

**Public hearing – Melbourne
12 May 2008**

Time: 10.00am – 5.00pm

Address: ACCC Office
Level 35, The Tower
360 Elizabeth Street
Melbourne

Room: Large View Room – Level 35

Witness	Submission	Summons
Australian Pork Limited Mr Andrew Spencer Chief Executive Officer Ms Kathleen Plowman General Manager - Policy	75 & 147	No
Teys Bros Pty Limited Mr Greg Kimpton Domestic Marketing Manager	n/a	Summoned & compelled to appear by ACCC
Victorian Farmers Federation Ms Meg Parkinson Deputy President Mr Darren Keating Livestock Group Mr Graeme Ford Executive Manager - Policy	126 & 70 (chicken meat group)	No
Westfield Group Mr Greg Miles Development Director	n/a	Summoned & compelled to appear by ACCC

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TRANSCRIPT OF PROCEEDINGS

O/N 80615

AUSTRALIAN COMPETITION

AND CONSUMER COMMISSION

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

GROCERY PRICE INQUIRY HEARING

**CONDUCTED AT: MELBOURNE CENTRAL TOWER,
MELBOURNE**

DATE: 10.09 AM, MONDAY, 12 MAY 2008

MR SAMUEL: All right, we'll start. Thank you, everyone, for attending. My name is Graeme Samuel. I'm the Chairman of the Australian Competition Consumer
5 Commission and the chair of this public inquiry into the competitiveness of retail prices for standard groceries. I welcome you all and declare the hearing open. I'm joined by Commissioner John Martin and Commissioner Stephen King who are the other two presiding members of the inquiry.

10 The inquiry has convened under part 7A of the Trade Practices Act. It's held pursuant to a request from the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, Minister Chris Bowen, which was received by the ACCC on 22 January 2008. Matters to be taken into consideration by the inquiry are set out on the website, which include the terms of reference that were provided to us
15 by Minister Bowen.

I notice that the ACCC has so far received over 190 public submissions to the inquiry, as well as confidential submissions. We'll endeavour to take into account all of the information that has been provided and we do thank industry participants for
20 the contributions that have been made. We understand that the competitiveness of retail grocery prices is of significant concern to all Australians. Now, the purpose of these hearings is to give the ACCC an opportunity to investigate in detail issues raised as part of the inquiry with industry participants. We've held hearings throughout Australia during April, with several hearings occurring in Melbourne
25 throughout May and early in June.

I wish to emphasise that many witnesses at these hearings are not attending voluntarily and have been summonsed to appear under section 95S of the Trade Practices Act. In particular, I noted that in general the ACCC has summonsed all
30 supplier companies. Therefore, no conclusions can be drawn regarding a company's willingness to participate in the inquiry from the fact that company is appearing at the hearings. Some of the material covered in hearing sessions will be confidential and commercially sensitive and, therefore, parts of the hearings will not be open to the public. Questioning will start in public but sessions will move into a confidential
35 phase when the questioning moves onto confidential material relating to the witness.

The ACCC has to be able to investigate issues that are commercially sensitive to witnesses without damaging the witnesses' competitive position and commercial relationships. We'll be questioning organisations their commercial relationships and
40 about confidential documents that the ACCC has obtained through using its information gathering powers. Now, clearly that cannot occur in public. In particular, where a witness has not made any submissions to the inquiry and has been summonsed by the ACCC to attend these hearings, we must be able to hear certain evidence in confidence. Transcript of the public parts of the hearings are placed on
45 the ACCCs website. We may disclose some aspects of the confidential components of the transcript a while after the hearing if we consider that some of the material

should be in the public domain, but we will consult with the relevant witness before doing this.

5 Where there are industry associations or representative organisations who are attending voluntarily, it is more likely that most of the hearing sessions will be in public. In terms of procedural issues all witnesses will have received a document that outlines how we intend to approach this hearing, so I won't go through those procedural points in detail. I just wish to emphasise that although we're not taking
10 evidence under oath at this hearing it is a serious offence to give false or misleading evidence to the ACCC. A transcript of the proceedings, apart from any proceedings held in private and determined to be confidential by the ACCC and the witness involved at the inquiry, will be made available on our website.

15 Now, as I said before, we recognise that some witnesses will be asked to give evidence that if disclosed would damage their competitive position or which may for other reasons be confidential. If a witness believes that a particular person or a series – a particular question or a series of questions are likely to require him or her to disclose such confidential information, the witness should indicate an objection to
20 answering the question on that basis. I will then consider whether the inquiry should take evidence in private from that witness. I note that although the ACCC is not utilising external counsel at this hearing, witnesses will be questioned by the ACCCs internal lawyers, Mr Damien O'Donovan, assisted by Ms Catherine Freeman.

25 That concludes my preliminary remarks. I thank all of the witnesses that are attending the hearings, particularly those that have been summonsed to attend. We realise that you are busy people and attending these hearings can be a significant imposition on you and your organisation. In particular, can I express my appreciation to the representatives of Australian Pork Limited who have already
30 attended a hearing in Canberra, but because of time limitations we couldn't conclude that hearing. We do very much appreciate your co-operation in attending again today to enable us to conclude the issues that we weren't able to deal with at that original hearing, so thank you very much.

35 I note again 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. Mr O'Donovan.

40 MR O'DONOVAN: Could you please state for the record your name, the organisation you represent and the role you have in that organisation?

MR SPENCER: Andrew Spencer, CEO of Australian Pork Limited.

45 MS PLOWMAN: Kathleen Plowman, General Manager Policy, Australian Pork Limited.

MR O'DONOVAN: Okay. Now, you both understand that it's an offence under the Commonwealth 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?

5 MR SPENCER: Yes.

MS PLOWMAN: Yes.

10 MR O'DONOVAN: Okay. Now, can you just state briefly what it is – well, firstly, is there a general submission that you'd like to make in opening or are you happy just to proceed straight to the questioning on your written submissions?

15 MR SPENCER: I think for the record it's just worth stating that our industry operates two very distinct levels. One is what we call our fresh pork market, which is self-explanatory, and that represents about 45 per cent of the total consumed pork in Australia. The other part of the business is what we often call manufactured product or the processed product, typically referring to salamis, ham and bacon, in consumption terms accounts for some 55 per cent of pork consumption in Australia. And I make that distinction because when it comes to retail relationships we need to
20 be very clear about differentiating between the two, as the relationships are very, very different on that basis.

25 MR O'DONOVAN: All right. Well, if we can just begin at the farm gate. Your submissions indicates that at present, or at least in the last quarter of 2007, the cost of producing pig was actually less than the cost of – sorry, the price being paid at the farm gate for pork was less than the cost of production. Can you indicate what changes occurred that increased the cost of production?

30 MR SPENCER: Yes, there was one major cause of increased cost of production. Grain is the largest single input in terms of costs to pig production, representing somewhere between 60 and 70 per cent of total costs. With the drought in Australia and with the global dynamics of the grain market, grain costs have gone up - almost doubled, I guess, over the last 18 months, two years and that has put enormous cost pressure on our industry.

35

MR O'DONOVAN: Were there any other factors influencing cost of production that are significant?

40 MR SPENCER: Well, that's the main one in terms of cost of production. Of course, profitability is not just about cost of production, it is also about price and the industry has been suffering enormous profitability problems, due to two things. One is the grain price issue I just mentioned and the other one is that the level of pig meat imports has skyrocketed over the last two, three years and that – without a significant decrease in domestic supply that means we have got an oversupply situation for pork,
45 so prices can't go up to cover the increased cost of production of the grain

MR O'DONOVAN: Right. And, in fact, it looks like prices at the farm gate have declined, and is that because of the supply coming in from overseas in the form of processed?

5 MR SPENCER: They certainly declined in relative terms to previous years in the latter part of last year. They've been holding more steady now because I think that a lot of buyers can see a situation where supply will be limiting in the future.

MR O'DONOVAN: Okay. Now, in terms of the main routes to market for a grown pig, how do farmers sell their product?
10

MR SPENCER: There's a large proportion – just firstly to describe our industry a little. As an Australian rural industry a lot of people would think that there's just a lot of pig farmers out there with, you know, small family owned properties, and there are a lot of those, but as a rural commodity, as a rural industry we are one of the most polarised towards the big end, the corporatised end. It makes sense in our industry because it is a very high capital cost industry, so you need a lot of money to start with. That changes the way our industry deals with ultimately consumers and typically most of the volume of pigs being sold today are under one type of contract or another.
15
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Some of them are extremely simple contracts where it may just be an agreement to take a certain number of pigs per week and others are very sophisticated contracts which might include cost sharing or risk sharing on the basis of cost of production, etcetera. So like many other industries there's a wholesale market, there's a direct to retail market and there's export markets. So there's various ways that the product ends up being delivered to consumers either domestically or overseas.
25

MR O'DONOVAN: Okay. And so in terms of the wholesale market is there a transparent price setting process like a saleyard where you can identify what the wholesale price of a pig is?
30

MR SPENCER: Not really. The reason is that we do have a saleyard market in Australia. There are very few pig saleyards left and we believe that something less than three per cent, I think, of the total volume is going through saleyards. So to look at saleyard prices you're not getting a true indication of what is really happening. You are tending to see the extreme volatile end, either down or up, depending on what supply is doing, supply and demand. So saleyard prices aren't a good indicator. We as an industry body – the peak industry body, do a confidential survey once a week and that picks up a greater part of that bulk, 97 per cent which is done under direct to – direct buyer seller relationships, sometimes often under contract as well.
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MR O'DONOVAN: Right. And is that published anywhere; has that been made available to the commission, the results of that survey?
45

MR SPENCER: Is it referred to in our submission?

MS PLOWMAN: It's not referred to in our submission, but it is publicly available information. There is some sensitivity in the industry regarding how we provide that information. Some producers feel that it gives some market players an advantage in terms of where they are going to drive that price. There has been a lot of discussion
5 about the value of that price – providing that information, whether we are actually doing a disservice to the industry or how we might need to improve it in the future. It is very difficult.

MR SPENCER: One of the problems with that report is that we're a small industry
10 in terms of numbers. Something like 60, 70 producers probably account for 60 per cent of our total production in Australia. So some producers or some buyers actually receive our weekly report and they set their prices by it, and then we ask them what their price is and they give it back to us. So it's a little bit of a problem for us, that it might be a self-perpetuating system because we're such a small industry. We've
15 asked whether that reports actually suppresses the ability of the industry to move towards more sophisticated contracts, which would give some price security because they look at our report at the moment for a little bit of price security.

MR O'DONOVAN: Okay. So if you're a relatively small pig farmer and you want
20 to strike a price with a wholesale buyer, you would refer to that information as giving you a rough indication of what is a fair market price for your product?

MR SPENCER: It's likely that would happen, but also possibly likely from both
25 sides of the buy sell relationship.

MR O'DONOVAN: Right. And if – again, if you're a relatively small producer
hoping to strike a good price, are there a number of processes operating in the market who you can play off against each other?

MR SPENCER: Yes, and it depends – how many depends probably on where you
30 are geographically in the country, but – because you don't want to pay too much to be transporting pigs around the place. But, yes, in general there's competition at that level.

MR O'DONOVAN: Right. And in terms of identifying who they are, are you
35 dealing with retailers who've decided to integrate further down the chain, are you dealing with processors who make ham and salami or are you dealing with meat wholesalers who are going to produce pork to be on sold to retailers?

MR SPENCER: Potentially all of those – either of those.

MR O'DONOVAN: All right. And so how many players are we talking about in
45 terms of – say, a pig farmer in New South Wales would have how many options in terms of wholesale buyers?

MR SPENCER: The bottleneck is the abattoir where all pigs have to go through an
abattoir ultimately and the abattoir business in our industry is relatively small also.

There's what we call export certified abattoirs are the ones that most of the volume goes through. 85 per cent, we believe, of all pigs go through an export certified abattoir and I believe at the moment there are eight – seven or eight - - -

5 MS PLOWMAN: Eight.

MR SPENCER: - - - depending on how you count them, export abattoirs in Australia, so 85 per cent of pigs are going through eight abattoirs at the moment. That doesn't mean there's only eight buyers because those abattoirs do what we call
10 service kill, so anyone can go and buy pigs on a property and have them service killed on a toll basis through an abattoir. Now, in terms of how many, there's – general wholesalers operating in the market, there are in the tens, no problem whatsoever, especially in the major capitals like Melbourne and Sydney.

15 The big – I guess when you are talking about the manufacture part of the market there's – we used to talk about the four majors in the manufacturing area, which was Primo, George Weston Foods, KR Castlemaine and Hans Continental Smallgoods. They are the big four. Two of those are now merging through an acquisition by
20 George Weston of KR Castlemaine, so the big four is turning into big three. Then there is a plethora of smaller, sometimes family owned specialty type smallgoods companies. So again, there is – yes, there is quite a lot of choice, I guess, if you're selling pigs into the market, where you want to sell them.

MR O'DONOVAN: Right. And is there concern in the industry at least at the
25 farmer level that at that wholesale level there might be a lack of competition that is suppressing prices or are people happy that it responds to supply and demand?

MR SPENCER: I'm sure you would find some concern out there if you were to ask
30 everyone, although some of it is driven by misinformation or lack of information about what is really happening. There really is an 80/20, I guess, when it comes to who is buying pigs and where the real volume is going, and when you've got two major retailers, as we have, large – they account for a large chunk of the total pig – fresh pork sold or smallgoods. Then there is the butcher trade as well. Now,
35 butchers tend to be probably much more likely to buy from wholesalers than to go direct. So that's where there is a lot of – probably a lot more competition occurs at that level.

MS PLOWMAN: The concern would really arise as to the nature of the contract
40 that the producer holds, particularly at the retail level or maybe even to a boning room. And certainly if you're a smaller producer the opportunities, I would say, are more at your niche marketing level, the type of – it would be more fresh pork production, possibly supplying your local butcher. So if you're very small that's where that trade tends to occur, but definitely if you asked some farmers there would be dissatisfaction at the prices they receive. But, as I said, in terms of whether your
45 ability to weather such crisis as a drought or even in our industry to some degree, inputs, the level of inputs coming in is dependent on the contract that you hold with

the retailer and the size of your production either way. The bigger you are the more likely the better the terms of your contract.

5 MR O'DONOVAN: Have you seen the contracts or had them described to you?

MS PLOWMAN: I've had them described to us.

10 MR SPENCER: We've had them described to us; we haven't seen them, so it's a bit of hearsay really, but we believe we've got a bit of a feel for what's out there.

MR O'DONOVAN: All right. So is the most common way that the major supermarkets buy meat to be turned into pork, by a direct contract with the grower?

15 MR SPENCER: I'd split that according to fresh pork or processed first and we'll talk about the fresh market. The major processors – our biggest single pig producer is a vertically integrated company who has their own abattoir, their own boning room, their own wholesaling company in effect and their own brands into the food service market or in two, three butcher shops into the retail market. So that as a company is one of the suppliers to a major retailer and thereby that's a pig farmer to
20 major retailer relationship. Most of the other suppliers are middlemen, some of whom have their own abattoirs, some of whom do service kills through other people's abattoirs. So, yes, again there is a mix.

25 MR O'DONOVAN: Right. But is there actually a contract where the major retailers go right down the chain and actually own – have an arrangement with the farmer direct and then pay – simply pay on a fee for service basis for the processing of the pig through the supply chain?

30 MR SPENCER: I understand that there is a relationship like that, yes.

MR O'DONOVAN: And is that the most common way pork is secured by the major retailers or is that an unusual relationship?

35 MR SPENCER: In terms of volume you've only got – in terms of volume it's not the major way. I'm getting into an area where I'm not – because I don't see these contracts I don't really know all the detail, but as I understand it, at least some of the supermarkets deal on a carcass basis. The other thing that is a bit strange about our industry is that a carcass makes up a major unit of sale at many points in the supply chain, whereas a consumer is not interested in a carcass at all, of course, only in the
40 cuts themselves. So one of the transitions the industry is going through is carcass trade versus what we call primals trade, which is a product much closer to what the ultimate consumer is going to be looking at.

45 So you've got mixes of major – take a major retailer as an example, they will have a certain proportion of their buying volume contracted with real numbers of pigs per week. They will leave a certain proportion as discretionary, potentially with the same supplier or with other suppliers. And depending on what their demand is like

they can take the minimum or they can take the minimum, plus each week. They also can say we'll have all this as carcasses or we'll have a mix of carcasses and primals, where if you have to take a whole carcass you've got to be able to sell every part of it. If you want to sell primals you are able to choose exactly what the real product you want at the end is and you can then be much more specific. So the buying of pigs is really a mix of all those different things happening at the same time.

MR O'DONOVAN: All right. I suppose the issue I'm trying to get at is to what extent do major retailers influence farm gate price or is that really the province of the major processors and abattoirs, that they are the price setters at the wholesale level and the retailers really simply respond to what is happening in the wholesale market?

MR SPENCER: I think there is certainly an influence because as soon as you've got one retailer dealing with a major pig producer, that is going to be having a domino effect across the industry as well. I think in general the major retailers have over the last several years moved in a direction of securing strong alignments with their suppliers for the majority of their purchasing. I think that has been a positive thing for the industry because that has had to happen under an environment where they have to be able to commit to a certain price or level of profitability for their suppliers. And at the same time, whilst they're discussing the product attributes, quality, etcetera, which comes with those close alignments, both parts of the supply – the buy sell relationship are being serviced in a positive way.

So that has been a positive thing for our industry and, in fact, you know, in very, very difficult times like we have now with the cost of grain and the import volume pressures on price, I think it's a reasonable assumption to make that the average price that the major retailers are paying for pigs for their fresh business is higher than the average being paid for pigs. And what happens, the retailers are also, of course - in their customer focused way they have a price range that they believe our product needs to sit on the shelf at. Now, when pigs are expensive they still need that price point to be met and so they will be prepared to take a squeeze on their margin to meet that and vice versa. When there is plentiful supply of pigs and they are cheap to produce, they will be making a very good margin on pigs. So they are very much consumer focused. They need a certain price point where pork has to be relatively the same attractiveness of beef or whatever their parameters are, that is their major driving influence because they're customer focused organisations.

MR O'DONOVAN: Right. So from that you would expect to see less volatility in their prices at the retail level, but that actually reflects that there is probably less volatility in the wholesale prices that they are paying for their product?

