

Public hearing –Shepparton

14 April 2008

Time: 1pm – 5pm

Address: **Country Comfort Shepparton**

481 Wyndham Street

Room: Parkview 1 (ground level)

Witness	Submission	Summons
Mr Bob Katter MP Federal Member for Kennedy	180	No
Apple & Pear Association Ltd Tony Russell General Manager Mr David Finger Representing Vernview Pty Ltd Mr Christopher Fairless Representing Geoffrey Thompson Fruit Packing Company Pty Ltd	80	No Summoned & compelled to appear by ACCC Summoned & compelled to appear by ACCC
Fruit Growers of Victoria Ltd Mr John Wilson General Manager	71	No

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TRANSCRIPT OF PROCEEDINGS

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

DR STEPHEN KING, Commissioner

GROCERY PRICE INQUIRY HEARING

CONDUCTED AT: COUNTRY COMFORT, SHEPPARTON

DATE: 1.00 PM, MONDAY, 14 APRIL, 2008

COMMISSIONER KING: Good afternoon. My name is Stephen King. I'm a Commissioner of the Australian Competition and Consumer Commission, and one of the presiding members of this public inquiry into the competitiveness of retail prices and standard groceries.

I welcome you all, and declare this hearing open. This hearing is convened under Part VIIA of the Trade Practices Act, 1974. It's held pursuant to a request from the Assistant Treasurer and Minister for Competition Policy and Consumer Affairs, received by the ACCC on the 22nd of January 2008.

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

I note that the ACCC has, so far, received over 150 public submissions to the Inquiry, as well as confidential submissions. The ACCC will endeavour to take into account all of the information that has been provided to it, and thanks industry participants for the contributions that they have made and are making. We understand the competitiveness of the 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. The ACCC is organising hearings throughout Australia during April, and we have several hearings occurring in Melbourne in May.

Now, 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, 1974.

In particular, I note that in general, the ACCC has summonsed all supplier companies, and therefore no conclusions can be drawn regarding a company's willingness to participate in the inquiry, from the fact that a company is appearing at the hearings.

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. The sessions will move into a confidential

phase when the questioning moves on to confidential material, relating to the witness.

5 The ACCC has been able to investigate issues that are commercially sensitive to witnesses without damaging the witnesses' competitive position and commercial relationships.

10 The ACCC will be questioning organisations about their commercial relationships and about confidential documents the ACCC has obtained through using its information gathering powers. Clearly, this 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, the ACCC must be able to hear certain evidence in confidence.

15 Transcripts of the public parts of the hearing are placed on the ACCC website. The ACCC may disclose some aspects of the confidential components of the transcript a while after the hearing, if it considers that some of the material should be in the public domain, but the ACCC will consult with the relevant witness before doing this.

20 Where there are industry associations or representative organisations who are attending voluntarily, it is more likely that most of the hearing sessions will be public.

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

30 A transcript of the proceedings at the inquiry, will be made available, as I said, and the non-confidential parts on the ACCC website.

35 The ACCC recognises that some witnesses will be asked to give evidence that, if disposed, would damage their competitive position, or which may, for other reasons be confidential. If a witness believes that a particular question or series of questions are likely to require him or her to disclose such information, the witness should indicate an objection to answering the question on that basis. I will then consider whether the inquiry should take the evidence in private from that witness.

40 I note that although the ACCC is not utilising external counsel at this hearing, witnesses will be questioned by ACCC staff members and including myself.

45 Now, that concludes the preliminary remarks, and I call those witnesses who are attending the hearings, particularly those of you who 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. Once again, I apologise for the delay in start today.

5 Now the first witnesses are the Apple and Pear Association. I believe we have Mr Tony Russell?

MR RUSSELL: Yes.

10 COMMISSIONER KING: And with you are Mr David Finger and Mr Christopher Fairless. Okay.

Gentlemen, I note again that it is an offence under the criminal code to give evidence at this inquiry that I witness knows is false or misleading or admits any matter or thing, without which the evidence is proceeding. Now, Mr Russell, if I can just ask you to lead off. If you can state - - give us a bit of background on your own position, and on the membership and purpose of the Apple and Pear Association, and we'll go from there.

15 MR RUSSELL: Okay, firstly, just a bit of background, our organisation, the Apple and Pear Association of Australia, it is the peak industry body that represents all apple and pear growers in Australia.

20 Now, I guess our primary function is to direct and influence research and development activities and marketing and promotion strategies on behalf of the industry. These activities are funded by levies which are collected under the strategy levy system set up under the Department of Ag. Fishes and Forestries, under the levies revenue service. Apple and Pear Australia Limited also actively represents the industry on agri political issues, including such issues as campaigning to protect the Australian hard fruit industries from foreign issues and risks associated with imports. Apple and Pear Australia Limited also is engaged in commercial trademark management for two trademarks currently, Pink Lady and Sundowner, which are trade marks names, globally.

25 The industry itself is state based. We have representative industries in all states of Australia, with the exception of the Northern Territory. Victoria happens to be the largest producing state. It's largely concentrated around this particular region in fact, where 90% of the nation's pears are grown, and approximately 20 to 25 percent of the nation's apples.

30 I guess our industry, just in broad terms, has declined from an export perspective in recent times due to global pricing pressures, but there is certainly opportunities that exist in this market where we have quite a firm domestic market applying for apples and pears; a fairly stable demand. We don't have imports currently for apples. We have a small number of pears that come into the country, but we do have excellent producing conditions generally throughout the country to provide Australian consumers with great products. I'm not sure what more you really wanted me to talk about in relation to the industry. But, I guess that gives a sort of broadbrush about the industry. Did you want me to comment on the submission?

COMMISSIONER KING: We have your submission, so I'll be asking questions about it in two various aspects of the submission as we go through. Perhaps just a little bit more on background to start with. Of the apple and pear crop - and please tell me if there's a distinction from the perspective of apples and pears, and also if there's a variety distinction so between, for example, Sundowner and the Pink Lady between some of the others, Granny Smiths and Golden Delicious and so on. Are you able to give me a feel for what share of the Australian crop would go through the major supermarket chains, what share would go through other retail outlets, and what share would go to other sources or other users, if I can put them that way, you know, processes, canning etc?

MR RUSSELL: The figure would vary a little bit from season to season but I guess it's somewhere in the order of 50 to 60 percent would be going through major supermarket chains, and that would include, you know, the metro as well as the Coles/Woolworths group. Now, that figure has actually been declining a little bit due to the emergence of a more effective independent fruit and vegetable retail sector, particularly in New South Wales, but it is also happening in other states. I think that would be about right, wouldn't it?

MR FAIRLESS: It might even be a fraction higher.

MR RUSSELL: Yeah, so fifty percent might nearly pull it up, with the proportion going into the major supermarket chains. So the other sectors are obviously through the wholesale market, which is largely servicing all the independent fruit and vegetable retailers, and that would comprise the balance, obviously the balance of fresh fruit sales. I guess there is a small proportion going through into the food service sector, directly into the food service sector, but again, that is probably going through the wholesale market sector in the first place, before it gets there at this point in time. Processing - - I guess there's another category. Of the whole crop, we would probably process up to 20 percent, depending on the season. Last year would have been a bit higher, I think. But, in a normal season 20 to 30 percent would average what - - that's fruit that's been proceeded into juice and/or other products.

COMMISSIONER KING: Just on that, is there a difference between apples and pears on the amount that go to the processing industry? I mean, presumably - - well, actually, let me skip back a bit. Presumably, the actual size of the apple crop is significantly bigger than the pear crop or - - okay.

MR RUSSELL: The apple crop is in the order of 300,000 tonnes give or take twenty or thirty thousand tonnes, over the last, seven or eight years, anyway.

COMMISSIONER KING: Yes.

MR RUSSELL: The pear crop is somewhere in the range of 150 to 190,000 tonnes total. The pear crop does consume quite a bit more in the form of processing, particularly in this region, because a lot of the industry was actually set up originally

for processing into can, you know, canned product, so with the SPC and Ardmona operations based around Shepparton.

