animal that's going to be live 600, whereas the domestic market ranges between a beast that's three to 320 kilos live weight to, say, 520. So there's quite a discrepancy.

10 The two generally don't work in conjunction. One is quite separated. So you're talking about in a lot of cases anything from six months to two years difference in the age of a beast that you turn off. So if you're producing cows and calves, then you have to have the ability to take your cattle through that extra time for export or turn
15 them off earlier. So, you know, that production cycle is a much longer time for export cattle.

COMMISSIONER KING: Does that mean that it's easier to move from domestic production to export than the reverse and the reason why I'm thinking that is that if
20 I'm producing cattle for the domestic market, I look at the prices today and I say, "Gosh, they're not a great deal if I'm selling domestically. If I hold onto the cattle for another six months, 12 months, I'll be able to sell them into the export market and get at least what I perceive at the moment is a better price." Would I be able to do that or is that just too simple?

25 MR BURKE: I think you're right. I think it's a very simple sort of overview. The reality is I don't know too many businesses that could hold off their income or the turn off for six or 12 months while they change their production system because that is essentially what you would have to do.

30 COMMISSIONER KING: Would you be able to – I can understand the cash flow issue. Is it a possibility to sort of mix and match, to say, "Well, look, rather than sending my whole herd off to the domestic market, I'll hold back on 40 per cent or 50 per cent, groom them for export" or are there problems in doing that as well?

35 MR BURKE: There's problems in doing that. I mean, the cattle industry is becoming a lot more specific and refined, a lot more targeted to specific markets with - different geographies tend to suit different breeds of cattle and different breeds of cattle tend to suit different markets better. You've got European-type cattle which
40 suit the local market because they produce the specific weights a lot quicker and then you've got the northern sector of Australia that have more Bosindigus-type cattle which take longer to produce the same sort of specifications. You've got different grasslands. The Australian cattle industry is becoming a lot more specific and a lot more targeted so that it's more specialised and you just don't chop and change
45 otherwise you lose any advantage you have had by specialising and targeting markets with the hope to get into supply arrangements with processors.

I have an arrangement with one of the processors that I'm in the vicinity of and they have specifically converted their whole processing arrangement to Japanese 100-day grain fed cattle. Now, because I have some logistical advantages with transport costs and a long term relationship, it suits my operation to go and target them and produce
5 the cattle that they want. I would be foolish to then, halfway through, because the domestic market might improve a few per cent to try and target something else which will cost me more in the long run. It's better to, you know, stick with a type. So it's a lot more difficult to chop and change, as you might, if you – I can't think of an example, but it can take you up to 18 months to alter your cycle and particularly
10 when you're breeding cattle, you know, you're looking at at least 18 month old animal to turn off. Well, you're looking at a year prior to that for mating, so you're looking at two and a half years to change your operation if you're breeding.

COMMISSIONER KING: Okay. So if I was currently supplying the domestic
15 market at the moment and I said – for whatever reason, I said, "Look, I'm sick of this. I want to target an export market" whether it was Japan or whether it was one of the other export markets that Australia supplies, I'd probably be looking at, what, an 18 month to two and a half year period to essentially run down my current – calling them a crop is probably the wrong word but - - -

20 MR BURKE: No, I know what you mean.

COMMISSIONER KING: My current herd and switching to an export-oriented
25 supply?

MR BURKE: Yes. Well, obviously that would be a decision that you would have to make based on your own business but at first glance it wouldn't make a lot of sense. It certainly wouldn't make any business sense to go out of something that you were perhaps well suited to, your country was well suited to, the cattle were well
30 suited to, to go and start changing on a very marginal alteration. Because the two markets, domestic and export, are sort of aligned but, you know, I don't think we're every going to see the situation where one has an enormous jump and the other one doesn't.

35 COMMISSIONER KING: So in your opinion, as a cattle farmer, there tends to be a parallel – a continuity between the domestic price and the world price. They tend to move together. If one goes up, then you would expect the other to go up either around the same time or shortly after. If one comes down, you'd expect the other to come down. Is that a fair - - -

40 MR BURKE: There is a certain amount of linkage but it just depends on, you know, a lot of aspects that are out of our control – world demand, the dollar. Generally they are fairly closely aligned.

45 COMMISSIONER KING: So does that mean – one of the reasons why I'm asking these questions is that if there was pressure from the retailers which systematically pushed down the domestic price of cattle in Australia – well, I want to find out, is

that a sustainable strategy for the retailers in the longer term or would they find that supply domestically started to dry up as cattle farmers started moving, over a period of - not necessarily immediately but over a period of a number of years. They shifted towards the export market or is there a group of captive cattle growers in Australia
5 who – they could - - -

MR BURKE: Well, this is – I mean, we will expand the hypothetical and we are talking a hypothetical here.

10 COMMISSIONER KING: I understand.

MR BURKE: Hypothetically, if the retailers drove down the price of cattle for the domestic market, then certainly you would have to start thinking about changing the way you did things to perhaps target a different market. Then long term – in the long
15 run – yes, perhaps it might create a shortage in the supply domestically as long as the international market maintained its level but, you know, that's very hypothetical.

COMMISSIONER KING: It does tend to suggest that if there was a market power problem at the supermarket level - the retail level if I could put it that way - that's
20 more likely to be reflected in a high price to consumers rather than in as a lower price, over the longer term, to growers. Is that a fair statement?

MR BURKE: Could you just draw that again for me?

25 COMMISSIONER KING: So if there is actually a market power problem at the retail level, say there is an abuse of market power that is potentially going to occur there, as I understand what you have just said, if they tried to use their market power to push down the price to cattle farmers over the longer term, that may work in the short term but is probably unsustainable in the longer term. They may, of course,
30 push up the price to consumers but, if I can put it this way, the victims, if I can put it that way, of any market power is more likely to be the consumer than the cattle farmer.

MR BURKE: No, I wouldn't necessarily agree with that but again we are talking a
35 hypothetical which I can't ever see, you know, happening to a great extent.

COMMISSIONER KING: So you just don't see that systematic push down from the supermarkets?

40 MR BURKE: Not systematic push down, no, but over the long run it may be not necessarily a systematic push down but it might be a systematic flat line where the prices don't go to a farm gate level. The prices don't alter which could almost have the same effect but it would be a lot slower.

45 COMMISSIONER KING: Okay, although, you have noted that there is a linkage between the domestic price and the world price. So could they flat line the domestic price whilst the world price is going up, do you think?

MR BURKE: Well, basically, they have almost done that.

5 COMMISSIONER KING: Because of their current contracts though but as those contracts roll off, do you think that we will see the domestic price come back in line with the world price?

10 MR BURKE: Well, they probably are in line to a certain degree. I mean, the domestic price is probably less volatile than the export. The export prices can change with the fluctuation in the dollar because, you know, a container load this week into Japan may cost less than it will in two weeks time and, therefore, it is a little bit more stable domestically but, you know, in the most part, they are relatively aligned. Again, bear in mind that there are different types of animal, there are different production systems and, you know, I am trying to give you an overall average view.

15 COMMISSIONER KING: I understand.

MR BURKE: Essentially, they are aligned as best you can align them when they are talking about, almost, apples and oranges.

20 THE CHAIRMAN: Thank you very much indeed and thank you for inconveniencing yourselves to suit out convenience.

MR BURKE: No problem at all.

25 THE CHAIRMAN: Thank you.

30 **MATTER ADJOURNED at 1.08 pm ACCORDINGLY**