MR SPENCER: For the majority of their volume, yes, they bring a lot more stability in difficult times especially. They take away volatility. They do have a part of their volume that they will be in the spot market for, and that part will be much more volatile, but I think as a generalisation you can say that the relationships that major retailers bring is one that gives more stability than it does volatility on the fresh pork side.

MR O'DONOVAN: Yes. Now, if we can just focus on the difference then between pigs that are prepared to be eaten as pork and pigs that are prepared to be processed. Firstly, is there a difference between the pigs? Can you say this is a pig that can only be sold into the processed market?

5

MR SPENCER: Typically a fresh pork pig is what we call a porker. They're smaller, they're up to say 65, 70 kilos. The processing pigs are what we call a baconer and they tend to be maybe 10 kilos heavier.

10 MR O'DONOVAN: Now, do retailers have any involvement with the processing, their conversion into bacon and ham and those sorts of things or is that strictly the domain of the four big processors you identified?

15 MR SPENCER: Well, it's them and all the plethora of smaller ones. As far as I understand – I believe I'm correct – the retailers have no capacity to do that themselves, but, of course, they do have their house brands, so they toll out the contracting of that in their house brands, but that's the closest they have to direct involvement in the industry of manufactured pig meat.

20 MR O'DONOVAN: Right.

MS PLOWMAN: Can I just add to that. I was informed of one retailer recently importing finished processed goods which we'd never heard of before. Limited tonnage went through a particular processing just for direct delivery. We see that as a possible – we've always thought that will be a possible way of this industry, depending on price structures, technology, transport costs, that inputted goods could just be landed processed and go straight into the retailer.

30 MR O'DONOVAN: And that has started to occur?

MS PLOWMAN: I've heard of one incident recently only. I've heard of lots of rumours previous to that.

35 MR O'DONOVAN: Yes.

MS PLOWMAN: It's very difficult for me to show that because of our tariff classification scheme which – it has certain limitations so we can't track certain products coming in. We can't put it generally into one general classification.

40 MR O'DONOVAN: Okay. But that would be a new development?

MS PLOWMAN: Yes, a recent – a new development.

45 MR O'DONOVAN: So then in terms of the price setting for the processed – so it's presumably competition between the four big processors that would then set the price at the farm gate for pigs destined to be processed?

MR SPENCER: Yes, and it's driven also by the fact that they – for those products they are able to use imported pig meat. So that has a bearing on what price they are prepared to pay on farm – the pigs grown in Australia.

5 MR O'DONOVAN: Okay. And has that produced a close correlation between some international index for pig meat in terms of the price – the farm gate price for processed? Is it now effectively an international commodity?

MR SPENCER: At that level, yes, for the processed market we really are dealing on
10 a globally competitive basis.

MR O'DONOVAN: Right. So the farm gate price will reflect an international price?

15 MR SPENCER: To an extent, it doesn't have – it doesn't mean it's the same but it has an impact on it for sure.

MR O'DONOVAN: Okay. And from your observation is that how prices are tracking now, that they track close to international pricing?
20

MS PLOWMAN: I think one of the things you have to realise is that we're not talking about a carcass in the processed market, we are bringing in specific cuts of meat, say a middle or a leg, so you need to track those prices as opposed to the whole pig to make those kind of comparisons.
25

MR O'DONOVAN: But it will come in as a finished ham or leg of ham?

MR SPENCER: No, they'll typically come in as a frozen deboned piece of meat – frozen and deboned for quarantine protocol reasons and then they cook it locally,
30 according to, again, the timed temperature, a quarantine imposed protocol and that's why it can only fit into that bacon, ham type market.

MS PLOWMAN: Smallgoods.

35 MR O'DONOVAN: Okay. So in a sense it wouldn't really be true to say that the four processors set the price – the farm gate price, that really the farm gate price is set against what the international import price of various cuts will be?

MR SPENCER: That's a major factor. There are certain smallgoods products that
40 can't be supplied by imports such as a ham on the bone that you buy at Christmas time. Because it's got a bone in it it has to be Australian. So again it just adds a little bit more complexity. That's a product that has to come from Australia. A soccer ball ham or something with no bone doesn't have to. So there are varying levels of influence that the global prices have on farm gate prices and there is also
45 a relationship between the fresh and the processed market.

If the fresh market is being well and truly supplied or over supplied, of course all pigs to a certain extent will have an impact on the global price because of the imports being a choice for the buyers of pigs. If the local supplier of pigs is having trouble just even meeting the fresh market, then, of course, the price of pigs can go up
5 because they are not competing with imports.

MR O'DONOVAN: Right. So there is also a relationship between the price of pigs destined for pork as well as - - -

10 MR SPENCER: Fresh and processed, yes.

MR O'DONOVAN: Yes. Okay. And if we wanted to track through the price – the price through the supply chain for the processed, is there a specific index – international index that we should look at that can assist us in tracking down
15 movements in international prices?

MR SPENCER: Not that I'm aware of. I mean the product that a supermarket or a major retailer is interested in when it comes to the processed market is a packet of bacon, a packet of ham, bulk hams and bacons for the deli cabinet, their own toll
20 manufactured house branded product. So they're not dealing in pigs at all and they see it as a very different business, and, in fact, this is one of the difficulties. This part of the business has been much more troublesome for our industry because of the potential to use imports which has put pressure on our demand for pigs, and the fact that it is a widely held belief that especially deli bacon or packaged bacon is often
25 used as a traffic generator or loss leader by major retailers and that has put enormous pressures back on the suppliers of that product to get the cost down as low as possible, which - - -

MR O'DONOVAN: Can I just stop you there.
30

MR SPENCER: Yes.

MR O'DONOVAN: Just in relation to that – because I think you've expressed that view in your submission that bacon was used as a lost leader. Do you have any
35 specific evidence for that proposition?

MR SPENCER: No specific evidence, no. I'd say it's a product of years of observation and anecdotal discussion but - - -

40 MR O'DONOVAN: With which sort of players in the industry?

MR SPENCER: I'd say the general trade rather than being specific to say, I don't think I've ever heard of a retailer admitting it, but I think the general trade has that
45 opinion.

MS PLOWMAN: When they've looked at the price of producing to people that specific cut, manufacture, etcetera, and in full realisation of the import prices coming

in, there's often a question of how can you sell a product at that price knowing how much it costs to produce and certainly there's a view that the margins there have gotten smaller and smaller and smaller.

5 MR O'DONOVAN: Right. At the retail level or at the processor level.

MS PLOWMAN: At the processor level.

10 MR O'DONOVAN: So if in terms of tracking the product through the supply chain, if we were to get information from the big four processes that would give us an indication of the wholesale price and then we could work out from that what the relative margins are between wholesalers and retailers in the processed pork industry?

15 MR SPENCER: Yes. I mean, our understanding has been that, if I can go back to the fresh market as I mentioned is driven by strong, longer term contractual relationships where I think it's very much a win/win from both sides, probably profitable for both sides. The process market has been one where we have an over capacity of infrastructure in the country so there's too many – too much stainless steel we talk about it. It just means there's too much processing facility but there's a lot of competition to get volume through it.

20 To get the volume you've got to get the big accounts working for you such as the major retailers. Now, the major retailers know this and, of course, they can put enormous pressure on knowing that's the environment they're working in and that also gives them the opportunity to say, well, if we want a lost leader we want every day sort of shopping basket products such as bacon. It lets them put a lot of pressure back on the processors to deliver extremely cheap products. That means they go to imports.

30 That has meant, I think, that the processing industry has suffered profitability issues for probably a number of years and it's putting stresses on rationalisations. that industry, and we're now seeing it with George Weston Foods buying the KR Castlemaine business. So dealing with two major retailers, if you've got four large suppliers there's a mismatch in terms of negotiating power and I think we're seeing that change now and it may need a bit more changing before it's really a balanced discussion.

35 MR O'DONOVAN: Right. So you're expecting more consolidation at the processor level?

MR SPENCER: I don't have any particular rationalisation in mind but I think it needs to happen for that to be a truly beneficial relationship longer term.

45 MR O'DONOVAN: Right. And have you tried to determine to what extent the two major retailers, Coles and Woolworths, what their market share is in the process pork products?

MS PLOWMAN: There is – that’s very difficult to determine. There was recently I think – I’ve forgotten the name of the study and I can certainly refer it to you later but I study on the Australian smallgoods market and it talks about the share of those goods. That would give you some general indication but in trying to figure out how
5 much – and you should be able to work out from that a general idea about how much the retail sector, each of those owns, since it’s 80 per cent.

MR SPENCER: But it depends if you are referring to brand share or volume share at retail as well but certainly on both accounts the major retailers account for a
10 significant proportion.

MR O'DONOVAN: Are we talking more than 50 per cent?

MR SPENCER: In total no, but it would probably not be significantly – now be
15 hugely less than that either would be my guess.

MR O'DONOVAN: So in each of Coles and Woolworths might have 25 per cent of the total market but you wouldn’t expect it to be much more than that?

MR SPENCER: Yes, probably.
20

MR O'DONOVAN: All right. And do you think the outcomes would be different in terms of prices the wholesalers achieve if the retail market was less concentrated?

MR SPENCER: I think if you in general talk about profitability going back into that processing sector where their capacity to pay more for pigs will be improved. So that could well have an impact and I think historically we would not have seen this huge increase in import volumes if that pressure hadn’t existed and through them being driven by - there’s been a much more focussed attempt to get price down than
30 there has been around the other issues of a business relationship like service, quality, packaging; all those other things. It’s really been very, very price oriented.

MR O'DONOVAN: Sure. But if, assuming that there was this less stainless steel or less over capacity at the processor level and they were able to achieve better prices
35 against the supermarkets, there doesn’t – from an outsider’s perspective, there doesn’t seem to be any real reason why that would then flow on to improved farm gate prices if there was over supply in the domestic market or cheap imports available. You would still get a poor price for your farm product. Is that right?

MR SPENCER: Well, I think the difference we have is that we have a very price oriented market between the processors and the major retailers. That has not led to a situation where you have these longer term type fresh pork relationships where you’ve got these people working together for a win/win on all levels, not just price because once you get that, that has to go back to the farm gate for you to secure your
45 supply in a timely way and when you need it. That is what we think could happen, should have happened in the process sector and it hasn’t because of the lack of balance on one side of the table to the other.

So that's a long winded response that I think that we would be in a much better position to get better on farm prices if the relationship between the processor and the retailer was a more longer term, win/win, mutual benefit one.

5 MR O'DONOVAN: And do you think that the price focus is a product of competition at the retail level or competition at the processor level?

MR SPENCER: More competition at the processor level, I believe.

10 MR O'DONOVAN: Now, looking at it from a consumer's point of view, just looking at the ADS statistics about pork and – as compared to bacon, the price rises in pork have been more substantial – much more substantial than the price increases in bacon and ham. So from a consumer's perspective I suppose the intense
15 delivered a better outcome for consumers. Would you agree with that proposition?

MR SPENCER: Well, it might have delivered a shorter term cheaper outcome but I think we would argue that it's put some difficulties into the future of that processed
20 no matter what happens, no matter if you get a change in currency rates, if you get a disease outbreak overseas where we can't import anything. There's a lot of business risk management that is being thrown out the window at the moment because of the focus on price and that is, I would suggest, not a sustainable situation and people are thinking short term when they're losing money. So I don't think that's in the
25 consumer's ultimate interest that it happens like that.

MR O'DONOVAN: But in terms of your understanding of the industry, it is true that pork and ham prices have been held lower than – sorry, not pork – ham and bacon prices have been held lower and inflation rates have been lower in the process
30 sector than they have been in the fresh sector?

MR SPENCER: I don't have any statistics in my head that would confirm that. All I can give you is a general impression. I don't believe that fresh pork prices either
35 have increased a lot although they probably will need to go up because of the increased cost of production that we now have. But that's the same for the overseas producers as well and that will ultimately in a normal market dynamic situation have to have an impact on bacon and ham too. So I'm not sure that there's a really large difference between the two if you were to look at it statistically but I don't have the numbers in my head.
40

MS PLOWMAN: Would you mind if I go back to your question around the consumer benefit. I mean, obviously there is a short term benefit in terms of pricing but there has also been a lot of discussion around, do consumers really know what they're consuming in terms of a lot of consumers think they're consuming an
45 Australian product and it's not. So – and this is a very difficult issue too because there's been a lot of studies that say that, well, people will buy if they know it's an

Australian product but then shoppers often have amnesia when they get into the supermarket aisles and they'll just buy on price point anyway.

5 Still our studies have shown and a number of studies increasingly show there are niche markets out there that we can catch up where consumers will pay on price. They want a similar product of quality and a similar price point at the end of the day. But you won't get an industry such as ours making those investments because of problems we have around labelling and the problems that consumers face. They are basically confused about what they are actually eating.

10 MR O'DONOVAN: Are there any changes, I suppose at the market structure level, at the retail level that would encourage – if a market was less concentrated would that encourage more accurate labelling or are we talking about imposing a standard?

15 MS PLOWMAN: I think that's just symptomatic of our labelling laws really. It just makes it harder for us as an industry for farmers to make that difference and capture more of that market where they can make a profit.

20 MR SPENCER: Although I think I am seeing – we are seeing the beginnings of a recognition that consumers haven't understood to now, that 70 per cent of bacon and ham on the shelf is coming from overseas. That will ultimately happen and we are seeing some of the processors thinking now about having completely Australian ranges as a part of their portfolio of products because they can see that this will potentially become an issue and that they do need to be able to guarantee an
25 Australian source for some of their products.

MR O'DONOVAN: Now, you indicate in your submission that your view is that there appears to be a trend of no increase in farm gate prices or a flat decrease in the farm gate prices but a trend in increasing prices at the retail level. Have you done a
30 specific study to verify that view?

MR SPENCER: We track retail prices because we track our own farm gate prices. Measuring them over particular periods of time you can show almost anything you'd like to. The dynamics of drought and grain increase and the cost of production
35 impact that they have compounds it even further. It's hard for me to generalise and say that we do have, you know – I can't think of a set of statistics that we do have that shows that. I don't know if you can think of anything?

MS PLOWMAN: More trend lines because that's – we can only – buying that data
40 is very expensive. Buying historical data obviously gets cheaper and cheaper for us but by then the markets have moved on. So we do attract specific cuts of pork, not so on the small goods sectors though and it does show that the trend line hasn't been increasing. That's not to say that some producers aren't doing well, as we said. It's this move to contracts, encouraging this relationship with the retail and producers.
45 That's where we can have better risk management and that's what we're seeing lacks on the small goods side. There is no relationship there.

MR SPENCER: I think to a large extent – if I can just interrupt you – the consumer has a value of pork in their head and they have a value of beef and they have a value of lamb and they're points that the supermarkets have to hit when they put it on the shelf. That's what their research tells them and they're prepared to do that even if
5 costs are higher, for example, they are now because of the grain issues and supermarket margins are probably squeezed at the moment because they still know they have got to hit those prices on the supermarket shelf and so they will compromise their margin to do that to a certain extent. Ultimately they'll probably have to push them up too.

10 So we're very much as an industry linked to what's happening in the beef market and what's happening in the lamb market. If there's drought happening you get this flood of stock coming into the yards because no one can feed them. That will pull those industry prices back. We'll have to meet them, squeeze on margin for pork for
15 a while but the opposite happens in the opposite set of effects. So that's, I think, one of the major inferences on – in the end on what's being paid.

MR O'DONOVAN: But from your understanding of the industry, there's no suggestion that it's concentration at the retail level that's allowing the retailers to
20 push up margins while pushing down farm prices. That's not - - -

MR SPENCER: I wouldn't generalise to say that at all. In fact our part of the industry also has a very key outlet that's not a major retailer and that is the huge number of small retail butchers and to a certain extent they help to balance that
25 whole situation to keep it relatively competitive, I think, so no, I wouldn't say that's happened.

MR O'DONOVAN: Okay. Has the introduction of Aldi to the market made any
30 difference?

MS PLOWMAN: Not that I've seen at this stage.

MR SPENCER: No.

35 MS PLOWMAN: But I think their price won't – their pricing and the products they sell, it would be interesting to see how it develops. I haven't seen anything at this stage.

40 COMMISSIONER KING: Just one question, if I could. We've talked a lot about imports. Are there any exports of pork meat or – either fresh pork meat or pork processed products from Australia?

MR SPENCER: Yes. Very little in terms of process but there's a significant export
45 market mainly or about half of all exports go to Singapore, fresh carcasses a lot of it, and a significant is from New Zealand as well and some other smaller countries.

COMMISSIONER KING: Okay. So of the fresh pork, you said of domestic consumption the fresh pork was about 45 per cent of domestic consumption, manufactured and processed product was about 55 per cent. In addition to that presumably there's been the fresh pork exported to Singapore and New Zealand.
5 Have you any idea of, if you just focus on fresh pork, what percentage of fresh pork then would be exported? Are you able to give me an idea of that?

MR SPENCER: I can give you it in different terms because on a consumption base you've got the imports in those figures as well.
10

COMMISSIONER KING: Okay.

MR SPENCER: What I tend to do is throw the imports out and if I just talk about domestic production of pigs around about 14 to 15 per cent at the moment is ending up overseas.
15

COMMISSIONER KING: So when you gave me that figure of 55 per cent manufactured and processed product, that includes all imports.

MR SPENCER: Yes, and 70 per cent of that is import.
20

COMMISSIONER KING: Okay.

COMMISSIONER MARTIN: Just on the structure of the industry. What is the, say, percentage of the top 20 of your members or – I mean, what's the - - -
25

MR SPENCER: Well, the top one until late last year accounted for 20 per cent of the total national production. So that's one. Then by the time you get to about, I think there's 30 piggeries in Australia with 1000 sows or more and if you added all of those together you'd be up somewhere around 35 to 40 per cent of total production just in 30. So we're more than 80/20, if you like. We're even more polarised than that. So a small number of very large producers very much is the bulk of the volume going into the market.
30

COMMISSIONER MARTIN: And is there any working collectively together by the - - -
35

MR SPENCER: Some of the – one of the major retailers is, is what they call the preferred supply group which is more than one suppliers. Whilst they have to maintain a competitive relationship with each other there are certain pre competitive areas where they can work together to make sure that their ultimate customer is being well served. So that's how I understand that situation works. Have I answered that question?
40

COMMISSIONER MARTIN: Yes. Well, I mean, collective negotiations is always a possibility in terms of the - - -
45

MR SPENCER: Okay. Yes. There's another situation where there's a group that calls themselves the Top Pork Group and they're, of course, a supplier of Coles. So I do believe that they work on a subtle collective bargaining type mechanism.