5 MR FAIRLESS: If I could just make a comment, the pear industry - - there's very few varieties within the pear industry, and the main two varieties are Williams BC, the Williams pears, which is the traditional SPC/Ardmona pear, the canning pear, and then you've got a Packhams Triumph, and then varieties after that, become fairly insignificant to where pears - - where the two pear varieties sit. So it can be a bit confusing, where Williams pears are traditionally focused on canning or processing
10 and Packhams pears are very much focused on fresh fruit marketing, either domestic or export.

COMMISSIONER KING: And do you have a feel, or can you give me a feel of let's say a figures of say 160,000 tonnes, how many of them would be the William pear
15 and how many of them would be the Packhams?

MR FAIRLESS: Traditionally William pears have been 70 or 80,000 tonne.

COMMISSIONER KING: Okay, so probably comes in about 50/50 from the farmer.
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MR FAIRLESS: Not far away.

MR RUSSELL: And a high proportion are processes and they are.

25 MR FAIRLESS: They are.

COMMISSIONER KING: If we turn back to 300,000 apples, then we've got about 20 percent, 20 to 30 percent going off to the processors, and obviously juices are again - please correct me if I'm wrong, I say "obviously." From an outsider's
30 perspective it would seem like juices is probably a major part of this processing? Is that right?

MR RUSSELL: It would be.

35 MR FINGER: And specifically in concentrated forms as well.

COMMISSIONER KING: Yes.

40 MR RUSSELL: Bear in mind that growers don't set about producing juicing fruit, right, it's a by product of downgraded fruit. And, I should point out that Australia currently imports in excess of 500,000 tonnes of apple juice concentrate from China alone in the form of apple juice concentrate. It would require in excess of 500,000 tonnes of fruit to produce that concentrate. And, I should say that that's had quite a major impact on the industry in Australia, since the mid nineties when that trait
45 emerged.

COMMISSIONER KING: I will come back to that in a minute. If we can just again thinking about the apple crop, you say from the point of view of juicing, clearly, it is the last resort as I understand it. What about is there any really significant industry in say can apples or is it a very small part of it?

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MR RUSSELL: Very minor.

MR FAIRLESS: No, it's still there and it's been for as long as the canning industry has spent in existence there's various varieties specific, and it fluctuates from year to year and the market demands and so forth, but Granny Smith apples as an example are very focused on pie packs canning and the like and then you've got all varieties taken up in a single strength or a concentrated juice component.

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COMMISSIONER KING: Do you want to give me a bit of an estimate - - I will step back a bit. If we focused on what I call the premium eating apples, things like the Pink Lady, if there is an oversupply or the crop that is having trouble selling at the retail level what would be the next level down for say a Pink Lady grower? Would they have the option of going into say you know, canning or something like that or is the fruit just unsuitable for that and juicing is their only option.

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MR RUSSELL: There's no demand. Really when you're processing demand there's no processing capacity. When we're talking about canning we would be talking about maybe a few thousand tonnes.

MR FAIRLESS: At the most.

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MR RUSSELL: It doesn't come into it.

MR FAIRLESS: If it is very variety specific.

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MR RUSSELL: So if we got to a situation where there wasn't any consumer demand for mainstream Pink Ladies or whatever it might be, there wouldn't be - - there wouldn't even be enough demand to manage the processing of the balance of the product, let alone interest from the processors to take it.

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COMMISSIONER KING: Okay. Now, we've got about 50 percent of the crop goes through Coles and Woolworths. Can you give me any feel of the break down? How many go to Woolworths, how many Coles, how many Metcash? I assume that's sort of the order of magnitude. Have you able to put any more - - ?

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MR RUSSELL: Between the three.

MR FAIRLESS: Between the three.

COMMISSIONER KING: If you're not, then that's fine, I mean, I realise - -

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MR RUSSELL: Metcash would be clearly the smaller; that's all I could say.

45

COMMISSIONER KING: Okay, fine.

MR FAIRLESS: If you link Coles and Bi-Lo together nationally they hold a greater share of the fresh fruit market in apples and pears than Woolworths, marginally.

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COMMISSIONER KING: Okay.

MR FAIRLESS: But then obviously Woolworths and then the other minor parties.

10 COMMISSIONER KING: And now when you're saying about 50 percent, is that basically direct supply to the supermarkets or are you also taking into account - - the supermarkets sometimes are the wholesale markets?

15 MR FAIRLESS: The supermarket is in the wholesale market every day. So, there's a - - a percentage proportion taken up nationally is a proportion of all purchases either direct, semi-direct, market floor.

20 COMMISSIONER KING: Okay. Now you pointed out the independent fruit and vegetable retailers and the growth - - you mentioned particularly in New South Wales. Also, do you find the same sort of thing happening in other states with supermarket's share of the retail sales is shifting across, at least to a small degree, to fruit and vegie retailers?

25 MR RUSSELL: I think it's probably happening a little bit in Victoria as well.

MR FAIRLESS: But not to the same customer or the same re-seller if you like. The greengrocers in New South Wales has been quite clever about where they have positioned themselves, and there's some very, very good greengrocers in New South Wales, independent. You could nearly call them small end retailers, really.

30

MR RUSSELL: An example is Harris Farm.

MR FAIRLESS: Harris Farm is a good one where they will buy off the market or they'll buy off direct, or they'll buy directly off the grower, the grower, supplier. They'll position themselves in the foyer of a Woolworths or a Coles in the same building as such, and then they'll go head-to-head, either on quality or price or both, and they've made a significant impact in sales, and those sales have had to come from somewhere, and in those sorts of cases they have come directly from a Coles or Woolworths being they are a tenant at that same building. And, the independent greengrocer has done a very good job of that in New South Wales, and you can see very clearly that they're taking away sales from the majors, if you like, being Coles or Woolworths. In Victoria, it's a little different, where the shift from a Coles or a Woolworths has changed because the dynamic of those retailers is changing a bit as well. But, Coles made a decision a year or two ago to disband or re-badge the Bi-Lo category, and that was a disaster for Coles, and they lost a lot of shoppers through that re-badging, and they've gone to other retailers - - oh, sorry, other resellers. It's hard to balance, but the new players like the ALDI Group have certainly impacted on

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where people shop, and there is no doubt that they have been able to pick up sales lost by the re-badging of Bi-Lo. But, independent of ALDI, the IGA organisation - and they've got over 600 stores in Victoria - they've made an incredible dint in either Coles or Woolworths or Coles/Bi-Lo, an incredible dint, and their sales are
5 actually lifting as well. So, they've made an impact on the sales platform, if you like, and ALDI and IGA have taken a significant portion of resale away from Coles and Woolworths or Coles/Bi-Lo. And, Brisbane you've got - - oh, sorry, Queensland, you've got a similar sort of pattern.

10 COMMISSIONER KING: Mr Katter will deal with that later, hopefully.

MR FAIRLESS: Well, in Queensland you've got a similar sort of pattern, but it's a different group of resellers. It's not an ALDI but it is a Harris Farm. They've shifted into that area. It's other smaller independents or greengrocers.

15 COMMISSIONER KING: Can I focus on New South Wales a bit for a second. So, you would agree there has been this change in the retail competition in New South Wales? I will come back to your submission in a second. But, if we fed that through, do growers see that at all - - you know once it works it's way back through
20 that supply chain, do growers see that increased competition in terms of increased competition for their fruit, and if so, what sort of fruit? Is it just particular qualities or whatever, or is it essentially that, you know, you're shifting from Coles are selling less because of the Bi-Lo problems, and the fruit and vegie sellers are selling more, but from the perspective of the growers, you know, it's just, you know, you're taking
25 from the left hand and putting into the right hand and there's really not much change from the grower's perspective in terms of the price and the deal that they get. Which of those two scenarios is true, if either?