5 MR SAMUEL: Thank you very much, and thank you once again for accommodating us by coming down here. We apologise having messed you around in the previous hearing but that is, as you know, time just ran out.

MR SPENCER: Sure.

10

MR SAMUEL: Thank you very much.

ADJOURNED [11.00 am]

15

RESUMED [11.05 am]

20 MR SAMUEL: We'll resume. Mr O'Donovan.

MR O'DONOVAN: Right. Could you state for the record your name, the company you work for and your position within the company?

25 MR KIMPTON: Greg Kimpton. I'm the Domestic Marketing Manager for Teys.

MR O'DONOVAN: Okay. Now, I just need to confirm that you understand that it is 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. Do you understand that?

30

MR KIMPTON: Yes.

MR O'DONOVAN: Okay. Now, could you state briefly what it is that Teys does?

35

MR KIMPTON: Teys is a processor of beef.

MR O'DONOVAN: Only beef?

40 MR KIMPTON: Only beef.

MR O'DONOVAN: Okay. And at what stage in the processing process does it get involved with a cow, as it were?

45 MR KIMPTON: Well, we purchase the cattle from the pastoralists and from that point we bring them through, process them and pack – package the product into a boneless form and then export it either overseas or send it to the domestic market.

MR O'DONOVAN: And so the form in which it leaves Teys hands is boxed primals, I think it's called?

MR KIMPTON: Boxed. Yes, all boxed beef.

5

MR O'DONOVAN: Yes, okay. So it doesn't get down to the trays that you see in a retail shop? Does it ever process beef to that level?

MR KIMPTON: We've just gone into a new venture in the last 12 months where we are starting to produce retail ready products.

10

MR O'DONOVAN: Right, okay. But previously that had not been the case?

MR KIMPTON: No.

15

MR O'DONOVAN: All right. And how long have you been with the company?

MR KIMPTON: Seven years.

MR O'DONOVAN: Okay. And as Domestic Marketing Manager, what are your principal responsibilities?

20

MR KIMPTON: The principal is to look for the best value possible for the product through the Australian market.

25

MR O'DONOVAN: Okay. And is that primarily the retail market or are there other market opportunities for your company?

MR KIMPTON: No. You've got the H and R trade, the - - -

30

MR O'DONOVAN: Sorry, when you say "H and R"?

MR KIMPTON: Hotel, restaurant trade - - -

MR O'DONOVAN: Yes.

35

MR KIMPTON: - - - and retail and then also, which is retail, butchers' shops as well.

MR O'DONOVAN: Right. Okay. And in terms of rough break-ups of the size of those markets, not necessarily your customer base but just how big those markets are. How big a proportion of the total domestic market is retail?

40

MR KIMPTON: I really don't have that figure at all.

45

MR O'DONOVAN: Sure.

MR KIMPTON: No. You know, it's very difficult to get that because there is a fairly large component of manufactured meat going onto the domestic market as well.

5 MR O'DONOVAN: Sure. Do you supply – does your company supply meat to manufacture?

MR KIMPTON: Yes, yes.

10 MR O'DONOVAN: Right. Okay. Would 50 per cent be too high?

MR KIMPTON: No, probably, 50, 60 per cent would go - - -

MR O'DONOVAN: Would end up - - -

15

MR KIMPTON: - - - go straight through to retail.

MR O'DONOVAN: Right. Okay. And is there a relationship between the price at which things are bought at retail and things that go to restaurants?

20

MR KIMPTON: No, the only – the only relationships we have with – as far as the value or the revenue that we will get from this market would be what we can get from overseas markets.

25 MR O'DONOVAN: Right. Okay.

MR KIMPTON: And that will dictate what levels we're prepared to sell at into the Australian market.

30 MR O'DONOVAN: Right. Okay. So it's the – so the hotel and restaurant trade is quite distinctive in terms of pricing to what you're selling to the retail markets?

MR KIMPTON: It's distinctive only from the point of view of the products that they take which is slightly different to what the retail sector want.

35

MR O'DONOVAN: Right. Okay. But there is – so there is a relationship between the pricing – how you price into the hotel and restaurant trade?

40 MR KIMPTON: Not – no, the relationship doesn't exist there. The relationship there exists on what we can get for those products overseas which will go up – basically on a basis that it will go to the retail sector and also to the manufacturing or the hotel and restaurant.

45 MR O'DONOVAN: Right. Okay. And is that also true for the retail price you expect for your product?

MR KIMPTON: Yes.

MR O'DONOVAN: Is also influenced by what price you can get overseas?

MR KIMPTON: Yes.

5 MR O'DONOVAN: Right. Okay. And in terms of finding an export market for beef that's been prepared for domestic retail, is it a relatively easy thing to do, to say the prices are better – to find a market for boxed meat, boxed Australian beef?

10 MR KIMPTON: Yes, the decisions are made – decisions are made well before we actually convert it to a box product. So that – the decision is actually made at the point of procuring the cattle.

15 MR O'DONOVAN: Right. Okay. So from a grazier's point of view they prepare it specifically for – they would prefer a cow specifically for export or specifically for domestic production, is that right?

20 MR KIMPTON: Yes. Yes, and that will depend a lot on the geographic areas where they've got their properties. And depending on that it gives them mobility to service various – various markets. There's very few that can do all the markets. So the ones that can produce the lighter cattle and the younger cattle are the ones that will go towards the supermarket trade, or the retail trade.

25 MR O'DONOVAN: Right. And from Teys' point of view they – how they use their processing capacity depends on the international market versus the domestic market and then you just buy on that basis. Have I understood that correctly?

MR KIMPTON: It will depend on – it will depend totally on which gives us the best revenue streams.

30 MR O'DONOVAN: Okay. But what changes first is your buying, which kind of cattle you buy domestically and then – and then you make a – and it's at that point that you've made a decision whether or not you're going to be exporting that product
- - -

35 MR KIMPTON: No, we'll be - - -

MR O'DONOVAN: - - - or selling into the domestic market?

40 MR KIMPTON: No, we'll be one step further – earlier than that. We'll make the decisions on all the returns that we can get for all the individual products that we get from the cattle.

MR O'DONOVAN: Yes.

45 MR KIMPTON: And from those returns we'll put them back to assess what they – what total revenue those animals are and then that will determine the margins and then that will determine where we buy the cattle, what cattle we buy, we process.

MR O'DONOVAN: Okay. So and in terms of buying the cattle, do you – is it done through saleyards, is it done through direct contracts with graziers - - -

MR KIMPTON: It's done - - -

5

MR O'DONOVAN: Is it done just by whatever comes in?

MR KIMPTON: No, it's not "whatever comes in." We've got to go out and procure the cattle and it will be done through the saleyards and also on a – direct with a lot of producers.

10

MR O'DONOVAN: Okay. And when those direct contracts are made are they on a fixed price basis or is price determined at some later point?

MR KIMPTON: No. When we – if we buy at the saleyards it's the price at the saleyards that we pay in an auction system. If we – if we buy direct from the producers a grid will be negotiated because we won't always see the cattle before they come in. We'll know, pretty well, how they'll grade but we don't see them. So it will be negotiated on the basis of a grid and then they'll come through the works, they'll be graded and they'll be paid on a grid according to the grid.

20

MR O'DONOVAN: Right. But the grid will be agreed - - -

MR KIMPTON: Prior to the cattle leaving the property.

25

MR O'DONOVAN: Right. Okay. And is that around about the time that the cattle are finished and ready for slaughter, or is it even earlier in the season than that?

MR KIMPTON: No, that's just prior to – they're finished, they're ready to go and we might be buying the cattle probably two, three weeks forward for processing.

30

MR O'DONOVAN: Yes. Okay. Now, I saw that you also do feedlotting?

MR KIMPTON: Yes.

35

MR O'DONOVAN: All right. Do you procure the cattle outright when you're intending to move them off for feedlotting?

MR KIMPTON: Again, I said I don't have that much experience with the feedlotting but the procurement there is they'll buy them outright but also they'll do – they'll do a service operation where they can lock into fixed contracts with them on the finished products.

40

MR O'DONOVAN: Now, when you enter the market to buy cattle is there – are the major supermarkets other buyers in that market?

45

MR KIMPTON: They are there – they either – they’re there and also – or they’ll have their agents buying for them, yes.

5 MR O'DONOVAN: All right. And are they a substantial influence on the market at that level?

MR KIMPTON: Yes, in – on the particular cattle that they wish to purchase, they influence it, yes.

10 MR O'DONOVAN: Right. Okay. And that’s young cattle for domestic consumption?

MR KIMPTON: Yes. And the lighter cattle.

15 MR O'DONOVAN: Right. And are they the larger – would Woolworths or Coles be the largest player in that market or are there other meat processors who are as large or larger?

20 MR KIMPTON: No, they’d be – they would be the most significant anyway in that area.

MR O'DONOVAN: By a big margin, or, like, would they have 30 per cent each or 50?

25 MR KIMPTON: I don’t – I couldn’t tell you the exact – they wouldn’t have that – no, not in those – those numbers to what is available in total, it would be fairly – fairly small.

30 MR O'DONOVAN: Right. Okay. And the other main players are meat processors like Teys?

MR KIMPTON: Meat processors, yes.

35 MR O'DONOVAN: Okay. And how many other – who are the – who are your competitors for the domestic – to supply the domestic market?

MR KIMPTON: The main competitors are, yes, Swift, McDonald’s, Nippon Meat, Cargill, Midfield and probably Herds just - - -

40 MR O'DONOVAN: Okay. And are you all competing to buy similar grades of cattle?

45 MR KIMPTON: Well, different companies have got different objectives and they – on what they wish to process to service their markets wherever they may be around the world. A lot of the domestic – being a sort of major processor our focus is not really buying cattle for the domestic market, our focus is more to buying the heavier

cattle which are destined for the export markets. And what we look to then market is the residual cuts, we would get better revenue from Australia back onto this market.

5 MR O'DONOVAN: Right. So the primary focus is export but you are able to strategically enter the domestic market?

MR KIMPTON: Yes. The market here does have the best price for the product, there's particular products, compared to the rest of the world.

10 MR O'DONOVAN: Right. Do you know why that is?

15 MR KIMPTON: It's basically – it goes back to just – well, it's mainly because we're from a, sort of, I'd say European-style background, English background, and those products that they've traditionally used there basically flowed across to this market over the last hundred years and, therefore, the consumption here, people expect to buy what they want to buy, they'll pay the money for it, so it comes through that stream.

20 MR O'DONOVAN: Right. But the cuts that people are interested in the USA or Japan are different?

25 MR KIMPTON: They – some of the cuts are different. As I said, all of those markets will buy the meat but it's where you get the best value for it. So all the markets are interested in the full range of products but they're not – they don't have the ability to pay the top dollar for it.

30 MR O'DONOVAN: Right. Now, then, in terms of selling into the domestic market, who are the – who are your main – who are the main buyers? Who are your main buyers?

35 MR KIMPTON: The main buyers that we have directly would be Coles. Then there's – then it runs back into wholesale distribution businesses which are the Gateway Provedores. Another one, Consolidated Provincial Meat Group. And then it comes back off into sort of medium to – some medium to smaller wholesalers within Australia and then – then we come back into the hotel and restaurant trade, the people that service that, they're the portion – who do the portion controlling and get it ready to go straight into the restaurants.

40 MR O'DONOVAN: So a domestic butcher, who would they buy through?

MR KIMPTON: They'll buy from the wholesale distributors.

MR O'DONOVAN: Right.

45 MR KIMPTON: We don't – we don't sell it at that level because we don't have the logistics to really handle it. It becomes inefficient for us.

MR O'DONOVAN: Okay. And the independent supermarket sector, where do they buy?

5 MR KIMPTON: We do quite a bit with the independents namely through Metcash and also with some product we do – with some of the retail ready product we do, which is very small, we do that direct with the independents.

10 MR O'DONOVAN: Right. Okay. So in terms of your dealings with Metcash you're supplying boxed beef?

MR KIMPTON: Boxed beef to their distribution centres.

15 MR O'DONOVAN: Right. Okay. And do you have any understanding of how it becomes retail ready from that point?

MR KIMPTON: From that point they will then on-sell it to the independents and then the independents individually will prepare the meat at their supermarkets for the retail.

20 MR O'DONOVAN: All right. Now, I understand you've got some kind of indirect relationship with Woolworths, you don't actually supply them with boxed beef?

25 MR KIMPTON: That's – basically they do buy quite a bit of our boxed beef but at this particular – the last 12, 18 months it's gone through third party - - -

MR O'DONOVAN: And they get an agent to buy for them?

MR KIMPTON: Yes, yes.

30 MR O'DONOVAN: Right. Okay. And do you provide any services for them, any abattoir services or - - -

MR KIMPTON: No.

35 MR O'DONOVAN: - - - boning, those kinds of things?

MR KIMPTON: No, we don't do any service kills for anybody.

40 MR O'DONOVAN: Right. Okay. All right. Now, the next questions I have, I think, are about your costs and market shares which you've indicated are confidential.

MR KIMPTON: Yes.

45 MR O'DONOVAN: Did anyone have any - - -

COMMISSIONER MARTIN: Well, just a little bit more about the breakdown. You're saying that a good part of your product is export and then certain cuts are sold domestically.

5 MR KIMPTON: Yes.

COMMISSIONER MARTIN: Just so that we can understand this a bit better, what are the sort of cuts that would be sold domestically? I mean, what's the - - -

10 MR KIMPTON: Yes, the main cuts the Australian market chase are the – are rumps – rumps, strip loins, cube rolls and a few tenderloins.

COMMISSIONER MARTIN: So what's the export, fillets and - - -

15 MR KIMPTON: Yes. A lot of the fillets off the better quality product goes export – rump strips, cubes, tenderloins. Then you get into the – like, chuck rolls and the – the butt cuts. But the main thing that determines where it goes is the size of the cattle and the quality of the cattle that'll determine which way it goes. It's not – it's not
20 just – it's not really black and white to a degree. And there aren't a lot of crossovers between the markets and that depends on supply and demand. Like, the Australian market is running – we're running through the off season here which is virtually through the Christmas period.

The demand increased because the supply from Queensland dries up because all the
25 meatworks are having their month's holiday up there. Well, then, all of a sudden, the market here will respond to that – the demand and they will take product that would probably normally go export. They'll pull it back through this market here just to meet the consumers' needs. They'll compromise the quality.

30 COMMISSIONER MARTIN: So, like, it's quite complex if you just look at a piece of rump, it's not necessarily the - - -

MR KIMPTON: It's not black and white. You got – when you look at the –
35 probably on the cattle, you look at the heavy steers or the grain-fed cattle, the majority of that will go export. You get into the lighter, grain-fed yearlings and grass-fed yearlings, the majority of that will go on the domestic market. And with the cow, again, the majority of that will go export but they're, like, the rumps and cube rolls will probably, most of the time, come back onto this market here and strip
40 loins.

COMMISSIONER MARTIN: So how does a consumer tell the difference between some of these?

MR KIMPTON: That will be on the – the way the retailers describe the products.
45

COMMISSIONER MARTIN: And what sort of differentiation would that be?

MR KIMPTON: Well, you know, I don't - - -

COMMISSIONER MARTIN: So you - - -

5 MR KIMPTON: That's not our business, that.

COMMISSIONER MARTIN: Okay.

10 MR KIMPTON: That varies tremendously.

COMMISSIONER MARTIN: That's all.

15 MR SAMUEL: All right. If non-ACCC individuals could clear the room for the moment and we'll turn off the TV cameras and the like and - - -

Just for those departing, I would anticipate that by about 12 noon or thereabouts we'll come back into public session again. Thanks, Damien.

20 **CONTINUED IN TRANSCRIPT-IN-CONFIDENCE**

CONTINUED FROM TRANSCRIPT-IN-CONFIDENCE

RESUMED

[11.36 am]

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MR SAMUEL: All right. Welcome to the representatives of the Victorian Farmers Federation. Mr O'Donovan, over to you.

10 MR O'DONOVAN: Could you state, each of you, your name, the organisation you represent, and your positions in the organisation?

MS PARKINSON: Meg Parkinson, I'm the Deputy President of the Victorian Farmers Federation.

15

MR FORD: Graeme Ford, Executive Manager - Policy at the Victorian Farmers Federation.

MR KEATING: Darren Keating, policy adviser in the livestock group of the Victorian Farmers Federation.

20

MR O'DONOVAN: Okay. Now, I just need to confirm that you understand that it is an offence under the Commonwealth Criminal Code to give evidence at this inquiry that you know is false or is misleading, or omits any matter or thing about which the evidence is misleading. Do you each understand that?

25

MS PARKINSON: Yes.

MR FORD: Yes.

30

MR KEATING: Yes.

MR O'DONOVAN: Thank you. All right. Now, in relation to your submission – well, firstly, did you want to make a general submission before we begin questioning, or is - - -

35

MS PARKINSON: Well, really the – our submission is to the Victorian Farmers Federation but also substantially put information into the National Farmers Federation submission. So there is a cross-over on points, just so that you are aware. There are whole lot of things that happen that we only just very lightly touched on, working on the theory if you want more information you'll ask us.

40

MR O'DONOVAN: Yes.

MS PARKINSON: One of the things in there which we may be able to give you a bit more information on is the price of beef and lamb, and as it's worked out particularly at saleyards. For your information, I represented the national Australian

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egg industry at a Retail Grocery Industry Ombudsman's mediation for the egg industry against Coles, and I think you are aware of that information, it's on your records. And I think the other information that we have that you're also aware of is our chicken meat group, and the VFF has also made submissions.

5

MR O'DONOVAN: All right. Well, then just in relation to specific matters about your submission that we'd like to raise, firstly, you do provide some data in your submission about increases in retail prices as against prices that are being achieved at the farm gate; and you've provided examples of lettuce and parsnips, in particular. Firstly, I was just interested to know what the sources of that data was.