MR FAIRLESS: If I can - - I'll make generalised comment. We're, firstly, I think
30 the ACCC need to understand that generally there is not an under-supply of product nationally, and if there is, it's through a disaster of some type. In that, I will say that when that the type of thing happens - and this region was affected last year by frost mainly, but frosts and hail. In fairness to the retailer - and one of the mains that we're talking about today then very clearly and very openly have gone out of their
35 way to vary the specification or the requirement in quality that they as a retailer want through their stores for their consumers. So, they have tried to help the industry balance the problems that they've got in the supply. In a year like this year, where things are somewhat more normal, then those variations to specifications revert back to a normal year, if you like.

40 But the main of sales through a major retailer or a wholesale market floor, is very dependent on the quality that you provide, and it's either provided through a specification or through your belief in what the market or what the end-user might want. And, there's lots and lots of different buyers, if you like, for those different
45 categories. I'm not at all convinced that you see a lot of competition for what's produced out of an area like this. It's how you perceive the market and what customer you're actually trying to provide that quality for. There's a level for every

different thing that you produce right back to the area of juice, which you say is the lowest value. So many consumers ah, sorry, many packers or suppliers to especially the wholesale market, have a preference on what they want to pack on the yield that they want to achieve from their bin stocks and their market return, or the competition
5 for their product is driven largely by the quality that they produce or supply to that market floor, wherever it will be nationally, if that makes any sense.

MR RUSSELL: I think the actual development of this new well, it's not entirely new, but this growth in this independent retail sector, in particular New South Wales, high
10 quality stores, I think it's actually added a new quality dimension to the new fruit and vegetable offering, which I think has been driven by consumers. I guess it's got be entirely driven by consumers. It wouldn't be there without consumers looking for those differentiated offerings, and typically, they're selling a lot of product at much higher prices in these places - not always, but certainly at quite high achieving prices,
15 and that's - - and that's got to be by choice. Consumers are looking for higher quality offerings. And, going with that, is a lot more service, there's a lot more labour required in some of these stores. They put a lot more effort into displays and fruit and vegetable handling and the management and storing product in cool rooms overnight and things like this. That's adding to obviously the retail cost.
20 But it's certainly increasing the offering that's going to it.

COMMISSIONER KING: Just on that, two things I'd like to follow up, rather than putting you on the spot: this inquiry has heard before that Woolworths, it has probably worked better with the industry when there have been times where there
25 have been supply in balances, than other major supermarket chain. Now, you mentioned one of them had. Are you able to confirm in a public session, whether that one is Woolworths or not? If you can't because of confidentiality, I understand.

MR FAIRLESS: No, no, I think I can, but just I think it's fair to say that the company
30 that I represent is a major Coles supplier, not a major Woolworths supplier, but it would be fair to say that in this last year there's been more variations to - - there's far more variation to specification allowances from Coles than there has been from Woolworths, farming.

35 COMMISSIONER KING: Again I - - -

MR FAIRLESS: I know - - -

COMMISSIONER KING: I understand the commercial issues there and I don't want
40 to go into them in any way at all.

MR FAIRLESS: No, not at all, but just so the public know, those types of variations, those specifications, they're open to the public every day of the week. They're on the Coles website, they're on the Woolworths website, and you can go in and see all that
45 information, first-hand any time you like.

MR FINGER: From a grower perspective I think the key factor there is who is their supplier. I mean, going a step further back, the apple and pear industry has significant vertical integration from growing, packing, storing and marketing companies. For the grower, who is just a grower alone, their perspective about that question you asked about before about whether it's simply changing positions really depends on who you are aligned with, and how good a job they are doing in terms of finding homes for all those different qualities of fruit. So, if I was supplying a packer and a marketer who really was focused completely on Woolworths or Coles or any segment, my perception of what was happening in the marketplace would be simply based on their performance. There's another point I would like to make going back to what is happening here in Victoria: many people wouldn't be aware late last year NQR has begun to venture into fresh produce, and here in Victoria there's about ten or twelve, but they are operating at a very, and again it's in support of what Chris was saying, at a completely different level of quality, which is very low.

15 COMMISSIONER KING: NQR, sorry?

MR FINGER: Not Quite Right, so suddenly, there's another player involved. The other significant thing in Victoria, which perhaps doesn't happen in New South Wales so much is that quite a bit of product here in Victoria - and I'm not just saying apples, but - finds its way through farmers' markets. Farmers' markets are a pretty popular sort of thing around suburban Melbourne, and a lot of growers go direct. And because of the growing situation in southern Victoria and some of the capital cities, there's also a lot of direct on-farm sales done. There are some people who make quite significant businesses who are still located in the urban rural interfaces, who sell a significant amount of product.

COMMISSIONER KING: Presumably, that is possible in Victoria because in a sense the growing region and the major population centres aren't too far apart.

30 MR FINGER: That's correct.

COMMISSIONER KING: Presumably that's much more difficult in the other states. Yes one other thing on the comments a few minutes ago, the independents offer a higher price but improved quality - - again, this inquiry has heard some fairly blunt criticism about the handling of fruit via the major supermarket chains and the handling of vegetables by the major supermarket chains, and perhaps the lack of knowledge at store level of how to handle produce. Again, because I don't want to put you on the spot, from a commercial perspective, but would you broadly agree or can you broadly agree in a public session or is that not your view, and if so, what is your view?

MR FINGER: I have a comment about it. Generally speaking, the organisations, the people that actually handle the product on the shelf, are some of the lowest paid people within the organisation, and as such, they don't have the skills that are there. Certainly, there is an area that can be improved, that it isn't always handled as well. But the other side of the coin is that, recently, particularly Coles and Woolworths

first of all, but Coles require that all of the product goes into returnable plastic crates, which significantly reduces that problem because the actual unit is put to the shelf and access to the amount of fruit is not available. So, without necessarily having provided training, they have actually moved to make sure the quality is better
5 intrinsically because there's not been the opportunity for it to be damaged, if you like.

MR RUSSELL: But I could just sort of add to that comment, and I think it's one of the reasons why we're seeing an emergence of this sort of high-quality independent retail sector, particularly in New South Wales again, which actually does focus on
10 that in store product handling and management. It's clearly an advantage that that sector has over the supermarkets, and they're working towards that all they can.

MR FAIRLESS: I think it is fair to say, too, that supermarkets recognize that, and they're trying to do something about it.
15

COMMISSIONER KING: Something could happen. I just want to go back to one or two things. You mentioned exports had recently declined. Are you able to say what percentage of the Australian apple and pear crop tends to go the export market as of today, and how has that changed, over, let's say the last five, last ten years?
20

MR RUSSELL: Okay. It's currently less than five percent, and probably five to 10 years ago - - Richard might know better - it was probably closer to - - 10 percent. I don't think it's been a lot higher than ten percent. Well, not in the last five or six years, anyway.
25

MR FAIRLESS: I think, again, it varies on what we're talking about, but a region like this where 15 or 20 years ago the pear industry was based wholly on exports and the proportion of fresh product that went to the domestic market was largely second grade product, and that was the way the industry ran, and ran for a very long time.
30 Basically, South American countries have taken that market away from us, and the industry has slowly reverted to solely a domestic market face, and the smallest of proportions of pears go to export, and that's a very significant, very detailed market, where there are very few, very few packers operating in an export sense, but it is to a specialised market, and where South-East Asia was our biggest importer, after
35 Europe, many, many years ago, where New Zealand and Canada are both the larger, the larger players in importing the Australian pear product. Apples are a little different. South-East Asia was the largest importer of apples, largely from Tasmania. That's changed significantly where now India is the large importer of apples, largely still from Tasmania. It's very variety specific, and there's a
40 specialised export/import arrangement between Australia and Europe or England in regard to Pink Ladies, and that's - - - that's still a significant market, which has the potential to grow and still has a lot of upside.

COMMISSIONER KING: If we're looking at say the variety of exports to Asia and India, you mentioned Pink Ladies. What other varieties would tend to be - - ?
45

MR FAIRLESS: Europe very clearly or England very clearly is Pink Lady only.

MR RUSSELL: Some Sundance.

MR FAIRLESS: But largely the Pink Ladies, and the South-east Asia, largely Red
5 Delicious with some Granny Smith varieties, and that's really the total structure of
what we as an industry export from this country. And, the pears, largely Packhams
and Buerre Bosc, and very little of anything else.

10 COMMISSIONER KING: That is really focused on the fresh fruit exports. Is there
also an export industry in canned pears?

MR FAIRLESS: Oh, very much so, and that comes back to Williams pears. A very
significant market, although lots of things, including the Australian dollar, affect that
and as southern hemisphere competitors in fresh fruit are the same southern
15 hemisphere competitors in canned fruit, but the Williams pear crop, very significant
proportion of canned pears end up leaving this country.

COMMISSIONER KING: Okay. Has that - - - the competition presumably in the
20 canned pear market has, as best as you know, increased as South America has
developed?

MR FAIRLESS: Oh, there's no doubt. The domestic market here is, for a word,
saturated by competition through retailers and the like, through imports and again
they're saying competitors in this country on an import basis are again competitors
25 into other countries where we're trying to export as they are.

COMMISSIONER KING: Yes. So, really, when we're talking about the canned - -
canned pears, I will focus on that - we're really talking about an international market.
We're an exporter, we're an importer.

30 MR FAIRLESS: There's no doubt, no doubt, and it needs to be said too, that the
variety that is specific to export in cans or export, or canning processing, that's in
decline also.

COMMISSIONER KING: Oh, okay.

35 MR FAIRLESS: The industry is much smaller now than it was 20 years ago, let
alone 30 years ago.

COMMISSIONER KING: And is that again just because of the growth of South
40 America?

MR FAIRLESS: Well, largely, because that's impacted on the profitability of that
variety and the processing industry as a whole and the processors have left the
industry and growers in turn, have left the industry as processors have.
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COMMISSIONER KING: Are you able to talk at all about the relationship processes or canners would then have with the major supermarket chains, or is that sort of too far down the chain from your perspective?

5 MR FAIRLESS: I could certainly generalise on what relationship they have.

COMMISSIONER KING: I guess the issue is to what degree. Domestic canneries finding - - well, imports have led to a change in bargaining. You know, it used to be the case that they had the brands, they had the ability to say to Coles and
10 Woolworths, you know, look, this is the deal. I was wondering have the imports, have generics, has that all been twisted around so now there's a change in that balance of power in dealing with the retailers?

MR FAIRLESS: There's no doubt. In very recent times, where the fruit grower had
15 canners independent, being Ardmona Foods and SPC - - where now that - - and the domestic market was very much driven by how competitive either of those marketers wanted to be for their supply base, and both their supply base in quite recent times were suppliers, so they were cooperatives. There's been a shift in the marketplace with Ardmona, SPC joining forces, and they're one conglomerate now. And, the
20 development of offshore processes, the Chinese and the South Africans, especially the South Africans, the Chileans and the Argentineans and so forth, where they've been able to leverage off the home brand shift through major retailers especially, and that created - - there is no question they've created a lot of hardship for processors and suppliers in this country for the home market. There is no doubt about that.

25 COMMISSIONER KING: That's a good point. So when we are looking at say a home brand product in either a Coles or Woolworths store, how often would that be an imported product? Are you able to give me a feel for that or not?

30 MR FAIRLESS: No.

COMMISSIONER KING: Okay. But from what you just said imports, it's a domestic - - Ardmona SPC is competing against imports in that generic space? Is that a fair way to put it?

35 MR FAIRLESS: Ardmona and SPC are clearly an international company, and they have to compete on their home market with imports, as well as domestic manufactured product.

40 MR RUSSELL: They also import materials themselves.

COMMISSIONER KING: Oh, so SPC Ardmona also import pears for canning here or are they a finished product?

45 MR RUSSELL: No, a finished, canned product.

COMMISSIONER KING: Are you able to expand at all on that at all? I mean, what sort of - - ?

MR RUSSELL: No.

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COMMISSIONER KING: Or is that something you hope to follow up with them?

MR FAIRLESS: I think you need to be pretty careful how you talk about those sorts of things. In short years, where through domestic issues there may be a reason why that sort of thing happens. But, you need to be a bit careful.

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COMMISSIONER KING: No. That's actually something that I think we probably need to follow-up with the company and get a better feel for when they import and why they import and the reasons why. As we have moved on to imports, fresh fruit imports now, obviously, one of the things Mr Russell you said in your opening remarks was that your organisation does campaign to protect the Australian fruit industry from unsafe imports. To what degree do you believe that unsafe imports - - well, can you expand on that a bit? I mean, along with probably most people, I'm aware New Zealanders make various claims about apples and fire blight. I mean, to what degree is quarantine risk associated with imports a significant issue for your organisation? What would, in your opinion occur, if quarantine restrictions were loosened, and to put it bluntly, is it really a quarantine and a safety of crop issue, or is it a way of keeping import competition out?

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MR RUSSELL: It is absolutely, absolutely a quarantine issue. It is not about keeping imports out of the country. Fire blight is a very devastating bacterial disease that affects fruit. It is in about 49 countries around the world. It originated in North America, and it's spread to 48 other countries around the world. And, they were only aware of how it spread in about nine instances. It's quite a devastating disease. It has quite major impact, particularly in warmer climates, which we are largely a warmer climate country in Australia, compared to many other countries in the world, and we believe that fire blight, if it entered Australia - and they do have it in New Zealand - - that's why we've been quite vigilant in maintaining our argument against New Zealand. If fire blight entered Australia it would have quite devastating impact on, particularly, areas like the Goulburn Valley, which is where 90% of our pear industry sits and quite a significant proportion of our apples are grown as well. So it's absolutely a 100% quarantine issue and we continue to maintain our fight on those grounds.

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MR FINGER: I would just like to make a comment as a grower there. The things that have the biggest impact on us are usually what you would term catastrophic events, things which take away a bulk of your income in any particular year. Competition is something that we have all the time, and we can certainly adjust to that. We already have to some extent, because as you heard, 25 percent of our production is approximately juicing type apples. That's a global price anyway, so already that's been factored into our production costs. So, a thing like a fire blight disease that came in wiped out half of my production units, and not only just wiped out that half,

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it wipes it out indiscriminately over the whole thing. It just becomes a management nightmare. So those catastrophic type events, they're the things that affect our viability, far more than competition.

5 COMMISSIONER KING: That being said, I'll jump back to competition again, because you did remind me about the imports of apple juice concentrate from China, and I think again it was you Mr Russell in your opening remarks, or earlier on, said -
- mentioned those imports and it had a significant effect on the Australian industry.
10 Would you be able to expand on that? I mean to what degree have these sort of imports been increasing and what sort of effect have they had on the farmers?

MR RUSSELL: What it's meant is that the returns that growers receive for producing great product is substantially less than it used to be.

15 COMMISSIONER KING: Are you able to put a bit a figure on that? I mean has it dropped 50 percent, 70 percent, 20 percent?

MR FINGER: At one stage half a dozen years ago, Chris, would it be, we were receiving up to 22 cents a kilogram for juiced fruit and it's now around six cents a
20 kilogram, as a general rule. That's what that has done to the juice price.

MR FAIRLESS: In saying that, though, there's now trending towards not enough juice in the world, in apples, as a commodity, and where the juice price was largely affected by imports from China as the orange juice industry was from imports from
25 Brazil, that price paid back to the supply base is slowly improving. The consumer is looking to find more finished product, which is putting more pressure on the supply base. Places like China are becoming more sophisticated. Their growers are getting better at what they do, so they're not wanting to sell as much product, raw product to juicers against a fresh market, so there's a trend towards not enough juice world-
30 wide, but the price slowly increasing. And this country certainly doesn't grown enough apples for the domestic manufactured consumption of juice.

COMMISSIONER KING: Okay. So, that's six cents a kilo, that is just purely given by the international price. Just from a grower's perspective, presumably - - oh, again,
35 I shouldn't presume these things. I have this very bad habit of jumping ahead. Sometimes I get told by the other Commissioners I can ask a question, provide the answer, and then check if it's right or not. In terms of costs, how does six cents a kilo run against what it would costs to actually grow an apple crop?