10

MR FORD: Growers provided us that information. We put out a request through our network asking for any information they had that would be relevant to the inquiry, and that is the information that came back.

15

MR O'DONOVAN: Right, okay.

MR FORD: Some growers, as you would understand I am sure, are reluctant to obviously put their hand up to be identified for various reasons.

20

MR O'DONOVAN: Sure. Yes, all right. So is what you provide in there an average price of that growers survey, or were they particular - - -

MR FORD: There would be specific – no, there would be specific instances.

25

MR O'DONOVAN: Right, okay. And is that true for the retail information as well? So the grower provided specific information about what their wholesale price was, and then specific information about what the retail price was?

30

MR FORD: What they understood the retail price to be, yes.

MR O'DONOVAN: Okay. Now, do we know what – which retailer they were providing?

35

MR FORD: No.

MR O'DONOVAN: Okay. So do we know if it was a major supermarket or if it was an independent?

40

MR FORD: The questions we put out were about the major supermarkets. I would assume it would be the major supermarkets, but I can't give that assurance.

MR O'DONOVAN: Right, okay. Now, you also indicate in your submission that the price of bread has risen up to 70 cents a loaf in the past 12 months. Can you tell me where that particular piece of data came from?

45

MS PARKINSON: Yes, National Farmers Federation, and I think you have already talked to them.

MR O'DONOVAN: Right. Yes, that's right, yes.

5

MR FORD: I think it was a survey they conducted.

MR O'DONOVAN: Right, okay. But there was no specific research which you did to generate that particular piece of information?

10

MR FORD: No.

MR O'DONOVAN: All right. Now, you've indicated concern about transparency in the chain. Now, in relation to fruit and veg, for example, there appears to be readily available published wholesale data, and retail prices are available at the shop. Is there some particular element of the chain that you feel needs enhancement beyond that, or are there specific commodities where transparency is a particular problem?

15

MS PARKINSON: Well, the horticultural people are particularly concerned about the point at which ownership changes, particularly agents and brokers, and the problems that they have at that point and knowing who owns what along the chain. That's one of their really big concerns, and that's part of what mandatory code was supposed to deal with. And they feel that the mandatory code needs to go that next step because, although it was aimed predominantly at brokers and agents, because of the relationship some of the brokers and/or agents have with the major chains, the fact that the chains aren't part of it means that they can't find their way through that maze.

20

25

MR O'DONOVAN: Right. So is the concern not that the major retailers comply, but the fact that they're not bound means that their agents can suggest that they're not required to comply in a specific transaction?

30

MS PARKINSON: Yes.

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MR O'DONOVAN: Okay. So the desire to increase, to have the retailers bound by the code isn't to address problems with retailers, but it's to address problems with their agents operating in the market?

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MS PARKINSON: Predominantly.

MR O'DONOVAN: Right. Is there a specific concern about retailers that needs addressing?

45

MS PARKINSON: In horticulture?

MR O'DONOVAN: Yes.

MS PARKINSON: On the whole those of our members who deal directly with the two major chains don't have a lot of concerns, but those who deal with the major chains via the intermediary have a lot of concerns.

5 MR O'DONOVAN: Right. Do you have some specifics on what they've suggested happens when they're dealing with those agents?

MS PARKINSON: Well, it's who owns what, and aggregation. For example, if you sell your – think you're selling your product to one of the supermarkets, you're
10 actually selling it to an intermediary. And then, to my knowledge, there are at least three steps between that intermediary and the supermarket, and those steps are all subsidiaries of one or the other. And if there is a problem along the chain or if the product is aggregated and then rejected, you can't work out what you should be entitled to have back or what money you shouldn't – you should be receiving back -
15 what credits you should be receiving rather, because you don't get money back.

MR O'DONOVAN: Yes.

MS PARKINSON: And it's very very difficult, and that's the source of a lot of
20 problems.

MR O'DONOVAN: Right. So it's aggregated by these agents?

MS PARKINSON: It is, and sometimes - - -
25

MR O'DONOVAN: And then, when it's rejected by a supermarket, these agents then sell it off wherever they can.

MS PARKINSON: Wherever they can, which may be to the wholesale market or it
30 may be wherever.

MR O'DONOVAN: Right.

MR FORD: If I could add something there, that the growers in this relationship with
35 agents quite often have no idea about the margins the agents are taking. And I think there's some concern that that process in particular is not transparent enough; that the difference between various agents about what their transaction would be, and also brokers, their transaction margins would be is not clear to the growers who would, in theory, assume that the agents in some ways are working for the growers as well as
40 the buyer. Another specific example that was given to you this morning was – and this was just an example of some of the occurrence that occur, that a Woolworths were apparently having a special on Pink Lady Apples for 2.95 a kilo. A rather large grower had an arrangement to provide Coles with Pink Lady Apples through a broker – through an agent actually I think, through an agent - - -

45 MR O'DONOVAN: And when you say agent, you mean an agent of the supermarket?

MR FORD: An agent of the supermarket, yes. The agent of the supermarket, presumably on some request from the supermarket, approached the large grower and asked them to reduce the price so they could match the special from Woolworths. Now, I suppose you – on face value, there’s nothing wrong with that if it’s a
5 relationship, but the grower had the – the alternative the grower had was either to match the price or to reduce his price, or to see his fruit go into storage for a week while they sourced other fruit that would match the price and he would incur storage costs. So there is pressure there; whether it is unjust pressure is for someone else to decide. But there is certainly pressure there for growers to meet certain criteria.

10 MR O’DONOVAN: Right. And if we were to ask you to confidentially provide a name, would that be - - -

MR FORD: I would need to contact the grower to see if they are comfortable with that, but we could certainly explore it.
15

MR O’DONOVAN: Yes, all right. So in terms of improving the transparency of that aspect of the market, is that necessary because there’s not a proper relationship between what’s happening in the wholesale markets and the prices for which
20 horticultural products are exchanging between suppliers and agents of the supermarkets; is that part of the chain? Is it unclear or unknown what the market price should be for those products?

MS PARKINSON: Well, the market price is as set by the supermarket.
25

MR O’DONOVAN: Sure, but our understanding is that that has a close relationship with what’s happening in the wholesale markets where there is published data.

MS PARKINSON: I really can’t answer that, I’m really not sure. But the specials
30 are an exception anyway which is what Graeme’s talking about.

MR O’DONOVAN: Sure, okay. Well, staying on the subject of specials, our understanding is that the specials are normally a two-way process where, in fact, growers if they have a lot of fruit ripening or a lot of product coming on line will
35 approach the supermarket and say, we think you should special this product next week because we’re going to have a big influx and we need the retail price to be able to cope with that increased supply. Do you have any information which suggests that that’s not, at least in many circumstances, how the process works between growers and - - -

40 MS PARKINSON: No.

MR FORD: No, I don’t. I think growers understand that if there is a surplus coming into the market with the seasonal growth conditions, that that is accepted
45 practice. So sometimes they may not be happy about the price they receive, but I don’t think they’re accusing anyone of treatment poorly in that process.

MS PARKINSON: Specials in other products are different

MR O'DONOVAN: Sorry, I was talking specifically about horticultural products there.

5

MS PARKINSON: Yes, that's right.

MR O'DONOVAN: Yes. When you say – so are there different, are there other products where the specials don't operate that way?

10

MS PARKINSON: Yes. I'm in the egg industry and as I understand it, in the egg industry when you sign your contract, you agree to a certain number of specials at a price and that price is a discount on what you would normally be receiving. And you have to agree to that when you get the – when you agree –when you tender, you have to agree to any specials that they may put up. So you have to agree to – you put in your tender before you know what the specials will be.

15

MR O'DONOVAN: Sure. And this is in relation to home brand, Woolworths brand or Coles brand eggs?

20

MS PARKINSON: Usually. But not always.

MR O'DONOVAN: Right. So sometimes it does happen in relation to branded eggs?

25

MS PARKINSON: Sometimes, but it's mostly the home brands.

MR O'DONOVAN: Right. Okay. But at that point of tendering, presumably they have an opportunity to determine the appropriate wholesale price to take account of the costs involved in producing specials?

30

MS PARKINSON: They don't know up front how many specials are going to be required.

35

MR O'DONOVAN: Right. Okay. So do you operate in the egg industry yourself?

MS PARKINSON: I do.

MR O'DONOVAN: All right. And do you supply a company which supplies the major supermarket - - -

40

MS PARKINSON: No.

MR O'DONOVAN: - - - or do you supply direct?

45

MS PARKINSON: Neither.

MR O'DONOVAN: Neither. So how do you sell your eggs?

MS PARKINSON: I sell them to the next tier down, the IGAs, the Wellcomes,
5 restaurants, all those. I don't sell to Coles and Woolworths or to any one who
supplies Coles and Woolworths.

MR O'DONOVAN: Right.

MS PARKINSON: And that's a purposeful decision that we have made in our
10 business.

MR O'DONOVAN: Okay. And in terms of how price is negotiated and agreed and
determined, is that done - - -

15 MS PARKINSON: In the next chain down?

MR O'DONOVAN: At your level?

MS PARKINSON: We just put in a price list and they say yes or no.
20

MR O'DONOVAN: Right. Okay. Now you have indicated in the submission as
well, that there's been a decline in the terms of trade for farmers since 1997, of 2 per
cent. Was that the result of a specific study which you did or was that - - -

25 MR FORD: Standard AB data. It's AB it's from.

MR O'DONOVAN: Right. Okay. And is that just looking at price?

MR FORD: Price and input costs.
30

MR O'DONOVAN: Yes.

MR FORD: Yes.

35 MR O'DONOVAN: Relative to the cost of production?

MR FORD: Yes. So terms of trade basically. The shift between prices received
and the prices for production – cost production.

40 MR O'DONOVAN: Right. Okay. And you have also suggested that there's an
increasing gap between the farm gate price and the retail price. Again, is that based
on AB data or is there some other specific analysis?

MR FORD: I think it's a broad range of data ranging from money total to some of
45 the AB data, some of the ABS data as well.

MR O'DONOVAN: Right. But has the VFF compiled a specific study to look at that?

MR FORD: No.

5

MR O'DONOVAN: And are you aware of any specific studies that we ought to look at to confirm that anecdotal view that that's the case?

MS PARKINSON: The price determination report had some of that information in it.

10

MR O'DONOVAN: Sure. All right. Now in relation to the dealings with major supermarkets, do you have any specific examples of misuse of market power that have been reported to you as a federation?

15

MS PARKINSON: Well, there was when we went through the PGIO process or the RGIO as it was then, Retail Grocery Industry Ombudsman process.

MR O'DONOVAN: That was in relation to the egg industry?

20

MS PARKINSON: That was.

MR O'DONOVAN: Yes.

MS PARKINSON: But that's the subject of a confidentiality agreement, so I don't know what I can say about that in the public process.

25

MR O'DONOVAN: Well I realise it wouldn't be appropriate for you to answer questions publicly about that. But other than that, are there – and when I say specific instances, I mean where you can provide us with, on a confidential basis, the names of the persons involved and the specifics of the conduct?

30

MS PARKINSON: Okay. Have you got - - -

MR FORD: Well there has been proposed, particularly in the wine growing industries, about contract clauses in particular.

35

MS PARKINSON: That's right.

MR O'DONOVAN: Yes.

40

MR FORD: There's been some issues to deal with price commitments - - -

MR O'DONOVAN: Sorry, can I just stop you. That's the ability to unilaterally change the terms of the contract in the wine growing industry?

45

MS PARKINSON: Yes.

MR FORD: And there's also been some issues to do with the last harvest where, as you would understand, the water shortage - we're certainly driving water prices quite high. But there were commitments made on a price the growers would receive for their product, which gave them some comfort to go into the water market to buy
5 water so they could produce, to see those prices later on reduced,

MR O'DONOVAN: Okay. Now which specific industry was - - -

MR FORD: The wine growing industry.
10

MR O'DONOVAN: So again, wine grapes. All right.

MR FORD: And I can attempt to get some specifics for you on that.

MR O'DONOVAN: All right.
15

MR FORD: Certainly try.

MS PARKINSON: There's also the use of setting QA barriers at a very high level
20 which are basically very difficult to achieve, if achievable at all. Whether that's misuse of market power, I'm not quite sure.

MR O'DONOVAN: All right. And in terms of specific changes to the Horticulture Code, other than joining retailers, or ensuring everyone who is the first point of
25 exchange is bound - - -

MS PARKINSON: That's right.

MR O'DONOVAN: - - - that's the primary change you would like to see?
30

MS PARKINSON: Yes.

MR O'DONOVAN: Are there any of the more prescriptive elements of the Horticulture Code that your members find difficult to comply with, or - - -
35

MS PARKINSON: No, I don't think so. I think in principle, people were very pleased about the Hort Code, but the concern was the change not working its way through, which is, you know, the first point of sale after the farm gate, needs to be part of that process.
40

MR O'DONOVAN: Okay. Now you have indicated also in your submission, that Australian supermarkets have a 24 per cent margin - - -

MR SAMUEL: Sorry, just before we go off the Horticulture Code, I wonder if we
45 can deal with each of these issues in turn, because it would be helpful just to clarify my own thinking. You have talked of agents. I'm trying to understand what we mean by the word agent. Because an agent, you know, according to my legal

training, is someone who is acting as the representative of and on a commission basis from and under the direct instructions of the principal. In this case the supermarket chain. But I'm gathering from the comments that you have been making that the agents, you're talking about as agents, are not agents in that sense of the word. They
5 are parties who are buying, as principal, and then supplying the supermarket chains, but if the supermarket chains don't want what they have got, then they'll shop them out elsewhere or alternatively, they may well return the product. Is that right?

10 MS PARKINSON: One of the problems we have, Mr Samuel, is that there's not a clear differentiation between agents and brokers. And that when you go down the chain, the change of use, it gets very muddled on who is doing what. And that's one of the concerns.

15 MR SAMUEL: But if – sorry, but if there is an agent in the – if the agent is truly an agent, that is acting on the instructions of and in accordance with the wishes and instructions of the supermarket chain, then that is effectively the supermarket chain with whom the grower's dealing?

20 MS PARKINSON: Yes.

MR SAMUEL: And I just want to understand because this is fairly important in the context of this submission that's being made by a number of representative groups. The supermarket chains ought to be made subject to the Horticulture Code. If we can deal with dealings direct with supermarket chains, I think your evidence before
25 was that, as you understand it, there are no complaints about the dealings between growers – I'm talking about in the horticulture industry – and dealings direct the supermarket chains. Is that correct?

30 MS PARKINSON: That's right.

MR SAMUEL: All right. Then you have indicated, however the problem is when there's an agent interposed. If the agent was acting in accordance with the instructions and the wishes of a supermarket chain, then the dealing ought to be the same. It would be like the supermarket chain appointing Mr O'Donovan and saying
35 "You go and deal with the growers on the exactly the same basis as my employee or manager or whatever it might be, would deal." And there ought to be no complaint. But I think that the circumstance you're describing is not truly an agent so much as it's an interposed entity, an intermediary rightly as you have described it.

40 MS PARKINSON: Yes.

MR SAMUEL: Would they not be bound by the Horticulture Code, as they're buying as principal?

45 MS PARKINSON: As we understand it, they are bound when they are the – you have got the grower there, you have got the supermarket there, you have got the agent in the middle.

MR SAMUEL: Yes.

MS PARKINSON: But the problem we get is that the person or the organisation that the grower sells to, is not the organisation that sells on to the supermarket.

5 There are two or three subsidiaries along the chain that break that relationship and the relationship that Coles or Woolworths has with its agent - - -

MR SAMUEL: Yes.

10 MS PARKINSON: - - - that agent then has a relationship with another subsidiary who is the one who deals with the grower.

MR SAMUEL: But each of those parties that are dealing with the grower, ought to be bound by the Horticulture Code, because they're buying as principal?

15

MS PARKINSON: Yes. They are, but the ones in between, that's where we're hitting the barriers.

MR SAMUEL: But if they are – let me just understand this clearly. If a grower deals with agent A – I don't like the use of the word agent, it runs against my legal training – with merchant A, merchant A is bound by the Horticulture Code.

20

MS PARKINSON: Yes.

25 MR SAMUEL: Merchant A sells to merchant B and merchant B then sells to merchant C and then merchant C deals with the supermarket chain.

MS PARKINSON: Except that merchant B and C are within the same group of companies as merchant A.

30

MR SAMUEL: All right. So they're related companies, they're subsidiaries or whatever. But the grower is concerned, isn't it, with the dealing between the grower and merchant A. What concern does the grower have as to the dealings between merchant A and B and C and then ultimately the supermarket chain?

35

MS PARKINSON: When the grower sells to merchant A, they have a relationship, as you say. Merchant - - -

MR SAMUEL: That's bound by the Horticulture Code. Yes.

40

MS PARKINSON: Merchant A sells to merchant B to aggregate the produce, so - - -

MR SAMUEL: But that is the produce that several other associated companies have bought from other growers around the place?

45

MS PARKINSON: Yes.

MR SAMUEL: Yes.

MS PARKINSON: So they're the aggregators.

5 MR SAMUEL: Yes.

MS PARKINSON: And then merchant B sells to merchant C who has the contract supermarket.

10 MR SAMUEL: Right. Now what concern does the grower have with that aggregation and that then sale on to the distributor to the supermarket. If the grower's got the dealing with merchant A and that dealing with merchant A is its only dealing - that's the one to whom the property passes and from whom payment is made on certain terms and conditions and that's subject to the Horticulture Code -
15 what concern does the grower have over dealings between A and B, the aggregator, or B and C, that is the distributor to Coles or Woolworths?

MS PARKINSON: Because the price comes down from C and the quality issues that arise in the aggregation, both price and quality, they get relayed back to the
20 grower without the grower being able to deal with the problem. Because once those things are aggregated, you can't break them up. So once the aggregation has happened through another company of which you have no direct relationship, to the best of our understanding, the Horticulture Code does not cover that where you don't have a direct relationship in there.

25 MR SAMUEL: But does that matter to the – if the grower knows that the terms of his contract, as governed by the requirements of the Horticultural Code, stipulate that property passes at a certain time in accordance with the Code, that the quality specifications are as set out in the contract, as required by the Code, that payment is made as set out in the contract, as required by the Code, is that not the growers' real
30 issue? Why would the grower be concerned if the aggregator, for example, received a whole pile of, I don't know, Pink Lady apples we were talking of before, and ultimately merchant C finds itself lumbered with, you know, tonnes of apples which the supermarket simply says "We're not taking them because they don't comply with
35 our specifications." Isn't that the problem of merchant B and C, not the problem of the grower?