40 MR FINGER: Oh, it's salvage. Straight out. It doesn't even enter into it. It costs the same amount to produce the juice apple as it does the - -

COMMISSIONER KING: Yes. So if you are looking at six cents a kilo over your crop you would be out of business next week?

45 MR FINGER: Probably faster if the bank - - -

COMMISSIONER KING: Okay, but then from - - ?

MR FINGER: Can I say within that, there are growers who have significantly different production costs per unit.

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COMMISSIONER KING: Okay. Are you able to expand a bit on that? Does that go different varieties, different access to water? What is it that leads to the - - ?

MR FINGER: It's predominately tonnes per hectare. The best, most cost-efficient producers of those who produce the most product per hector of land.

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COMMISSIONER KING: Okay, and is that quality of the land itself or there's just different - - ?

MR FINGER: No, that's just a whole lot of skills that go with being a grower. It is about planting distances, it's about - - it is about land, it's about water, but given all things equal, it is simply skill. Probably, one of the characteristics of the fresh product industry - and I speak from apples - is that, generally speaking, the higher the inputs, the higher the returns that growers are likely to get out of that product, which is against some other things in apples and pears, and probably most horticultural, the higher the inputs, the higher the returns are that you're likely to get. That's not factoring in the risk.

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COMMISSIONER KING: But is it fair to say the apple industry is one where say from a grower's perspective, a smart grower can still make good returns, although obviously in the margin there are going to be some growers who are struggling? Is that a fair characterisation of the market today, or is that under-stating one or other of those bits of the market?

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MR FINGER: No, from my personal perspective I think for those who are good at their job, and they're in the top percentage there's opportunities, albeit more difficult, but there are still opportunities.

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COMMISSIONER KING: Now, one of the things that I wanted to come back to - and this comes back really to your submission in your Association ,I get the impression from your submission , and please correct me if I have taken the wrong message out of here , but a lot of the issues relating to apple and pear and fresh fruit flowing through the system to the customer, a lot of the concerns relate to transparency, that it's just not clear what's going on, where when and why, and can I get a bit of a feel from you as to what the concerns are, and also how the concerns differ between different channels to market, whether it is different through the wholesale market, whether it is different if you are going direct the supermarket or different if you're going through an intermediary to the supermarkets and so on? It's a big question.

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MR RUSSELL: Maybe I will quickly start. Certainly you're quite right, I believe that transparency is one of the impediments that affects good knowledge and

business decision making in the apple and pear industry, and it is different in different segments of the supply chain. It is apparent that there is a lot more transparency in the transactions, and David could comment from his perspective as a grower and related directly with the supermarket chains, but there is more
5 transparency and the documentation, the pricing outcomes with growers, when they have direct supply relationships with the supermarket chains. They know exactly what the price is going to be. The transparency falls down significantly through the wholesale market sector. I know you are exploring, or have been exploring with others, the whole question of the business code and how that works and issues
10 associated with that. But, clearly, the lack of pricing transparency that occurs in that sector varies, substantially less than what they'd probably see in the supermarket sector. I don't know if you want to add anything, David.

MR FINGER: Yes, I would. I'd like to say that until recently Chris's company and the group that I've involved with were on an equal footing in terms of supply to
15 Coles, and that's changed. And, I think the real problem with transparency comes as each step is added into the supply chain, the transparency becomes more obscure and tends to be distorted along the lines of, if you like, the mushroom type treatment. You keep people in the dark. So, the people who are at the very closest thing have the greatest amount of transparency. And now in some instances, the information
20 chain is deliberately suppressed, and in others it's just simply a difficult job to do it. I supply through a third party, both Coles now and Woolworths. The very interesting thing is that in dealing with Woolworths if you actually shift direct to the DC, I actually see the tax invoice that goes to the Woolworths chain, as a supplier who shifts direct to DC. You can't get it any more transparent than that. Now if I sell to
25 Woolworths through an agent in a market, I would never, ever, see that invoice or a copy of it.

COMMISSIONER KING: You're actually in a very good from my perspective a
30 very good position because you obviously with both of them, Mr Finger. Have you had any rejection from MSCs in the past?

MR FINGER: I'm an expert at it.

35 COMMISSIONER KING: Oh, okay.

MR FINGER: I'd actually like to make a comment about that. The specifications that chains give us are very, very clear, and highly detailed, highly technical right
40 down to temperatures and bricks and pressures, and you name it, it's in there, even to the length of the apple versus the width of the apple, versus all of these things. Most of my difficulties occur with rejections at DC about the interpretation of those specifications by my staff, by the QC at the DC.

COMMISSIONER KING: QC meaning "quality control."
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MR FINGER: Quality control person at the distribution centre, so most of my difficulties, - and just, look, there's been times when my fruit hasn't been good

enough, either through a lack of control in my situation, or a deterioration after shipment, which can sometimes happen - not often, but it sometimes does and sometimes there'll be delays within the supply thing that product doesn't get to that point as quickly as you might want it to when you're dealing with other parties. So,
5 it is a perishable product, and I think that's the very important thing to remember with fresh produce, they are perishable, so these issues arise.

But, the dominant problem is this very open interpretation of the specifications, because they are so complex.
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COMMISSIONER KING: Yes. When you get a knockback from quality control or at the distribution centre for a Woolworths or a Coles or a Metcash, are you provided with a written explanation as to why your fruit is being rejected, or is it purely a verbal one?
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MR FINGER: No, no, they're very formal. They're very , they're forms that come by email. They even have photographs, all of that very detailed , almost as detailed as the specifications that you send it in under. X amount of fruit. Major defect, minor defect, very detailed. The dispute arises over the interpretation of what's actually
20 being seen and not being seen.

COMMISSIONER KING: Has there ever been a situation where you felt the quality controller has rejected the fruit for what you think is a particular interpretation, if I can put it that way, that is being used as an excuse? In other words, for example,
25 perhaps the quality control has basically been told behind closed doors look, you know, we've been flooded with apples at the moment, we don't need any more this week, just find a reason to reject a crop? Ever any feeling that that sort of thing is going on, or is it just a legitimate though incredibly annoying difference in interpretation?
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MR FINGER: We're very proud of what we do with our product. Any time you're rejected
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COMMISSIONER KING: You don't like it.
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MR FINGER: You take it , well, I used to take it as a personal insult, but you don't last very long if you take it as a personal insult. The reality is it happens to every supplier at some stage or other. There is no doubt in that scenario you question whether it was legitimate or not, and I think the chains have probably got better at it,
40 but there's certainly been times when I have wondered whether that was exactly the case, and you would question whether it was , - this is the interesting thing, if you go into DC, whether it was better product from someone else, not that you didn't meet the specification, but just that someone else had better product. You do question sometimes whether that's the case. You might have met the specification but it may
45 not be as good as other suppliers. So, yeah, I'd have to be honest, there are times when I have a query.

COMMISSIONER KING: You ask those questions, too.

MR FAIRLESS: In following on from that, though, the ordering structure from
retailers is quite detailed. At least seven days in advance of your first shipment.

5 That's not right. There's a seven-day window that you are allocated, a supply
window, and you are provided with an order the week prior, within two or three
days. You may hold an order five days before your first shipment. I shouldn't say
seven, but you do hold that order prior to the first shipment date.

10 COMMISSIONER KING: Yes.

MR FAIRLESS: And you know that volume, the state, the cost of that product to the
retailer and the like. Secondly to that, you have quite a complex supply addition and
subtraction regime as well, where if the retailer finds through school holidays or wet
15 weather, whatever, that the demand on your product hasn't been what they've
estimated, you will get a phone call and ask them to drop an order off, but there is a
policy on how that's done. But, in saying that, you get the same phone call when
things turn in your favour, have you got extra? Can you get them on a truck tonight,
tomorrow, or whatever, and whatever that might be, and in fairness to retailers you
20 get a lot of those No reseller wants a cancellation or not reply, but they're there.
Some of us strive on both.

COMMISSIONER KING: Just on in those situations, what would be the minimum
time for a cancellation? What would be the shortest time before the shipment?