MS PARKINSON: No, it's the problem of the grower.

40 MR SAMUEL: How does that occur?

MS PARKINSON: Because it just gets pushed back down the chain. And the farmer gets told that your product does not reach the quality or the supermarket won't buy it, not always told why, and as Graeme said, you have two choices. You
45 can come and get it but you don't know which ones are yours so that makes it difficult, or you can leave them sitting there for a week and see what the price is then, but we'll charge you X amount for the privilege of doing that. And the price is

set - like, the growers with these Pink Lady apples, they have to have the fruit in to the distribution centre on the Sunday but the price is set on the Monday.

5 MR SAMUEL: Right. But now – so the growers’ complaint is primarily with merchant A, not stipulating clearly a set of specifications that would meet the requirements of the major supermarket chains.

MS PARKINSON: That’s right.

10 MR SAMUEL: Yes.

MS PARKINSON: Or that fit into the mandatory code.

15 MR SAMUEL: So why does the grower deal with A, if A is unreliable?

MS PARKINSON: That’s a really good question.

20 MR SAMUEL: Why doesn’t the grower just simply say “I’m not going to deal with you because I have been caught out too many times, you know, if you had told me in the first place the specifications of the ultimate buyer, which is a supermarket chain, then I would have made up my mind then and there whether or not to sell to you.”

25 MS PARKINSON: I think probably the answer is that growers who are having these problems are not very small, they’re not the really big ones, they sort of the ones in the middle, they have to move their product, they’re dealing with an agent that they have been dealing with for a quite a bit of time. Often the agents change their relationship, which is one of the things that happens and until something goes wrong, they’re not aware of what the relationship is.

30 MR SAMUEL: Okay. We’re now – again, I’m sorry to label this but it’s very important in terms of this fairly significant issue. If Coles and Woolworths were made subject to the Horticulture Code, how would it change the circumstances that I have just described, as distinct from the Horticulture Code supposedly working effectively to pull into line merchant As dealings with the grower?

35 MS PARKINSON: From our point of view, we see it that those others in the supply chain would then be subject to the Hort Code as well. I mean this shows a great faith in the Hort Code that, you know, we think the Hort Code’s good. What the concern is is that we trying to pull those others into the Hort Code as well.

40 MR SAMUEL: Yes. And that’s what – I’m sorry, I do have to pursue this because I’m just trying to establish this.

45 MS PARKINSON: No worries.

MR SAMUEL: It’s an issue that’s put to us often that, you know, the Hort Code will be much more effective if Coles and Woolworths were subjected to it. And yet,

the sort of description which I may have over simplified, that I have just given you, suggests that there's a problem in the relationship between merchant A and the grower, in that either the Hort Code is not addressing that issue of that relationship, or alternatively merchant A is not complying with the Horticulture Code. I mean, if
5 there's a problem – let's assume that we're not dealing with merchant A, B and C, all of whom are related, but we're just simply dealing with the wholesaler.

And the wholesaler says "I'm going to buy ..." and it might be a wholesaler that's up at the market, "I'm going to buy from you in accordance with the requirements of the
10 Horticulture Code" and the grower says "Yes, that's fine and here's the contract and the specifications are as follows" and the property passes as a certain time and payment's made in a certain time. Now if the Horticulture Code is working in accordance with your view on it, which is that you have placed a lot of faith in the Horticulture Code, that transaction between grower and wholesaler ought to be a
15 satisfactory transaction. I'm wondering why the transaction between the grower and the merchant A, is not equally satisfactory, irrespective of what happens between A and B and C and Woolworths, because it's all – that ought to be down the line and – now it seems to me that the problem is between the grower and merchant A. I'm trying to understand what's happening, what's going wrong there.

20 MS PARKINSON: I think where there's a problem between the grower and merchant A and there's no – say you're selling to a merchant who sells in the market, there may be disagreements over the years but those get dealt with. The complication is where there's an on-selling within subsidiaries, where you lose your
25 way through, you don't know who to talk to, you don't know how to deal with the problem. It's like having a brick wall in the middle of it, you just can't get over it or around it or under it. And there's this level of frustration because it's almost impossible to solve the problem.

30 MR SAMUEL: Well now, perhaps that's getting to the heart of the issue. Is it not the grower saying "I would far rather deal direct with Coles and Woolworths, than deal through a series of intermediaries, i.e. merchant A and then – behind the scenes – B and C, because I know then exactly what Coles and Woolworths like. I know their specifications, I think, according to your evidence, I like the way they deal
35 because I can deal with them very satisfactorily." I'm trying to understand if that's the issue, if the problem is the interposition of merchants A, B and C.

MS PARKINSON: I think the problem is that farmers like to know who they're dealing with. And in this situation – and if there is a problem I would like to try and
40 solve it. In this situation it's very hard for them to solve the problem because it slips through – I mean, our horticulture group met with one of the supermarkets and their agents and tried to sort this one out and they had everybody sitting around the table and they couldn't work out who sold what to what.

45 MR SAMUEL: Yes. Sorry, I'm putting propositions to you, so tell me if you disagree. But what you seem to be suggesting I think is as follows. (1) That where they deal directly with the major supermarket chains, their dealings are, on the

whole, very good. (2) Where they're dealing through intermediaries, whether it's (1) a, or (2) and (3) – a, b and c, they're finding them unsatisfactory. The reason they find them unsatisfactory is because they can't have direct communications with the parties they would prefer to deal with, which is the major supermarket chains.

5

MS PARKINSON: I don't know that they necessarily prefer to deal with the major supermarket chains, but they want to know who they're dealing with. Because - - -

10 MR SAMUEL: And what those with whom they're dealing, really want, in terms of specification and the like.

MS PARKINSON: Yes, that's right.

15 MR SAMUEL: And so therefore dealing with merchant A, as an intermediary, or A, B and C as aggregated intermediaries – related intermediaries – they can't find out what it is really that the ultimate end buyer wants, which is the supermarket chain.

MS PARKINSON: That's right.

20 MR FORD: If I may add that the agents of the supermarkets, it should be the position our Hort group put to us – and they're, sort of, the experts – is that the Hort Code should cover all first transactions. And currently it doesn't pick up all first transaction from the grower.

25 MR SAMUEL: Why is that? Which ones is it missing out on?

MR FORD: Well, my understanding is if the supermarket appoints an agent and the agent does the dealings with the grower, that's not covered.

30 MR SAMUEL: That is if it's a true agent.

MR FORD: Yes.

35 MR SAMUEL: But what you're describing, I think, is not a true agency, according to my, you know, legal understanding of what a true agency is. It's - - -

40 MR FORD: I think, if we're talking about this Pink Lady example, so my understanding now it was an agency. This is a large company that is appointed by the supermarket chain to act as an agent and I think this is the perhaps the group that Meg was also speaking about, where there was some misunderstanding even between – at a meeting between our Hort group and these groups, about who exactly was acting in what role. So I'm not so sure that even the further industry has got a complete understanding of how the application of the Hort Code should be applied. So I think it, just as a fundamental, very simple but the view that our Hort group have taken, it should be the first transaction from grower which must be covered by the Hort Code. Now whether that's directly with the supermarket or an agent of the supermarket, like a pure agent of the supermarket or a merchant or a broker.

45

MR SAMUEL: Well certainly I think that – I understand they’re the Horticulture Code, in all circumstances other than a party acting as a pure agent, that is a voice, a spokesperson for the supermarket chain, they’re governed by the Horticulture Code, where the voice or the spokesperson is operating in a way that is unsatisfactory as far
5 as the grower’s concerned. You would wonder the supermarket chains don’t the voice, wouldn’t you? It seems to me the voice might be doing them a disservice.

MS PARKINSON: Well I think that the voice, as you put it - - -

10 MR SAMUEL: I’m just - I’m trying it to describe the trade - - -

MS PARKINSON: If I sell to you as the agent and then you sell to another group within your – another in your group and then you sell to another one, I think I’m dealing with you but I’m not because you’re not the one who has actually got the
15 contract although I think you have. And that’s the level of the frustration, in that you think you’re dealing with an organisation that is the agent, but they’re not. And when our Hort group sat down with these people and the supermarket and trying to work out who was an agent and who was a broker, who they were dealing with, the people in the room who were the people who dealt with this, could not tell them
20 whether they were an agent or a broker.

MR SAMUEL: Now Mr O’Donovan asked you before whether you could give us some information as to the growers that are sustaining some of these disadvantages – some of these difficulties - and you said well you couldn’t publicly and I understand
25 that. Are you able to give them to us confidentially?

MS PARKINSON: We can certainly ask them.

MR FORD: We can ask the - - -
30

MR SAMUEL: Yes. Look, I have to say that’s the one thing we would really like to hear. I’ve made some public comments more recently and when we had the but yes, maybe I misunderstood. This is a plea to you - - -

35 MR FORD: Yes.

MR SAMUEL: - - - to give us the information because if we can’t find out who to talk to, there’s an awful lot of growers in Australia to subpoena, to bring in to subject to confidential hearings. But we would far rather if you could say to the growers
40 “Look, if you can just let us know who you are, we will meet with you confidentially, we will take information from you confidentially.” But it’s terribly important for us to be able to find out the answers to some of these issues and I have tried to, sort of, say it in a number of public forums since, that we are really keen to find out what’s happening and if there are difficulties.

45

As I have said on a couple of occasions, you know, the current circumstance we have is that it’s a bit like, you know, a crime being committed in a suburb and all the

locals saying “We know who did it, but we’re not going to tell you. You just go out and do your job and find out. But no one’s going to tell you who it is that did it or give you any information to assist you in finding out.” And that just makes our job impossible. So if you can help us with that, that’s a plea for – and we will protect
5 entirely, the confidentiality of the names and the information they provide us. But it will enable us to conduct a far more rigorous inquiry and to deal with some of the issues that clearly are of concern to growers.

MR FORD: Yes.
10

MS PARKINSON: Yes. That will be fine. We’ll talk to them.

MR SAMUEL: Thank you. As soon as you can, if you would too.

15 MS PARKINSON: Okay. When we get back.

MR SAMUEL: Okay. Sorry, Mr O’Donovan.

MR O’DONOVAN: No, that’s all right. The only additional question I had was,
20 you say in your submission that the Australian supermarkets have a 24 per cent margin whereas the USA has a 16 per cent margin. Again, could you tell us the origin of that particular - - -

MS PARKINSON: The price determination report that was done by – are they
25 Whitehall?

MR FORD: Whitehall.

MS PARKINSON: Whitehall Associates.
30

MR O’DONOVAN: Whitehall, for the Department of Agriculture?

MS PARKINSON: Whitehall Associates, yes.

35 MR O’DONOVAN: Yes. On my reading of that, there were certainly some US supermarkets that had comparable margins to the larger supermarkets in Australia. Firstly, would you agree with that proposition, or do you recall?

MR KEATING: No, I don’t recall.
40

MR O’DONOVAN: So it is just a matter of us reviewing that, to assess that – that particular piece of data.

MR KEATING: Yeah.
45

MR O'DONOVAN: All right. Now, you indicated that you had some comments, or expertise in the pricing of lamb and beef. Is there anything specific which you can tell us?

5 MR KEATING: One of the things I would bring up with regards to that is – this has mainly come from information from our members, and quite often we get comments over the phone, which is the verbal stuff which is hard to substantiate, but it is the comments about the disparity between the pricing in the supermarket and the pricing in sale yards. That again comes down to that farmers are price takers, and they have
10 very – only a very small amount of power in that actual market.

One particular instance of this we have already put a submission into the ACCC, or within a log of claims, and it's being pursued at the moment in relation to the Coonawarra sale yards, which is in South Gippsland, where very simply we saw one
15 of the parties involved with the market, which is mainly the processors, exerting their power over the market by changing it – the method at which the cattle are sold in that particular market. Now, we have had a number of our members in the area, I suppose, display their – that they really don't like the way it's changed, but they are powerless to do anything about it.

20

MR O'DONOVAN: So, firstly, can I just stop you there. At whose instigation was the process changed?

MR KEATING: The processors. So they aren't not necessarily the people who are
25 there, present, buying the stock. They may have people working for them, and they are doing it, or they are using someone else. So, an intermediary. I'm not sure if agent is the right word or not for that. But essentially the processors are the people who, you know, be it the abattoirs, and essentially the meat companies.

30 MR O'DONOVAN: Sure, and what was the change that was made?

MR KEATING: Basically it centred around whether the cattle are weighed before they are sold, and these are – in this particular yard they are sold by per kilo of lightweight. So whether they are weighed before they are sold, or after they are sold.
35 The argument against, and generally producers have a preference for pre sale, because when it comes to the fall of the hammer, a price is set immediately at that time, and it's known that you got \$372, or whatever it be, for the animal. With post sale weighing, the animals may be weighed, but the time after the fall of the hammer is variable, and it raises some questions about, firstly, that at the time the producer
40 can't set up a reserve price on the livestock in dollars per head.

If something happens in between the fall of the hammer and the weighing of the animal, who bears the cost of that, and there have been instances in the past where producers have worn that. So, an animal has injured itself after the auction process
45 has gone through before it's weighed. So – and there is a lot of – just essentially it leaves the producer with a disadvantage also in that animals continue to lose weight while they are standing around in the yards, and the longer it is between the fall of

the hammer and the actual weighing of the animal, the greater that loss in weight could be, so therefore the lower the returns to the grower.

5 MR O'DONOVAN: And who owns the sale yard and sets the process for that?

MR KEATING: Well, this particular yard is owned by the Victorian Livestock Exchange. The sale yards in Victoria are owned by various – different groups. In the past they have traditionally been owned by the Shire Councils, and those type groups. We are now sort of moving towards a mixture of private and public
10 ownership. There have been – the people – essentially the people who run the yards provide a service of having a facility there, and quite often dictated by the – well, not – dictated might be a strong word, but the people who use it are the ones who often set the terms of reference for the way that it works. And there currently isn't a code of practice for the selling of live weight – of cow by live weight operating in
15 Victoria. There is a very old one, but it's – with a lot of the changes in individual animal ID, and those sort of things, it makes the old code not really up to date with current practices.

MR O'DONOVAN: Right. And how many processors operate within the market?
20

MR KEATING: Look, a large number, and depending on the price, some opt in and out, and there is also a split between both domestic and export work.

MS PARKINSON: In Coonawarra, though, there is probably about three or four.
25

MR KEATING: Three or four large ones, but there area lot of smaller buyers who work out of that. And it is also a little bit further complicated in that some of the people who act there as the buyer, or the bloke who puts his hand up and, you know, bids on the actual animal, may be working for more than one processor, depending,
30 you know, on a given day.

MR O'DONOVAN: Right. Okay. Is there any specific evidence of that practice?

MR KEATING: Yes, and there is some information I will be providing. I have
35 been speaking with Katherine Haslop, and so I've provided some information to her that are sourced from some of the members in the area.

MR O'DONOVAN: Do your members have a view about whether the sale yards still represented an efficient and competitive market, apart from those specific
40 issues?

MR KEATING: Look, it does, but a lot of members – a lot of our members that we've spoken to have – the sale yard is their sale of – I suppose it's their method of choice for selling their livestock, and there is a lot of social and cultural reasons
45 behind that. But also with a lot of the smaller producers, it is a much more tangible way for them to do business. They don't have the relationships and the knowledge to be able to deal directly with processors, and to, you know, consign, say, a truckload

because of – well, it can be because of the size of their operation, their location, and some of the freight costs associated with moving them further, and also just through their knowledge and understanding of the market.

5 So for the smaller producer, it is a very easy way to do business. And a lot of the, I suppose, there are other agents in there, but it is the intermediaries or the companies that will do the actual – provide the auctioneering service. They are separate from the owners of the sale yards, most of them, and a lot of those – the information that they provide is centred around that, and that’s the way that they like to do business
10 also. So it’s put forward as a preferred method of selling for a lot of producers.

MR O'DONOVAN: That is all the questions I have.

MR SAMUEL: All right. Can we go back to two issues. Collective bargaining.
15 VFF actually in our experience has been pretty good in drawing various representative groups and its members together and encouraging them to collectively bargain. But having said that, in the whole of the time since January '07 when the new collective bargaining notifications came into place, the total number of notifications across every industry that we have received is eight, which is slightly
20 disappointing, and I've got an awful lot of people sitting around and wondering what has happened to the notification process; why it hasn't worked.

Can you give us any guide, given that the VFF actually has been probably at the centre of a lot of the work that you have done with the ACCC on authorisation
25 applications and notifications. Is there a problem with the notification process, or is there a problem with the dealings with the ACCC, or there is a problem with growers just not wanting to collectively bargain?

MR FORD: I think that the main problem is the notification, you can't add growers.
30 That essentially the list of – in the notification is the only entities that are able to collectively bargain. And as we know, farms change hands quite often, so effectively once that occurs, you either do a whole new notification process, or they are not party to the collective bargaining arrangement. So, under authorisation, of course, you can – simply you only need one entity to have the authorisation, and
35 provides coverage to anyone else. I think that is probably the fundamental problem.

MR SAMUEL: Okay, which would explain the reason why we are still getting a number of authorisation applications, rather than notifications, yes. So that the strictures contained in the law and regulation of notifications are too inflexible.
40

MR FORD: Too narrowly defined.

MR SAMUEL: Yes. In terms of authorisations – indicated that – I think you had that that is probably a more favourable process to follow, and we have endeavoured
45 to streamline that process to almost bring it into line with the notification process. We are still not experiencing the level of authorisation for collective bargaining that we would have thought met with our encouragement of collective bargaining as a

method of dealing, and a method of levelling out the playing field, in our endeavour to encourage that by treating authorisation applications as quickly and in as streamlined a process as we possibly can. Again, is there a reason that you could explain for that, or not?

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MR FORD: I had quite a bit to do with the particular meat industry authorisation, particularly the provisions that were applied for. In industries where there is a relatively harmonious relationship between the entity with the market power and the growers, authorisation is probably a very effective tool in reducing transaction costs and negotiating quite simply. In industries where there is perhaps not that level of harmony, and there is a bit of argy-bargy between the entity with the market power and the growers, an authorisation doesn't bring any compulsion to bring a negotiation to a conclusion. And as we saw in the chicken meat industry, effectively, although we had authorisations, we continued to negotiate and negotiate and negotiate and negotiate, because there was nothing to bring it to finality.

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15

That was the reason why the chicken industry attempted to bring the collective boycott, which is to bring a defined end point where an arrangement has to be met, and where there is compulsion on both parties to try and reach an agreement.

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MR SAMUEL: And the tribunal knocked that off.

MR FORD: Well, that's right. The ACCC, to its credit – in our view, to its credit, actually granted the provision, and the Australia Competition Tribunal decided that, I think, perhaps to paraphrase it, and I'm not sure if I'm doing this correctly, but this was our view, that essentially two wrongs don't make a right. That provided of capacity to boycott, and was perhaps just a little bit too over the top to remedy what was perhaps an ability for the other companies to negotiate fairly.

25

MR SAMUEL: And probably set the threshold bar for a collective boycott approval at such a level that it was virtually impossible to ever get - - -

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MR FORD: Well, that is our view. It will never occur; effectively it will never occur now.

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MR SAMUEL: And would you say it is the absence of the ability to get authorisation for collective boycott that has been the sole, or the principal, or a factor in disincentivising parties to seek collective bargaining or collective negotiating authorisations?

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MR FORD: I can't speak on behalf of a lot of other industries, but I suspect it is an issues, particularly where – it wouldn't necessarily have to be a boycott. I mean, we explored a whole range of issues, but it would seem that the way the TPA was structured that boycott was seen to be the only tool to actually go to, you know, whether it was arbitration, but that seemed to be not – wouldn't have fitted within that process. That may have been a better outcome, or it may have been a worse outcome. But I imagine industries would have looked at what happened in the

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chicken meat industry case, and as you have pointed out, and we agree fully, that the threshold for a boycott provision is essentially unobtainable. And if you understand that if you go through the process of a collective bargaining organisation – which is not cheap, by the way – I mean, it is quite expensive, and particularly if you end up at the Competition Tribunal, it is horrendously expensive.

MR SAMUEL: We don't encourage all our decisions to be reviewed by the Competition Tribunal.

MR FORD: And we would never encourage it to anyone else. But why go through the process, if you effectively are going to be negotiating until the cows come home, and there is no end point. And that is still our view, although hopefully the chicken meat industry is starting to come to some sense.

MR SAMUEL: Now, the only other thing I wanted to do is just to make absolutely clear that the request – the plea I made, I think is the best way to describe it – for information, doesn't just relate to the horticultural code. It relates to any examples, any experiences of bullying, harassment, oppressive conduct, unconscionable conduct between growers and any parties with whom they are dealing. So whether it is the major supermarket chains, or processors, or manufactures, or whatever, we want to hear about those, because they are really important in terms of our understanding the position of growers in the market place today.

We are well aware that many growers, if not all, would say that the price they are receiving for their produce is too low; that they would prefer it to be higher. I mean, wouldn't every supplier of every product like their price to be higher. But what we are really more concerned about is understanding examples of bullying, harassment, oppression, harsh dealings, unconscionable conduct. And, as I said before, and I give you the undertaking that if they wish to contact us, or you can supply us names that we can contact them, should be supplied to Mr Tom Lerner, whose details are on the Website. We will make sure you get the details. You could pass this on to your other colleagues, but if that information can be given to us, it will be held by Mr Lerner and the Commission in confidence. We will speak to the parties concerned in absolute confidence, but we are very keen, if not anxious to obtain any such information that might be relevant to our deliberations.

COMMISSIONER MARTIN: Well, just going on from what Tim has said, the one thing we didn't ask much about, or raise, was dealing with processors. Is that something that you have got a view or comments on, and I know you have said a few things about Home Brands. Did you want to comment on supplying to Home Brand, and whether they were intrinsically just dealing with the retailers, and that those arrangements were fine?

MS PARKINSON: When you say processors, what do you mean?

COMMISSIONER MARTIN: Supply to, say, processors.

MS PARKINSON: Manufacturers.

MR MARTIN: Manufacturers, yes.

5 MS PARKINSON: Did you want to add anything?

MR FORD: I think the issues we talked about, the wine industry is perhaps an example, and certainly the chicken meat industry is another example. I think that - -
-

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COMMISSIONER MARTIN: And other members don't have different issues with manufacturers?

MR FORD: I'm not talking in specifics, but brought to our attention.

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MS PARKINSON: Not – I mean, it's part of whole thing, but usually the issues with the manufacturers are the fact that they are on-selling. One of the things that happens is if I'm an egg marketer, or meat supplier, particularly an egg marketer, when I go to put in my tender price to one of the majors, I also have to tell them all the costs in the supply chain behind me. So they know when the egg industry is starting to get a benefit for a technological increase, improvement, those sorts of things, and they can adjust their price accordingly.

20

The reason why we went to the retail grocery and to the Ombudsman, which I can talk about, is that the market – the supermarket in question was trying to make everyone bid down in a Dutch auction on the Internet, so you didn't know what you were doing and they set a ceiling price which was most unsatisfactory. The whole way that the process is done, the information that you have to give basically means that there is – every time you get a technological advance in your industry, which these days is the only advance you really get to reduce your price – reduce your costs, that immediately flows into the pockets of the supermarkets and that is one of our concerns. Do you want to add anything about meat processing?

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MR KEATING: Look, not a lot in addition to what I've already added in there.

35

COMMISSIONER MARTIN: But does it cut both ways, that if you're costs are going up that supermarkets are likely to review the - - -

MS PARKINSON: It went up a little bit for drought. We got an agreement that we put the prices of eggs up in the 2002 drought and they went up again. They went up a small amount. They didn't reflect increasing cost but they did go up a small amount and we negotiated that outside of the contract period because of the drought and we said to both the major supermarkets that, you know, they should go out and tell everyone what they're doing, which they did.

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But there's a very small proportion. The home brand issues or the private label issues, there are – if you look in the supermarkets you'll see there's most – there's

three different levels of price point for private label. There's the Homebrand and there's a medium one and then there's the top level which is trying to price itself out by the exit company with branded names on and they don't say Woolworths or Coles, they've got another name.

5

Basically a product is a product, you're paying the different prices for the brand, for the private label, not for the product. There is a pure profit above the minimum profit. They usually go – it's usually the same people who are supplying them and they're supplying them at the same price, so, you know, it's pure profit.

10

COMMISSIONER MARTIN: So you're saying the margins are much better at the – the higher price point ones?

MS PARKINSON: But they're buying the product at the same price all the way through the chain.

15

MR KEATING: Perhaps I could add on the meat pricing side of things, with both lamb and beef over the last two or three years, prices at the retail level have been relatively stable, which has been in comparison to some larger fluctuations at the saleyard end of the scale and that's some information I've had supplied to me by Australia, so it perhaps gives an idea of that end.

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COMMISSIONER KING: I just want to come back to the discussion on the horticulture, then also the discussion we had on the issue with the weighing of the cattle at the saleyard. It seems to me that part of the issue here when you say not clear he was dealing with the transaction, does part of that come down to just the issue of risk and who's bearing it, so that at the moment you supply – and I'll use Mr Samuel's example – the farmer supplies to A, who supplies onto B, who supplies onto C and there may be pooling of the product there and then C takes it to the supermarket and the supermarket says, actually this is below standard and it then works its way back down the chain and the risk is borne by the grower.

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In fact the grower here is facing the risk of not simply their own product being rejected, but, in fact, the pool product being rejected, whereas it's obviously impossible to – sorry, but I can't unscramble the egg. Is it the failure that's going on here – let me put it a different way. Are a lot of the concerns from the growers – and it comes also in the cattle situation – that it's a risk that's not well specified on who's bearing the risk at a point in time that's not well specified, so that inevitably at each stage of the transmission chain as a risk occurs or a risk is borne, borne badly, it tends to be passed back to the grower, whereas if there isn't a bad outcome the grower in a sense doesn't get the upside? Is that really part of a problem that we've got in here?

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40

MS PARKINSON: Very much. Yes, you've pretty much hit it on the head.

45

COMMISSIONER KING: Yes.

MR KEATING: Yes, I would agree entirely with that, that my basic understanding of economics would mean that in a truly efficient market the biggest – the largest bearer of risk would be taking the largest profit margin supply chain.

5 COMMISSIONER KING: They would be compensated?

MR KEATING: That's right, compensated for the risk they're incurring. I think it would be hard pressed to suggest that farmers aren't bearing the majority of the risk in all the supply chains, particularly the way where the have been the last 10
10 years and particularly also given that there are market power issues, as you've just explained, but clearly they're not getting the lion's share of the supply chain profit margins.

COMMISSIONER KING: Would a lot of the growers' issues then be addressed if
15 in a sense at first point of contact there was a clear price set at that stage – for example, again go back to the first party, A, the first intermediary that farmers deal with. If that intermediary then said yes, I think this product is at spec and I will give you this price and then if the supermarkets reject it later on, well, that is my problem, not your problem. Would that get around most of the sort of issues that the farmers
20 have?

MS PARKINSON: I'm sure that would be a great improvement. I mean part of the issue is that you're supplying the product - to be able to get into the supermarket on the appropriate date you have to supply the product before the price is set and that is
25 part of the issue as well. But certainly - - -

COMMISSIONER KING: So again, it's a risk that has been taken by the grower rather than the intermediary - - -

30 MS PARKINSON: That's right.

COMMISSIONER KING: - - - as to what that price will be?

MS PARKINSON: That's right.
35

MR SAMUEL: Right. Thank you very much, you've been very helpful and we appreciate you coming in and I hope it will be of even more help with the flow-on from this meeting?

40 MS PARKINSON: We'll go back and we'll make the phone calls.

MR SAMUEL: Thank you.

MS PARKINSON: Thank you very much.
45

MR SAMUEL: All right, we'll adjourn the hearing until 2 pm.

ADJOURNED

[12.40 pm]

RESUMED

[2.05 pm]

5

MR SAMUEL: All right, well, it being 2 o'clock we'll reopen and welcome the representatives from Westfield. Mr O'Donovan.

10 MR O'DONOVAN: All right. Could you state for the record your full name, the company you represent and your position in the company.

MR MILES: Yes, Gregory John Miles from Westfield, Director of Development and Asset Management.

15

MR O'DONOVAN: And do 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?

20 MR MILES: Yes.

MR SAMUEL: We might just for the record state the names of the legal advisers that are here.

25 MR WALSH: Tim Walsh, the general counsel Australia and New Zealand for the Westfield Group.

MR SPEED: Peter Speed, Speed and Stracey.

30 MR O'DONOVAN: All right. I just want to go through with you firstly the process for identifying sites – suitable sites for Westfield Developments, but before I do that if there are any questions that I ask you which you consider the answers will disclose confidential material, can you please indicate that and then the chairman will consider whether or not it is more appropriate for those questions to be answered in private. Okay. All right. Now, the first question is how does Westfield go about
35 identifying suitable sites for development as a Westfield centre?

MR MILES: Well, I guess in terms of the Westfield business a large part of its business is expanding in expansion of existing centres, so they are generally long-
40 term assets. They're held by Westfield long term, but where we do look to enter new markets or build new centres we're generally looking at population growth corridors or area where there is evidence of both a strong existing population base that is under serviced by retail and one that is likely to grow in time to support a centre of a regional type nature.

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MR O'DONOVAN: Right. And when you say of a regional type nature is that defined in terms of the size of the development we're talking about?

MR MILES: Yes, generally in terms of something that can end up at sort of 50,000-odd square metres plus of retail floor space.

MR O'DONOVAN: And is that size category that Westfield operates in?

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MR MILES: The large part of our business is in that market although we do have centres that are smaller, in the 25,000-odd square metre mark and they've been assets generally that have been held for a long period of time as just part of the long-term portfolio.

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MR O'DONOVAN: But in terms of looking for new business it's generally the larger size?

MR MILES: We look at something that has the capacity to grow, yes, absolutely.

15

MR O'DONOVAN: All right. And in terms of identifying that is that something that is generated within the company or is the company ever approached by local planning authorities about putting a centre in a growing area?

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MR MILES: No. It is certainly – we are rarely approached by local authorities. The bulk of it is done internally, but we will consider proposals that are brought to us from anywhere generally.

MR O'DONOVAN: Now, once a site has been identified as appropriate, having the appropriate population mix to sustain a centre of the kind that Westfield is interested in, what are the key inputs into the centre design, particularly in relation to the tenant mix. Are there specific metrics you're looking for?

25

MR MILES: Well, I guess we're looking at both the existing trade area and the trade area that is likely to be in place at the time the centre opens, so we're looking at number of people, retail spend, types of merchandise they acquire, and that will generally dictate the size of centre that we initially build or the size of expansion that we undertake in relation to an existing centre. We'll take advice from generally people like Urbis, JHD who forecast retail sales, and that will generally influence the mix of retailers, mix of merchandise that we seek to establish on that site or in that expansion.

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MR O'DONOVAN: Right. Okay. Now, we've noticed that some of your centres have only one supermarket, some have two, some have three. Are there any particular factors which influence the decision to allow more than one or to go up to three supermarkets in a centre?

40

MR MILES: No, generally where we have one it's probably largely the result of the size of the centre and/or land, and/or retail demand in terms of a limitation of only having one supermarket. In a larger centre we will generally have two supermarkets and in a lot of cases we'll have three in the sense that more recently in the last five or

45

six years we've got a number of Aldis, so we'll have Aldi generally in two supermarkets.

5 MR O'DONOVAN: Right. So would it be fair to say that the default position is that if a centre is large enough for Westfield to be interested, that you will get two large format supermarkets in?

MR MILES: Generally that is right, yes.

10 MR O'DONOVAN: Okay. And is that an issue that is ever discussed with the major supermarkets, about whether there will be one or whether there will be two, or is that a matter that is determined by Westfield prior to talking to anyone externally?

15 MR MILES: Well, Westfield would always have a view on what is appropriate for that centre, whether it's going to be – as I said, if it's an expansion it might just be clearly obvious that there is only one supermarket that is not there. It may be a relocation of an existing supermarket. If it was a new site – if we had approval for a centre that had two and that was of a size that looked like it needed two, then it would be obvious that we were going to put in two. And clearly, if we were staging a development and we were only doing a one stage – a one supermarket stage, then 20 the factors that would influence where that supermarket would be, would be our view of the competition within the area and what would be a differentiator for that centre to make it attractive to customers to utilise.

25 MR O'DONOVAN: And is there any point at which in terms of population density or retail spend, where Westfield says this area is big enough to sustain a third supermarket in our centre – that is not an Aldi, so we are talking about a third large format supermarket?

30 MR MILES: Yes, we have over the years had three supermarkets. We probably have a couple of our centres at the moment that have three and they have historically been a Bi-Lo, a Coles and a Woolworths and a Safeway, and in some cases we've had an Aldi as well. So we certainly do have situations such as that.

35 MR O'DONOVAN: Okay. And at what point does a centre get big enough – are there any key metrics that you can give us that indicate that it is appropriate to put a third supermarket into a single centre?

40 MR MILES: It's really the sales volumes of the supermarket. If you've got sales volumes at a level that suggest that there is demand for supermarket goods and it's put pressure on the existing supermarkets, then that is generally the indicator.

MR O'DONOVAN: And you have access to those turnover figures through your leasing arrangements?

45 MR MILES: Yes, that's right, yes.

MR O'DONOVAN: So you're able to monitor?

MR MILES: Yes.

5 MR O'DONOVAN: Right. And is there a trigger number that you would have to review that situation?

MR MILES: Look, there probably is and it would differ from market to market in the sense that supermarkets trade at different levels in different cities, but, look, it's
10 one that probably does over \$10,000 a square metre in supermarket sales.

MR O'DONOVAN: And when you hit that point where you think that there is scope for another supermarket and there is an appropriate amount of space available, will you enter into discussions with the supermarkets about whether you're going to use
15 that extra space as a supermarket?

MR MILES: No, generally not. We'll generally form a view as to what is the right answer for the centre that increases the appeal of the centre from a customer point of view and we'll generally proceed down that path, based on our own research and
20 understanding of the market in that particular location.

MR O'DONOVAN: Okay. Now, if one of the supermarkets' leases contains a clause which is effectively a right of first refusal if there is going to be another suitable site opening up, if one of those clauses is present obviously you have to go
25 and speak to the supermarket and offer it to them.

MR MILES: Yes.

MR O'DONOVAN: When it's offered do you just offer it to them as a supermarket
30 or can they put to you a counter proposal about putting in a discount department store, say a Big W or a Target or a Kmart?

MR MILES: I can't – no, generally it's for a supermarket use but it depends on the clause that is operating. So we'll either refer specifically to that type of use and if it
35 does then we offer it for that use. But generally it's not in our interest to end up with two of the same supermarkets in a centre, so we will ordinarily be finding – trying to find a way where the centre doesn't end up with two of the same supermarkets.

MR O'DONOVAN: Okay.
40

MR MILES: Having said that, we haven't had to my knowledge many, if any, of those circumstances where we've had the first right of refusal.

MR O'DONOVAN: Now, then, in relation to – when you are expanding there are
45 obviously existing supermarkets in the area. To what extent does the identity of the other supermarkets in the area affect Westfield's decision about who to approach to anchor a new development?

MR MILES: Once again it really depends heavily on the market. I mean we have some markets that would have 20 or 30 competing supermarkets within the trade area and so in a sense when you've got that many competitive supermarkets in a trade area of a centre such as ours, in a sense it doesn't really matter who you put in. If
5 you do happen to have a trade area where there are only five or six supermarkets, then it may well be obvious that one of the major brands is more preferable for us than the other brand. But having said that, as I said, in most of our centres we would end up with the two supermarkets in any event, and if it is an expansion whoever is there may dictate who that other supermarket would be.

10 MR O'DONOVAN: Sure.

MR MILES: So there's a lot of factors.

15 MR O'DONOVAN: And in choosing your tenant are you influenced by obtaining a point of difference from the – separated from the other supermarkets in the area?

MR MILES: That is certainly what is important from us – from our point of view.