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MR FAIRLESS: Well, within the people that I support it's a 48-hour notice, but then
I take that one step further and I'm very flexible on how that, on what those
requirements are as a business person, a reseller. Frankly, I don't care what notice I
get. My business is about supply, and convenience.

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COMMISSIONER KING: But it must create issues of inventory within your
perspective as a business person. I mean if you're about to ship a - - - -

MR FAIRLESS: Oh, of course.

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COMMISSIONER KING: Send a shipment off to Woolworths or Coles and they
suddenly cancel it on you.

MR FAIRLESS: It would create more hardship for the person on the forklift, than it
40 does for me saying yes or no. Yes, no doubt.

COMMISSIONER KING: But you are generally then able to ship that fruit through
the wholesale markets?

45 MR FAIRLESS: Well, in my case, no, because I specifically pack for a retailer with
a returnable plastic crate. But, it makes no impact on me as a reseller at all or as a
supplier for the retailer I support, Coles, because of the order coming in the next day,

the next day or the next day. So, I have a planned patterned program by variety, by day of the week, by supply program, and I drop a pallet or ten pallets today, and if they don't want it - and that happens - then I adjust my packing program for tomorrow or the next day or the next day, until I get it back in synch. I make a note.

5 No difference to me.

COMMISSIONER KING: So does that mean that in your packing program, - let's say you get told by Coles today, look, we're going early Monday so Wednesday you were going to ship ten pallets, and look, can't take it. You drop that order off. That then, obviously, affects your - - - you'll make up that change. You've in a sense got to drop off ten pallets somewhere in your packing schedule. Does that then simply mean that you ring some of the growers and say, look, we can't take delivery of your crop today or we can't make as much delivery or what - - there's got to be a feedback down the line. How does it work?

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MR FAIRLESS: Well, again in my case, the impact is not significant at all. The business I work for is a 52-week a year supplier and packer. We pack fruit every Monday, because we pack fruit every Monday, so if the order isn't what it was on Friday, then we make that adjustment either for another retailer or for a market floor sale through a different package, a different box type. If the order is cancelled then I already have it packed in a return plastic crate, and then I just leave it in its slot in a packed position until the next order comes up.

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COMMISSIONER KING: And it will just come through again. Okay.

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MR FINGER: But for me, it's slightly different because I work through another party and that does create more difficulties because that third party is probably juggling a number of other suppliers, so that where they have no direct control over it and it's cancelled, that does impact more than it would in that situation, because you may then miss out for a week or 10 days whilst they manage the inventory that's lying in another packing facility. But again, as Chris said if you want to supply those are the management issues that have you deal with.

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COMMISSIONER KING: Mr Fairless, have you ever had rejected -- a shipment rejected from major supermarket chains?

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MR FAIRLESS: I'm one of the kings.

COMMISSIONER KING: Do you want to expand a bit more.

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MR FAIRLESS: Oh, look, it's a difficult scenario. There are lots of reasons why you get rejections, and we ship - - we ship product all over the country other than Western Australia. We pack up and it goes to every state other than Western Australia.

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COMMISSIONER KING: That is quarantine reasons, by the way. Okay.

MR FAIRLESS: Those matters - -

COMMISSIONER KING: They won't let it come across. I was trying to remember
the last time I flew into Perth and I think they had the sniffer dogs at the airport to
5 make sure I wasn't sneaking any apples across the border.

MR FAIRLESS: There's lots of reasons why you have rejections. No one likes it and
least of all the retailer doesn't like it because that impacts on the buyer, because his
performance is - -
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COMMISSIONER KING: Creates - -

MR FAIRLESS: It creates difficulty yeah, it creates difficulty for the State buyer.
He's judged on his performance as a buyer. It impacts on their sales at that particular
15 date, because we're all delivering on a day of sales basis. So, a product that enters a
DC this morning is shipped out this morning, so as soon as I don't supply you, the
retailer, I've coped it in money. So, they don't like it, either. It's the last thing they
want is a rejection because it physically costs their pocket as much as it costs ours or
more.
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COMMISSIONER KING: So when you're in a situation so let's say you had some
rejected and you receive documentary evidence from the supermarket chain, do you
feed that back to the grower?

MR FAIRLESS: No. Oh, well, actually, yeah, in some cases. We're a very
substantial grower in our own right, and we have a number, a very large number of
growers behind our own production as well. It depends what the rejection might be
for. If it's a packaging, transporting type issue, or physically a quality issue that we as
a packer have created then, no, not at all, but if it's an inherent problem within the
30 structure of the apple or pear, being internal browning or bitter pit or some type of
chemical imbalance that we believe as a reseller isn't our problem, then we would do
that, and we have one of those presently.

COMMISSIONER KING: Okay. Now, there's obviously a cost in those situations,
35 whether it's due to the packing or it's due to the nature of the fruit. Who bears that
cost when - - you know, let's say it's one of those issues, so the fruit simply isn't as
valuable as it was. Does the farmer - - - if it's a packing issue would the farmer
actually then have to share some of the cost? If it's a fruit issue, do you share some
of the cost of the rejection?
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MR FAIRLESS: If it's a packing issue, in our case, we take the hit, if you like, upon
the total cost. And, we have a policy that that product has to be returned from
whichever destination it's at, and it has to be re-worked or discarded, and we need to
find out why we've done what we've done and how it's happened. But, that's an
45 internal structure.

COMMISSIONER KING: But in that situation the farmer would never actually know about it, you would simply pay them for the fruit?

5 MR FAIRLESS: That's right. Under the code, once we've - - in our case, once we've packed the product today, the grower is paid tonight.

COMMISSIONER KING: Right, there is no question about it - - yeah.

10 MR FAIRLESS: If we believe it is an inherent problem of the product we've brought that product in from an outside commercial cold store or an outside commercial grower and it hasn't been in our control, and we believe there's something inherently wrong with the product, we would then say listen, we don't - - we're not going to take the whole hit on this. You better come in and have a chat to me.

15 COMMISSIONER KING: Okay. So again there would be some sort of negotiation about how to fix it up?

MR FAIRLESS: Yes.

20 COMMISSIONER KING: Now, part of the reason why I'm asking this is that since we're in a unique position, here, Mr Finger, because you said you now work through third parties to the major supermarket chains. Do you find that the sort of process Mr Fairless has been running through, is that common in the industry? Let me be quite abrupt. We are dealing with transparency. We have received some complaints that
25 third parties on produce are like black holes, that you send your fruit off to them and there's a rejection. You just get told, no reasons, you just get no feedback whatsoever. Now, obviously Mr Fairless is painting a picture of his business which is very different to that, and, quite frankly, from where I sit, it sounds a hell of a lot better than some of the statements that have been made to this inquiry about third
30 parties. What is your experience?

MR FINGER: My experience is that within the Coles supply where the cost of freight exchange is my third party broker, what Chris has been talking about is very similar. It comes back, and you deal with it appropriately in whatever way is part of
35 the management system. Where I see that the black hole occurs is when I ship it, most times to an agent in a central market. They are, if you like, timelagged in terms of information compared to the scenario you've just been hearing about, where it's you know, you get a rejection at six AM. You're going to know about it at 6.01 AM. Whereas in the wholesale market system, I could have a rejection this morning for
40 whatever reason, whether it's by the fruiterers in the market and those other independent retailers rejecting it or for whatever reason. That is a much less formalised, rigid reporting system. You can have agents who do a very similar thing or you can just simply find out when you get your cheque back six weeks' later that you got a quarter of what you were expecting and then when you query it, there'll be
45 a - - when you query it, there'll be a process of yes, it was because of this, this, this and this. So there are black holes, there are black holes in the distribution system. Generally speaking, they're certainly not within those very direct supply chains.

The problem that arises is when you are actually supplying a supermarket chain through a potential black hole, because what happens in those situations is you pack to that very high specification and for whatever reason it's rejected from that third agent's system, not the more direct route. It's usually not shipped back to you to deal with, it's dealt with at that point, and so the traceability, the transparency of tracking that product, it's not there, and often, it's discounted far more than you would expect for the sort of problem that it would be rejected for at ADC or at point of sale, retail. And, I'd have to say, before you go on with that, that was what the Horticultural Code of Conduct was aimed at. But, it isn't good.