20 MR O'DONOVAN: Yes.

MR MILES: So we're about creating a point of difference, whether that is through the supermarket itself, whether it is through the aggregation of fresh food retailers around the supermarket, with a fruit and veg guy, couple of butchers, whatever. If
25 that acts as a differentiator for us in that trade area as opposed to a lot of single freestanding supermarkets around us, then we'll try and create a point of difference and a reason for coming to us and to that supermarket and to that fresh food, rather than just rely on the supermarket.

30 MR O'DONOVAN: All right. But if an area is already heavily dominated by a particular major chain, would you seek to get that chain or would you seek to get the other chain?

MR MILES: No, we would generally seek to get the other chain.
35

MR O'DONOVAN: In terms of how definite that decision is, will you set up a process of negotiation with the chain that is already heavily represented to see how keen they would be to enter the centre?

40 MR MILES: We may do from an establishment of pricing expectations, but in most of our situations we end up with both supermarkets in any event. So, as I said, it's either a case of they're both going in on day one or one is already there and so, therefore, it's an additional one. And so it's in a sense very obvious that we wouldn't want to have two of the same brand.
45

MR O'DONOVAN: Yes. All right. Now, in circumstances where you're proceeding, I guess – are there still developments where Westfield would have only – be commencing a development now with only one supermarket in it?

5 MR MILES: No, there's nothing on our development program at the moment that only requires one supermarket.

MR O'DONOVAN: Right. Okay. In the past when you've had only one supermarket in the development, has that prompted objections from the other
10 supermarkets in the area to the - - -

MR MILES: At a planning level?

MR O'DONOVAN: Yes.
15

MR MILES: No, not that I'm aware of.

MR O'DONOVAN: And also in relation to planning decisions, when you're seeking council approval do they have any role in either determining or approving
20 the tenant mix?

MR MILES: No, generally not.

MR O'DONOVAN: Right. So provided that it meets amenity and traffic and other
25 - - -

MR MILES: Yes, I think a lot of consents will deal with certain uses that the council has some development approval right over and in most cases they have a view over fit outs and food and health type set ups, but, no, generally not over major
30 tenants.

MR O'DONOVAN: So you would never hear a council say, look, we've got too many Coles and Woolworths in the area already, find another supermarket?

35 MR MILES: No, that would be unusual.

MR O'DONOVAN: Right. Have you ever heard of them doing it?

MR MILES: No, you generally hear more at a – either a discount department store or a department store level where a region might have just one department store and they have a view that they would be very keen for the other department store or discount department store, but not so much at the supermarket level.
40

MR O'DONOVAN: And is it ever at the – do they express a preference? Is it part
45 of a - - -

MR MILES: No, it generally doesn't come up.

MR O'DONOVAN: Right. But when they – in relation to the department store, is it just them expressing a preference to you or is it actually imposing a development condition?

5 MR MILES: Yes. No, it's more in the line of a preference rather than in consideration from a planning approval point of view.

MR O'DONOVAN: Right. So it's - - -

10 MR MILES: It's more the decision makers expressing a view based on their shopping preferences.

MR O'DONOVAN: Right, okay. And so in circumstances where you set up a centre to have both major supermarkets represented, does that mean that there's
15 never any suggestion from the major supermarkets that, look, we'd be willing to pay more rent if only one of us goes in?

MR MILES: No, that situation hasn't arisen with us.

20 MR O'DONOVAN: Right, and is that because they know that that's just not an option that's on the table or - - -

MR MILES: I think that probably because of the size of centres that we're generally involved in and in terms of the amount of specialty retail space we put in,
25 that they would be aware that in terms of anchoring or using major tenants as a way of distributing customer flows and traffics for the benefit of specialty retailers that it would be obvious that that wouldn't make any sense to us not to – not to incorporate two supermarkets.

30 MR O'DONOVAN: Right. So what is it about the economics of a centre that attracts Westfield to the idea of having two supermarkets rather than having a single supermarket possibly paying more rent, having effectively secure and substantial
- - -

35 MR MILES: Well really, as I said, we're all about creating environment where the consumers, when they leave their homes, say we want to go to that location because it's got either they think the best pricing opportunity, the best range of merchandise, that it can all be done in one location, they don't have to drive around to many
40 locations. And so we're really all about aggregating uses that the customers in that trade area want, and so that we become the choice destination, if you like, for their shopping habits.

MR O'DONOVAN: Right.

45 MR MILES: And to only have one supermarket limits the range of – or limits the attractiveness to potentially a bunch of customers that would otherwise be there.

MR O'DONOVAN: So from your perspective, there's really no rent that a single supermarket could offer you at – to exclude the other?

MR MILES: That would – no.

5

MR O'DONOVAN: To compensate you for excluding the other?

MR MILES: No, no.

10 MR O'DONOVAN: Okay, all right. And then in terms of the – I suppose the point in the planning process, at what stage do you decide on your anchor tenants, is that before the first sod has been turned, before planning approval is sought?

15 MR MILES: It's definitely before the first sod is turned because at that stage we have normally signed agreements for lease which is binding on the retailer. We would probably have a view at the time we seek consent as to who will occupy the major tenant boxes; but the terms may or may not have been agreed. But we will certainly have a view as to who they are.

20 MR O'DONOVAN: Right, okay. And is the reason for doing that is because the anchor tenants, in a sense, underpin the whole process, the whole attractiveness of the mall or otherwise as a business proposition?

25 MR MILES: Yes. Well, they are certainly key to the overall success of the mall and the way a centre is laid out, in terms of the locations of them.

MR O'DONOVAN: Right. So is it fair to say that Westfield wouldn't proceed with a development unless it had the two supermarkets available to it?

30 MR MILES: Yes, if it was in a market that required the two supermarkets, that's right. Well, in fact, all major tenants, whether it be supermarkets, discount department stores or department stores if they were part of the mix of that centre.

35 MR O'DONOVAN: Right, okay. Now, then looking at the question of rents per square metre, now am I right in saying that that information is publicly available?

MR MILES: It would be in some locations but not in other locations.

MR O'DONOVAN: Right.

40

MR MILES: Where leases are registered in certain states it's certainly available, and I think Victoria is the only state that leases aren't registered; they wouldn't be available.

45 MR O'DONOVAN: Right, okay. So because we've had submissions which lay out the rent per square metre for Coles and Woolworths versus speciality shops.

MR MILES: Yes.

MR O'DONOVAN: Now, and the differential seems to be – well, just to give you an example, Westfield Liverpool Coles is \$245 a square metre, versus Bush's Meats
5 at \$1338 per square metre. Firstly, can I – does that differential sound right to you, that that's - - -

MR MILES: It would be in that ballpark. I think that Coles' rent is probably a net rent. In fact, they may well be both net rents so that's probably okay.
10

MR O'DONOVAN: Yes.

MR MILES: Yes. No, that would be right.

MR O'DONOVAN: Okay. And can you just explain from Westfield's point of view, why there is this per square metre differential in what's on offer between - - -

MR MILES: I guess – well - - -

MR O'DONOVAN: - - - what some would say are competing retailers?
20

MR MILES: I guess there's probably a couple of factors. One is that there's obviously clearly more space in a supermarket than there is in a speciality shop. The lease term is generally substantially longer so the supermarkets – our lease terms are generally 20 to 25 year terms. The speciality retailers are generally five year terms.
25 They clearly help to drive traffic to the centre, and in a sense the rents are in large part a factor of the expected sales of that location. So the supermarkets generally have a view that the rent component of their business should be two and a half to three and a half per cent, so as a range of the expected sales or of the sales of a particular location. And that's just their business model. So in a sense that heavily
30 influences the level of rent paid for a store.

MR O'DONOVAN: Right. And if they refuse to come into a development, what's the consequence for Westfield?
35

MR MILES: Well, you would generally end up building less retail space in total because you wouldn't build probably a bunch of retail – specialty retail space that you otherwise would have because you wouldn't have the anchors to drive traffic to the centre and to influence pedestrian flows through that centre.
40

MR O'DONOVAN: Okay. So the – when you are looking at a proposal and in an area that's already serviced by existing Coles and Woolworths stores, do Coles and Woolworths ever say to you, look, we're adequately represented in that area, we're not interested in entering?
45

MR MILES: That would rarely occur. It would generally manifest itself in their view as to the likely sales and, therefore, rent that they're willing to pay for that location, rather than an outright, no, we don't want to be there.

5 MR O'DONOVAN: Right, okay.

MR MILES: It would reflect in the sales expectation.

10 MR O'DONOVAN: So the effect of existing stores is to lower the turnover of - - -

MR MILES: The turnover potential of a new site.

MR O'DONOVAN: Okay.

15 MR MILES: And, therefore, their view as to what rent they would be willing to pay for that site versus another site that didn't have a lot of existing competition or, in fact, stores of their own.

20 MR O'DONOVAN: Right, okay. Now, in recent years has there been an introduction of a third supermarket to a centre that you can think of, a Westfield centre?

25 MR MILES: Well, we've introduced – I think to date we've got about 11 Aldis trading and we've got another three or four to open during this year. So we've certainly been quite aggressive in that. We've got sort of 30-odd each of each of Coles Woolworths, and for the moment 11 or so Aldis.

30 MR O'DONOVAN: Right, and is there a – was there any reaction to the introduction of Aldis from the major supermarkets?

35 MR MILES: I guess, in the beginning there was some level of concern. There was a new entrant and some increased competition. I've got to say that that relatively quickly dissipated to the extent that I'd say probably now most – both of the major supermarket chains, if there was to be an Aldi introduced to the centre, would probably rather have them near them than away from them. That's probably where the view is at at the moment.

40 MR O'DONOVAN: Okay. So that in negotiations with them there's no specific attempts to exclude Aldi from the centre?

MR MILES: No.

45 MR O'DONOVAN: Okay. Has Westfield ever in recent years introduced a third large format supermarket to any of its centres that isn't a Coles or a Woolworths, so a Franklins or a Super IGA?

MR MILES: No, we've probably not done that in the last six or seven years. We were – Westfield was very active in rolling out the Franklins Big Fresh stores when they were active in the late nineties, and we had a number of those and, yes, we rolled out quite a few of those. But, no, there hasn't been the opportunity of late to do that.

MR O'DONOVAN: Okay. Why is that?

MR MILES: Largely because there's not another integrated large format supermarket offer available.

MR O'DONOVAN: Right. Now, Franklins still operates in New South Wales?

MR MILES: Yes.

MR O'DONOVAN: And as I understand it, is expanding its format to include fresh as well as packaged groceries?

MR MILES: Yes, I think they are, but I think they're still only a 2000 square metre model rather than a 3 or 4 thousand square metre model.

MR O'DONOVAN: Right.

MR MILES: That was my last discussions with them, so we've got sort of four Franklins in the portfolio so we from time to time catch up with them. They've obviously been through some troubles over the last few years but, as I said, I'm sure their business model at the moment is back to sort of 1500 to 2000 metre models rather than the bigger boxes.

MR O'DONOVAN: Right, okay. And that's what you're interested in in terms of
- - -

MR MILES: Well, in terms of sort of anchors and the driving power in attractiveness, you are really after supermarkets that can trade at sort of the maximum volume possible in that market.

MR O'DONOVAN: Okay. Have you been approached by Metcash about establishing a Super IGA of those proportions?

MR MILES: Yes, we have. We've had discussions with Metcash. The difference with Metcash is that their business model is one of – they don't actually retail, so Metcash wholesale. And so in a sense the issue with the Super IGA business is that the success of an individual store is ultimately dependent upon the operator, or the franchisee, or the licensee, or whoever it is that runs that particular store which is quite a different business model to that of the major chains.

MR O'DONOVAN: Right, and does that make it less attractive from your point of view?

MR MILES: In the absence of knowledge that it's a proven operator, it I guess
5 brings increased risk to us that you could open a centre or a mall with a large number
of specialty shops hanging off a large format supermarket that ultimately doesn't
perform. And if it doesn't perform, then the specialty that have leased premises
around it will generally not perform as well because the foot traffic to that
10 supermarket will be less than it would otherwise have been and, therefore, the ability
to achieve sales for the specialty shops around it is, therefore, decreased. And so it
brings increased risk from a development point of view.

MR O'DONOVAN: Okay. So is there any other operator in Australia other than
15 Coles and Woolworths who Westfield would trust to anchor a Westfield
development?

MR MILES: From a supermarket point of view?

MR O'DONOVAN: Yes.
20

MR MILES: Not of a major brand. I mean, from our point of view, as I said, we're
about aggregating retailers to create really unique offerings so we are still very active
and strong in the creation of fresh food precincts, so we still hold near and dear the
notion of the small retailer, butcher, fruit and veg guy or, in fact, the expanded fruit
25 and veg, meat, deli operators that can provide a point of difference for us and do
significant volumes, whether that be Harris Farm. In Melbourne here, in Doncaster
we've just opened a fruit and veg deli butcher store that is 1800 square metres and
looks like doing significant volumes adjacent to the Coles supermarket. So if you get
an opportunity to go to Doncaster, it's worth having a look at, just in terms of the
30 level of environment and competition created through the specialty retail that's
aggregated alongside.

MR O'DONOVAN: Sure. But in terms of it, if the market is left as it is, that
35 Westfields developments will include a Coles and a Woolworths and there won't be
an expanded independent brand operating large format supermarkets.

MR MILES: I think that's right. I mean, there's no doubt that we would – we
would love and we we're disappointed at the loss of the Franklins and the Franklins
Big Fresh model in particular which was effectively the third force at the time in the
40 big box of market retail. That was a big loss to the industry and from our point of
view it would have been better had it existed.

MR O'DONOVAN: And have you looked at some of the smaller or less national
45 brands like Foodland which operates large formats, at least one large format
supermarket in South Australia and Super Barn which operates a large format
supermarket in Canberra. Have either of those entered your radar?

MR MILES: Once again it depends on opportunities in each of those markets because as far as I am aware they are not looking to expand out of those locations and so, no, we've not really had any dealings with them there. I think - is Foodland part of Metcash as well in South Australia? I think he is a franchisee of the Metcash system in South Australia, yes, and very successful I'm aware at the site. It's really a case of whether that can be expanded, whether he has information, whether he has the capital to do that.

MR O'DONOVAN: Right. But if those types of operators who had I suppose - - -

MR MILES: Existed, yes, and they were successful, absolutely.

MR O'DONOVAN: - - - proven a large point at the supermarket. Would they be considered or would they - at this point in time they would be considered a big risk from Westfield's point of view.

MR MILES: No. If they were, you know, proven operators capable of driving sales, they certainly would be considered.

MR O'DONOVAN: Okay. All right. Now, what I'm going to do is turn to some specific releases in - relating to various Westfield premises. Are you happy to talk about them in public at least at the beginning?

MR SPEED: It really depends on the nature of the lease and whether it's a public record or not. I mean, if it's part of the confidential discussions we would rather keep it confidential and offline and we haven't identified those. So probably - okay.

MR O'DONOVAN: All right. Well, we'll start and make sure you stop us if you're unhappy? Okay. Now, I'll start firstly with Penrith which, I understand, has a Franklins and a Woolworths rather than a Coles and a Woolworths?

MR SPEED: Yes.

MR O'DONOVAN: Can you just explain briefly how that particular tenant mix came about?

MR MILES: That was a centre that we acquired and both of those tenancies were in place although we have recently renewed the Franklins lease. I imagine that was influenced by the fact that Coles was in a centre down the road but again in terms of how that was put together, it was a Lend Lease at the time. We acquired it a couple of years ago.

MR O'DONOVAN: Chatswood New South Wales?

MR MILES: Yes.

MR O'DONOVAN: Looks like a large centre but only has one Coles supermarket?

MR MILES: Yes.

MR O'DONOVAN: Why is that?

5 MR MILES: Land size building structure, that's again a market that we would like
to have put Woollies into. They really didn't have the space. Woollies had a Food
For Less in that centre that they – it was an old Franklins store so originally that
10 centre had a Franklins that used to do sort of just over \$20-odd million in sales and
Coles had a supermarket. Franklins business was sold. Woolworths got that site,
rebranded it Food For Less. It traded at a significantly lower level because I think
Woolworths were only operating a handful of Food For Less's in the New South
Wales market so there wasn't the marketing power behind them and we've recently
elected not to renew that lease and we've put Aldi in there and Aldi open there next
week, I think. So we'll end up with an Aldi and a Coles.

15 MR O'DONOVAN: Okay.

MR MILES: It wasn't big enough to take Woollies.

20 MR O'DONOVAN: Geelong in Victoria.

MR MILES: Yes.

25 MR O'DONOVAN: There's just one Coles?

MR MILES: Yes.

MR O'DONOVAN: The reason for that?

30 MR MILES: Once again land sized topography. Safeway were historically in the
centre across the road in Market Square. It didn't trade very well. Their lease came
to an end and it wasn't renewed and we have just – we're just doing a development at
the moment and have reopened Coles in a new location. So the nature of that site is
35 that it's really a city centre location so it's not the sort of centre that people come to
to do their supermarket shopping. So the demand for the supermarket there isn't as
strong as it would be if it was in suburban Geelong.

40 MR O'DONOVAN: And does the rent that Coles pay, is that affected by the fact
that they are the sole supermarket in that centre or - - -

MR MILES: No. No, not at all.

45 MR O'DONOVAN: And if you were to look more broadly than just your centre at
the other retail option that is around is there competition for the Coles store that's in
there?

MR MILES: There's – I think there's a Coles and Woollies in Packington Street in Geelong which it would be one or two kilometres away. As I said, I think the Coles is really a – it's really a CBD top up shop type supermarket but, no, there are Coles and Woolworths supermarkets around the CBD at Geelong.

5

MR O'DONOVAN: Now, going to Woden in the ACT, there's a centre there with a Coles and a Woollies but both of the leases have clauses preventing the establishment of a third supermarket.

10 MR MILES: Right.

MR O'DONOVAN: Is that commonly – firstly, is that the kind of clause that's commonly requested by the major supermarkets?

15 MR MILES: Once again, they're not our leases. We acquired that centre at the same time we have acquired Penrith actually so I can't tell you why they're in there. Does that have a threshold for the size of the third supermarket?

20 MR O'DONOVAN: Yes, it does. It certainly would accommodate an Aldi size supermarket.

25 MR MILES: Right. No, sometimes we have them and so long as - in our mind so long as they accommodate or allow an Aldi operation we have periodically agreed to them because we haven't felt we've been giving up anything particularly if they're for a limited period of time.

MR O'DONOVAN: And what's the size limit for an Aldi? What size square metres can you get an Aldi into in the centre?

30 MR MILES: I think they probably go as small as 1100 square metres but ideally sort of 13 to 1400 square metres.

35 MR O'DONOVAN: Now, in relation to Plenty Valley I think a request was made to exclude a supermarket – a third supermarket and that request was rejected?

MR MILES: That's right.

MR O'DONOVAN: Why was that?

40 MR MILES: Why did we reject it?

MR O'DONOVAN: Mm.

45 MR MILES: Well, it was really just unnecessary. That's a site that had an existing Coles. Coles had a first right of refusal in that situation. We ended up being able to get Safeway in and we also elected to put Aldi in. So we've ended up there with

Safeway, Aldi and Coles. We rejected it simply because it was unnecessary and we pushed back on it and they accepted that and we moved on.

5 MR O'DONOVAN: Now, in relation to – I think it's Chirnside and Tea Tree Plaza.

MR MILES: Yes.

MR O'DONOVAN: I think they are both in South Australia?

10 MR MILES: No. Chirnside is in Brisbane. Tea Tree's in South Australia.

MR O'DONOVAN: There were two Go-Lo leases which - - -

15 MR MILES: Bi-Lo.

MR O'DONOVAN: Sorry. Bi-Lo.

MR MILES: Yes.

20 MR O'DONOVAN: Which were surrendered by Coles.

MR MILES: Yes.

25 MR O'DONOVAN: And the conditions of surrender were that those sites not then be leased to supermarkets for 10 years?

MR MILES: Yes. I think the limit again on those was 2000 metres so it doesn't preclude an Aldi but yes, that's right.

30 MR O'DONOVAN: Well, let's start with Tea Tree Plaza. What's the competitive effect of those conditions? Presumably Bi-Lo is closing?

35 MR MILES: Yes, that's right. The Bi-Lo is closed. So Coles made the decision to close down its Bi-Lo brand and they came to us with a request to convert the Bi-Lo to a Coles so we would have ended up with two Coles in the centre and one Woolworths and as I said earlier, it's not in our interest to have two of the same brand utilising space. So we said, no, we wouldn't allow it to be rebranded in the lease and they understood that and we agreed terms for them to pay us a surrender sum for the lease to be surrendered to call the lease early.

40 And as a condition of that they wanted to not have another supermarket for a period of time which in the context of the arrangement didn't seem unreasonable to us particularly given that it didn't preclude us from dealing with Aldi when and if Aldi come into the South Australian market which again we hope that they do because it will be good for South Australia and also it would be good for us in terms of the ability to incorporate them into the centres.

45

MR O'DONOVAN: So what would Coles have been concerned about in asking for that condition? Who is the – would Foodland - - -

5 MR SPEED: Can we do this one in-camera because there's probably a confidential communication that we would

MR O'DONOVAN: Sure. Well, then turning to – is it Chirnside or Chermside?

10 MR MILES: Chermside.

MR O'DONOVAN: Chermside in Brisbane. Again, the same clause was requested by Coles and it was agreed to.

15 MR MILES: Yes. Those arrangements were done at the same time.

MR O'DONOVAN: Sure. What was the tenant mix in that mall?

20 MR MILES: There was a Coles, a Bi-Lo and I think a year or so before we just added a Woolworths to that centre. So once again they decided to close down the Bi-Lo brand. Its sales were declining. It was one of the few left in metropolitan Brisbane and we came to the same sort of arrangement there for them to pay a surrender sum and for us to take back the space and release it.

25 MR O'DONOVAN: And has it been released?

MR MILES: Yes, it has.

MR O'DONOVAN: And who to?

30 MR MILES: Harris Scarfe have taken that site. Harris Scarfe is a – have elected to move into the Queensland market and it will be one of their first stores in Queensland.

35 MR O'DONOVAN: Now, I'm not familiar with Harris Scarfe. What's their operation?

MR MILES: Harris Scarfe is a Melbourne/Adelaide brand. It sells homewares, clothing. It's a sort of a smaller Big W/Target/Kmart type offer.

40 MR O'DONOVAN: Right.

MR MILES: But operates out of a 3 Mr Roach 4000 metre box but they have aspirations to grow in Queensland so that will be one of their first.

45 MR O'DONOVAN: All right. I might ask you some further questions confidentially about that one.

MR MILES: Sure.

MR O'DONOVAN: Now, in relation to Doncaster.

5 MR MILES: Yes.

MR O'DONOVAN: But just on what I know about it as a person from outside Victoria, that that's a development which has doubled in size recently in terms of the specialty stores?

10

MR MILES: Yes. It's midway through construction.

MR O'DONOVAN: And it already had an interest in Coles and Safeway?

15 MR MILES: Yes. It had a Coles and that's one that used to have a Franklins Big Fresh that was converted to a Safeway. Yes.

MR O'DONOVAN: But there's no plan to add a third supermarket to that?

20 MR MILES: No. That's the one that we've added 2000 metres of this - - -

MR O'DONOVAN: Harris Farm?

25 MR MILES: - - - Harris Farm type operator with a large fruit and veg component, a butcher, deli and grocery lines. So they're there in 1800 square metres.

MR O'DONOVAN: Okay. And who is providing the grocery lines?

30 MR MILES: Coles and Safeway.

MR O'DONOVAN: Sorry. They're being added to that?

MR MILES: Yes. They've been rebuilt basically.

35 MR O'DONOVAN: So they're existing leases have been moved into the redeveloped area?

40 MR MILES: Yes. Both stores closed down because the development couldn't have occurred whilst they were in occupation so they let the site for about nine months and they just reopened sort of a month or so ago.

MR O'DONOVAN: But in terms of who's supplying grocery lines, it's still just Coles and Woolworths.

45 MR MILES: That's right.

MR O'DONOVAN: You can do that. All right. Now, what if a reasonable decision were made to restrict the number of supermarkets that could operate within a particular local area such that on occasions Westfield were prevented from using –
5 Westfield developments?
having a Coles or a Woolworths as their supermarket, what effect would that have on

MR MILES: Look, one - - -

MR SPEED: Is there a particular example that you're alluding to? I mean, it's a
10 hypothetical - - -

MR O'DONOVAN: It's purely hypothetical in terms of - - -

MR MILES: It would depend again on the market, and the circumstances in which
15 that centre sat. It may mean no development would occur, because the risk would be too great to build specially retail space without a supermarket, or it may be delayed, or alternatively it may be replaced with some other form of retail that we had a view could act as a traffic generator to anchor that part of the mall and the incremental speciality space – speciality stores that went with it.

MR O'DONOVAN: And if you had to nominate who – if you decided that there did
20 have to be a grocery retailer, if you had to shortlist your alternatives once Coles and Woolworths are taken off the list, are there particular companies that Westfield would consider?

MR MILES: We would probably go to Aldi, and we would probably aggregate it
25 with a large fruit and veg, similar to that which we've used at Doncaster and used in other locations to achieve the uniqueness and attractiveness of the location by aggregating retailers.

MR O'DONOVAN: But at this point in time there isn't a large format grocery
30 operator who you would think of immediately as likely to fill a gap in the market if Coles and Woollies are excluded from it?

MR MILES: No, not obviously, no.,

MR SAMUEL: Right. We will move to confidential session in just a few moments,
40 but I am interested just in some of the answers you have given in relation to the availability of space to Coles and Woolworths, and the like, and the relative freedom that I think you have indicated you feel in your ability to lease to new supermarkets, or to Aldi, or whatever the case might be. Are there ever circumstances where you have a disincentive to lease to a third supermarket, or an incentive not to lease to them?

MR MILES: No, probably not. In fact, there is probably more incentive to lease to
45 them, to the extent that we can create the opportunity for more speciality retailing to go with them.

MR SAMUEL: But there wouldn't be circumstances where the rental arrangements that you have with an incumbent tenant change as a result of a decision on your part to admit a third supermarket tenant?

5 MR MILES: We have a couple of those clauses, but most of them have either expired or they have a short term. So we wouldn't today have anything I think that really stops us from doing anything, or that would cost us.

MR SAMUEL: And you wouldn't – I just want to just test that 'or would cost you',
10 because you could have a diminution in rent or a changed rental arrangement, but you might take a view that the diminution in rent payable by supermarket A is more than offset by the rental that you would get from supermarket B or C, as the case may be. So let me just get it clear. Do you have in existence today rental
15 arrangements which taken on their own would result in a diminution of rental, in the event that a third supermarket was allowed to compete in the centre?

MR MILES: A large supermarket?

MR SAMUEL: Large or small, because it depends on square metreage, and the like.
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MR MILES: I don't think we have anything that would preclude us from putting an Aldi in, where there would be any effect on any of the other supermarkets' rents.

MR SAMUEL: That is on the basis, therefore, that an Aldi is less than, what, 1000
25 square metres, but more than - - -

MR MILES: Well, it's less than 2000 metres, or less that 1500 square.

MR SAMUEL: Okay, yes.
30

MR MILES: Having said that, I mean, as you would be aware, most of the supermarket leases have percentage rent clauses based on sales. And so there is always some potential impact in bringing in another supermarket, whether it be an Aldi or another full line supermarket, could, depending on the rent review cycle,
35 have some impact on the percentage rent earned. But equally – that is a relatively small number, but equally most of our leases would ratchet up the percentage rent every three years or five years. So most of it would get locked away.

MR SAMUEL: But given the attraction of having a Woolworths or a Coles as an
40 anchor tenant, and they are both as an anchor tenant in a major shopping centre, would it be usual for either of those to request from you a provision that provided some form of adjustment of their rent, in the event that you decided to admit a third supermarket competitor into the centre?

45 MR MILES: No, look, that would be unusual, although we do have a couple of those. I think Helensvale is one, where there is – it says that rent drops to a percentage of sales if we bring in a third supermarket greater than a 2000 square

metres, and that had a five year time frame on it. So in that circumstance, it was a brand new centre on a brand new site. It is unusual to expand a centre after it is built within five years. So in a sense that clause exists because it didn't preclude Aldi; in fact, Aldi opened at the same time as Coles and Woolworths, and we took the view
5 that it wasn't going to preclude us from doing anything, because it is unusual to expand within five years of a Greenfield site opening.

MR SAMUEL: All right. So let us get to the hear of it then. We know the size of the Aldi type store, we know their business model, and the like. Would there be any
10 centre that Westfield owns where there would be a disincentive for Westfield to admit Aldi in as a tenant of that centre?

MR MILES: No. I am pretty confident that – I can come back and confirm that, but I'm pretty confident there isn't anything that would act as a disincentive for Aldi.
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MR SAMUEL: Okay. If you could come back and just confirm that.

MR MILES: Yes.

MR SAMUEL: The other issue that has raised its head in the context of a somewhat coincidental report, a totally coincidental report that has been issued in the UK, relates to issues of restrictive covenants, and the like. Now, you will be aware that the Australia Government has just – it relates to the FRV rules, the Foreign Takeover Rules, but there is still a view that is put to us by a number of submitters to this
20 inquiry that planning laws and other constraints, including FRV, have a negative impact on the ability for new entrants to enter the market and to compete.
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Now, not surprisingly the Shopping Centre Council doesn't agree with that. I say not surprisingly, because your standard rule of economics is that if you can restrain or
30 restrict the amount of supply, then it pushes up the price you receive. Would you like to give us your own view on that?

MR MILES: I think as I said earlier, we have got – I mean, there is this general view that planning and centres policy has created an environment where there are
35 few opportunities and competition is somehow constrained. But as I said, in some of our sites we would have 20 or 30 supermarkets in what we consider to be our centre's main trade area. Certainly at Liverpool in south west Sydney, there would have to be 30 or 40 supermarkets in that trade area, and as a result our supermarkets trade at a substantially lesser level than they would otherwise do.
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Another example here in Melbourne, Doncaster has a lot of supermarkets of a free standing nature around it, and it would be again one of our most competitive supermarket locations. So – and even in one of the more densely populated areas such as Chatswood, where there is not 30 or 40 competing supermarkets, there might
45 be 10 or 12 competing supermarkets within that trade area, but nevertheless there are still competing supermarkets.

So I understand what they say. I think that any new entrant coming into any market, it's never going to be easy to click your fingers and have a network of stores capable of being achieved, whether that be for planning or just pure economics. You have got to buy the land from somebody at some point in time. So there is a bunch of
5 issues that come with it, but as I said, as you drive around Melbourne or Sydney there is a lot of examples of free standing supermarkets and retails that don't look like they are the result of any centre's policy.

MR SAMUEL: Let me just test you in an absolutely hypothetical set of
10 circumstances, and I want to stress for anyone here, this is not part of our thinking, Grant, not necessarily, but I just want to test you. If the UK recommendations, which I think I can summarise in three lines, as follows.

The first is that restrictive covenants that might exist between major retailers like the
15 major supermarket chains and landlords, should be the subject of scrutiny and/or potentially grandfathering and closure and constraint on their use in the future, your reaction to that would be if we were to recommend that as part of our report?

MR MILES: Probably not a bad thing from our point of view, but as I said, there's
20 nothing at the moment that's really stopping us doing anything that we want to do or have done. As I said, we – at the time Aldi came into the market we, I think, sat down and agreed 10 agreements for lease for 10 sites in one go and we were able to roll those out, and as I said, we've continued to do it. So it's – I don't think it would have any substantial ramifications on our business positively or negatively because
25 it's not an issue for us at the moment.

MR SAMUEL: Okay, that is the easy one.

MR MILES: Yes.
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MR SAMUEL: Now we'll move to the slightly more difficult ones. If one of the recommendations was that planning laws ought to take account of competition in a particular locality, particularly in the area of grocery retailing and, for example, if planning decisions are being made that the issues of future competition would be
35 taken into account, particularly in the area of supermarkets and groceries and the like
- - -

MR MILES: Look, that could obviously be done. I think that it adds another layer of complexity to the process. I mean the devil would be in the detail I suspect on
40 that. It may well be that it results in things happening slower, things not getting built and there, in fact, being less competition. I think it really depends on how they would operate and really the number of players that are in the market overall.

MR SAMUEL: Okay, now I'll get to the most painful one, and it probably applies
45 under the law as it currently stands in any event, and that is that any acquisition of a new location in a shopping centre by one – by any of the supermarket chains would be required to satisfy a competition test – that is that would not lead to a substantial

lessening of competition in the market. Now, as I say, it probably applies under section 50 of the Trade Practices Act as things currently stand, in much the same way that we would examine an acquisition of an existing supermarket by one of the major supermarket chains or we would examine the acquisition of the site.

5

MR MILES: Yes.

MR SAMUEL: If such a competition test were to apply broadly and openly and transparently to new leases granted by your group, how would you react to that?

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MR MILES: Once again I think the devil is in the detail. I think that it depends whether you're talking like for like or whether there is a suggestion that if we were going to lease a site to either Coles or Woolworths that somebody could in some way come back and say, no, that should be an Aldi or that should be a FoodWorks or that should be somebody else. I mean that would clearly change the dimension of what was either being contemplated as a development and it may result in it not being built because the ramifications for the rest of the opportunity may be such that it's just isn't viable. So I think it really depends on, if you're talking like for like in terms of operator to operator, or whether you're talking about the idea that you could somehow end up with some other use that is completely at odds with the one originally being contemplated.

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MR SAMUEL: They would be factors to be taken into account?

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MR MILES: Yes.

MR SAMUEL: Well, as I guess, that is probably the one that is potentially more painful than the others if it were - - -

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MR MILES: I think that is right, but again I think it depends on the – it is really more a question of the number of operators in the market. As I said earlier, from our point of view it was a pity that the old Franklins model and the bigger units of Franklins disappeared because we had many centres that had a Franklins Big Fresh and either a Coles or Woolworths and it was always good to have a third player in the market. I think that is probably more the issue.

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MR SAMUEL: All right. Anything you want to cover?

COMMISSIONER MARTIN: Just on the trade areas as you'd describe them, what – how do you define that? Is that a 20 minute drive or - - -

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MR MILES: No, again it depends on the type of centre and the geography of a region. So if you're in a location where there's a gully or a bridge, there tends to become some natural barriers to where people will travel from and, of course, the composition of retail on that site will also dictate how big a trade area is. And so the trade areas are commonly defined as primary trade area where you would expect to have a high frequency visit, and that would probably be within five Ks. And then

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you'd have a secondary trade area. And then potentially a tertiary trade area if you had a draw from a much wider area but much less frequency.

5 So from that wider area they might come in once every couple of months, whereas the primary trade area is in three times a week. And that's generally defined by way of exit surveys or telephone polling in terms of where they would shop, or where they do shop.

10 COMMISSIONER MARTIN: And in an intra-centre market sense you've more or less indicated that in the non-dry grocery area, the bakeries and the - - -

MR MILES: Yes.

15 COMMISSIONER MARTIN: - - - that you like to get the non-chain competition. Is that because of the customers like that best, or it's best for - - -

20 MR MILES: I think it's a bit of both really. As I said, if you come from the point of view that Westfield really is in the business of aggregating retailers that customers like and want to buy product from, then the specialty food part of the business is a really important part of our business because, as contrary to the view that the centre's policy results in little competition, there are a lot of free standing supermarkets in all the markets that we operate in. And so for us it's all about trying to create a point of difference, because with a free standing supermarket you can't aggregate a fish shop, a butcher, a fruit and veg – it's unusual to do that because you don't have the
25 frequency of visit, or people come at the wrong hours.

They shop, you know, from six till midnight, and so that's not when the little guys want to be open. And so for us it is a point of difference and it does act as a generator of traffic to the centre because when someone gets in the car, they can go
30 to the fruit stand up the road or they go, I'll go to that one because I really like that meat from that butcher and I won't buy it from Woollies, or I'll go to the fruit shop next door, or – all those things are really important to us and it's a part of the business that we strive to keep strong and relevant.

35 MR SAMUEL: Have you got some questions to ask in confidential session?

MR O'DONOVAN: Yes.

40 MR SAMUEL: All right. So I'll clear the room of non-ACCC personnel, please. Yes, there won't be any more public sessions after this, so that's the end of the public hearings from today.

45 **CONTINUED IN TRANSCRIPT-IN-CONFIDENCE**