COMMISSIONER KING: Can I just before we - - we go to the code, we have had fairly extensive submissions on the code, which is part of the reason why I put it to the end. You said that sometimes you work through the agents and they work well and sometimes they're like black holes. Why doesn't in a sense the market for agents work? Why isn't it the case that okay I've dealt with that agent, they gave me a bum steer. I'm just not selling my fruit through that agent any more. I'm going to go through the guy that's given me the good deal that's been much clear in relation to me. Why doesn't it work like that, that those bad agents, are simply - - bad agents is pejorative - - - those agents that are less desirable to work with, why aren't they sort of cleaned out of the market over time? Why do they survive? Why do growers deal with them?

MR FINGER: The thing is it's a little bit like the Scarlet Pimpernel, it moves around and look, I was an agent in the Melbourne market for a number of years and sometimes even to your best abilities or management, you will get a very disgruntled grower, and so they swap, but it's - - the market itself is sort of ephemeral. You know, I can be - - you can be a fellow agent and we're competing for the same buyer, and I can sometimes possibly give you a much better deal because I badly want that buyer than at other times, and in certain instances we might both have our eye on that buyer and order in the same fruit, and he only buys if off you, because you gave that guy a better deal. So, suddenly I took a punt and ordered that same fruit in for that buyer and it's gone, and I might actually have to discount that by five or ten dollars. Well, you're going to have very - - and interestingly enough we might have even sourced it off the same grower. He's going to be very disgruntled having sent out the same product of the same pack run to you and to me and you've returned him five or ten dollars more per unit. So, it's a very complex, a very wheels within wheels type of business, and it is extremely difficult because it isn't transparent of pinning down what it is that the charges are for. And one of the issues with the market system and with all of them is that most of the charges are based around percentages. And, they do not reflect what the actual costs are. Now, Pink Lady is a very sought after apple, very high priced. Gala at the certain leveller. The best supplier is actually penalised under a commission system for supplying premium fruit, if you really want to think about it.

If you get charged 15% on a \$40 box, and you get charged 15% on a \$20 box, and the costs in doing the business were probably cheaper on the Pink Lady - -

COMMISSIONER KING: That's forty - -

MR FINGER: Yeah, that's right, you're actually being penalised for supplying premium product. So inherently in that system, commissions allow actual costs and actual things to be masked. You cannot get access to what it costs for them - - how long it was in the storage, how many times it was handled, how many times it was lifted by the forklift. You can't get access to the actual costs, and that's - - you know, the thrust of this whole submission is that there needs to be far greater understanding out there in grower land, in particular, but also at consumer land about what actual costs are involved in landing a particular product through the chain. And from where I sit, that is extremely difficult to get. And, if there was one thing that came out of this ACCC inquiry that I would like to see is, that some of those actual costs and margins and things that at the moment we can't even find out and have a guess at, might actually be founded in fact, and not all this snipping. So, as a grower going forward, if I could actually see where the cost centres were and the margins were put on and whether - - that would be - - that would clear the air so much.

COMMISSIONER KING: Is it reasonable to say that when you're talking about transparency what the growers want is to know that they're getting a fair price? Is that a reasonable almost summary of what you mean by transparency?

MR FINGER: Basically that's right, that they're not being ripped off. Look, we all deal with inputs back at our farm. We know about the cost of packing, you know, down to the last detail, but what we don't know is whether as the produce goes further down the chain, whether, in fact, the costs are actually legitimate that have been taken out, and whether they equate to the commissions that are being charged. And in some instances, as I tried to point out, at the higher end I don't think they are justifiable, and at the lower end, quite often they should be more.

COMMISSIONER KING: Horticulture Code, that hasn't addressed that?

MR FINGER: No, because the real problem is, as I said before, if I deal with Woolworths and I ship direct to the DC, I actually see the invoice. I don't believe - - I don't know of anyone who is has been able to actually look at an invoice written out to a retailer as a grower. Now, I haven't personally asked for that at this stage. But I just - - I just don't see that being readily available.

COMMISSIONER KING: Is the problem - - and again I will put to you what has been put to the inquiry so far - - I mean, there are almost two views of the horticultural code. The missing view is oh, yes, it's working - - I'm not sure I've come across anyone who says that yet. Hopefully, I'll find someone who says it's working before the end of it, because it will be interesting to find who thinks it's working. So far everybody has said that it's not doing what it intended to do, and they tended to have two different views. One is that it's a rotting corpse and should be completely overhauled. You know, there's no chance of resurrection. It just - - it needs fundamental overhaul. That's one view that's been put to us. The other view is, look, the code is fundamentally right, but it's the enforcement that's the problem. Do

you fall into either of those camps? Do you fall in between or do you have a different view of the code entirely?

5 MR FINGER: I probably fall in between in the sense I do think people should be
accountable. It should be transparent. You should be able to see what the costs were
involved. You should be able to know what the retailing prices were. However, my
observation would be that it was probably rushed through in the end and as in most
10 things, involving political decisions, practicality and consultation about what is
actually in it sometimes gets done by the way to achieve a particular end. There's two
things that came out of it. The one that's most difficult for our industry, in particular,
is price pooling, and it really does make it extremely difficult and probably Chris, in
15 fairness, disadvantages a lot of growers I would suspect, in the sense ours isn't as a
perishable a product as say stone fruit or bananas or whatever. We have the ability to
store it for periods of time, to give, if you like, consumers are regular supply
throughout the year of what I would say is a pretty high quality product. We get a lot
of criticism about stale product and old product, but, you know, I'd like to make the
20 observation here and now that people get better quality apples and pears than they
did five years ago, even, and heaps better than ten years ago. We provide a very high
quality product. So, price pooling is really interfering with the distribution in a
regular and set way to the consumer if it's fully enforced. It will become a major
25 problem if it's completely enforced, because at certain stages of the year, in picking
time particularly, and in fruit that hasn't got longer storageability, if you have to
actually get rid of all that waste, we're going to see, if it's enforced, really dramatic
price fluctuations, because the grower who is dealing through a major packer
30 marketer like Geoffrey Thompson, is going to have to take the money and they're
going to have to pay because they've got no way to go with it. They pay it upfront
and that grower doesn't get as big a return and then they possibly have got to - - you
know, there are so many ramifications for what that means, so you're going to see for
the consumer, potentially these massive price fluctuations based around the price
pooling.

The second one that is important is that - -

35 COMMISSIONER KING: Sorry, for the consumer and for the grower?

MR FINGER: Yes, both ends, and difficulties for the middle part of the chain who
have to either find the money or finance the payment of that at that time and buy it
themselves, with all the inherent problems if it wasn't as high as quality as they
40 thought and measurements. Like, it's going to create all sorts of quality problems, all
sorts of issues. So, price pooling is a major impediment.

The other threat is that Pink Lady is exported out of Australia, and is completely
based around price pooling, and that would make that an extremely difficult thing
where you're competing on the export market, and Australia has got a slot from May
45 to August and whatever the are, the slots, then it might actually have to actually go
earlier to get less, so there's some real difficulties based around price pooling within
the code, and yeah and controlling and being fair to everybody.

In terms of making it work, I think it does need some adjustment, but the intents good. Everyone has to be accountable, and there's probably a significant section of the supply chain that doesn't want to go to that level of accountability.

5 COMMISSIONER KING: How do you keep the transparency - -

MR FINGER: How do you - - ?

10 COMMISSIONER KING: How do you keep the transparency from the growers' perspective with pooling?

15 MR FINGER: Oh, well, look, most of it is price pooled now. We know exactly - - I mean, if I go back to my first experience, we were in a group of growers supplying coals over at - - we would negotiate between us. We might price pool for the next six weeks, allowing for the specials and the fluctuations. At different times of the year, the price moves up and down, and I'd like to table here some data on the year 2005 about the retail prices, supermarket prices, wholesale market prices and the margins.

20 COMMISSIONER KING: To reach agreement.

25 MR FINGER: Yeah, by negotiation, and I think that that should be within the Code of Conduct that people can negotiate the terms and conditions of the price pooling. That's a commercial decision that impacts dramatically on just about every person in that initial part of the supply chain.

30 COMMISSIONER KING: Let me just Mr Finger or - - sorry, Mr Fairless or Mr Russell, did you have anything that you wanted to add on the horticultural code of conduct at the moment or - - ?

MR FAIRLESS: I would rather not comment on the code. That's fine.

COMMISSIONER KING: And Mr Russell, anything that you wanted to add?

35 MR RUSSELL: No, I don't have anything that I wanted to add to that.

COMMISSIONER KING: One thing that I would do, because it's going to be tabled, Mr Finger, would you mind just running through exactly what you provided to us, so that we make sure we understand.

40 MR FINGER: Well, it's some data taken out of a group that operates around Australia under APEL's path funding, and it's a group that talk about supply conditions, and whatever, and there's a couple of people paid to collect data on the retail prices, the Sydney market prices, and we look at the thing.

45 The reason I'm tabling that, is that within the apple category, the margins are significantly different on certain varieties. For instance, if you look at Granny Smith - - there's Gala, Red Delicious, Granny Smith and - -

COMMISSIONER KING: Pink Lady.

MR FINGER: Pink Lady. And, there are significant differences at different times of the year, and what you see there is reflected at times, you know, special buys,
5 promotional weeks, and the retail price varies. But, the one that I'm wanting to probably point out, is that within the apply category, the supermarkets take different margins on similarly priced product out at different times. And again, from where I sit, I don't understand how those - - how those margins are worked out. Again, it's a
10 transparency thing, and if you like, certain producers of certain product perhaps subsidise or cross that category across a variety. So, a Granny Smith grower, for instance, they might be retailing at \$3.98, and Pink Lady is at \$3.98 but the actual margin on the Granny Smiths can be considerably more, and they are the sorts of things I think that again, if the inquiry came up with it, is how those margins are set.

15 COMMISSIONER KING: Okay. Thank you very much for that. Thank you very much for your attendance today. Again, apologies for starting a bit late, and then I've kept you for a fair time. So thank you very much. It's been very, very useful.

MR KATTER: Mr Chairman, I've got Pat Byrne with me today. He's got a place with
20 us in Queensland, and he will be part of our delegation, if that is all right. Mr Byrne was coordinator for the Reform Council which has about two and-a-half thousand growers for meetings that have been held in North Queensland.

COMMISSIONER KING: All right. I will get that officially on the record in a
25 second.

All right, welcome Mr Katter and Mr Byrne. Thank you for attending the hearing.

30 Again, I wish to note that it is an offence under the Criminal Code to give evidence at this inquiry that a witness knows is false or misleading, or omits any matter or thing without which the evidence is misleading. Do you understand that?

MR BYRNE: Yes.

35 MR KATTER: Yes.

COMMISSIONER KING: Now, for the record, obviously Mr Katter, we have your details, but Mr Byrne would you just be able to state for the record your full name and your position?
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MR BYRNE: It's Patrick Byrne. I've been Coordinator with the Sugar Industry Reform Committee. I'm also the Vice-President of the National Civic Council, and I also work with farmers in a number of areas, including water, dairy, parts of horticulture.
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COMMISSIONER KING: Thank you. Now, Mr Katter, we received your submission, which we have gone through and it provides details of eggs, milk and

sugar. Before we move to sort of questions that come out of that submission - - and I do recognise obviously, you have chosen three products but as I understand it - -

MR KATTER: Three, yes.

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COMMISSIONER KING: By way of example, you're not explaining your own for those three you are saying they are - -

MR KATTER: Yes, they're just examples, that's all.

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COMMISSIONER KING: Do you wish to make any opening remarks?

MR KATTER: Yes, I do. I suppose there are two substantive opening remarks I want to make. Firstly, in the sugar industry - they may not seem related. The petrol prices in Brazil are 74 cents a litre. The price in the United States is \$2.60. These are last year's prices. I've got photographs of them actually pulling up the bowsers, so I can verify both those figures.

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The reason why America is around 81 cents a litre and Brazil is around 74 cents a litre is because they have ethanol, and they have a very proactive government - that's the point that I want to make.

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If you want a market to work and work properly, then you have to do something about a market that is controlled by very few people, and they have similar problems to what we have with the petrol industry, with respect to the big oil companies owning the bowsers, but they have overcome their problems, and laughed all the way to the bank. Their farmers are getting some \$450 a tonne for their sugar. Our farmers are getting \$272 a tonne. But that wasn't why it was done. It was done for health reasons, actually in the United States. So I make the point that active government is needed, you must have proactive government.

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Now, what has happened in Australia when Jack McEwen left the scene - and really his era continued on under Doug Anthony, who introduced the wool marketing scheme. But, when the marketing scheme was introduced over the next three years, the price of wool doubled. When the marketing scheme was undermined, and then removed by the then Prime Minister, Paul Keating, the price dropped clean in half.

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Now, Australia, when that occurred, one-tenth of the nation's entire export earnings came from one thing. Now, to quote Allen Jones half - - we did own the industry and now we only have half the industry. Half the sheep are gone and will never come back, and we can't produce at those sort of prices, and the industry is just slowly closing down. I have virtually no sheep left, and I represent about a tenth of the service area of Australia.

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The second issue is at that stage, they introduced the Sites Act, for example, in petrol pricing, and they limited the oil companies to 420 outlets, only in Australia. When Woolworths and Coles did the deal with Caltex and Shell, they got a hundred - -

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1,060 sites in one hit. So one government delivers a 1,060 sites. The other government says you're restricted, all four of you, to only 420 sites.

5 Now, the second issue is - and don't quote me on this figure in 1990, but I think it was about 1990. Prior to 1990, we had QUT, which had a very big share of the market in Queensland, wholesalers.

10 COMMISSIONER KING: Sorry, Mr Katter. I may need to correct you on this. Do you mean "QUT" or "QIW?"

MR KATTER: Oh, "QIW." I'm sorry.

15 COMMISSIONER KING: Or is it just the - - the Queensland University of Technology will be very impressed with your submissions, I think, anyway.

MR KATTER: QIW, Davids. But, QIW had a very big percentage. In my old State electorate of 20,000 people or 30,000 people, they had all of the trade. There was no Woolworths or Coles in that electorate at all. That same electorate area now is completely dominated by Woolworths and Coles. There is hardly any independents left there at all; they've all gone.

25 But, Davids had a very, very strong position in the market in New South Wales. Franklins, you know, both in New South Wales and Victoria, but they were very significant. Then you had Coles. I don't know whether Bi-Lo was part of Coles then or not, and Woolworths, but there were very five, very significant people in the market place then. And in 1991, as in this document, Coles and Woolworths had 50.5% of the market. Now, it would appear, according to their own figures, that they have around 82% of the market, but that would be in line with the ABS series and the AC Nielsen series. They both were showing a growth of about 2%, 2.2% a year, both a separate series. So, if you worked on that, they should have about 82% of the market at the present moment. I'll return to that in a moment. I just need to go back.

30 The people that were here before, there's an entirely different perspective here. North Queensland has some very perishable commodities, mangoes - and I was a grower myself of mangoes. They're very perishable. You've only got about three or four weeks' of shelf life. Bananas are perishable as well, but we're also very big producers of potatoes in my electorate - and they're not perishable at all.

40 But, the mandatory code, the pre-eminent position of some of these groups that are associated today, the Rural Action Council, they would probably be the most aggressive group in Australia. They did all of the work to mandate a code of conduct. It was done in my electorate. They had all been nice in meetings, meet with the Deputy Prime Minister and they secured the announcement in the heart of the electorate. So, they were the people that were most active in this area.

45 On the managed investment schemes, the groups that went to see the Minister, Peter Dutton, were also organised by the Rural Action group. So, they were a very, very

influential, very aggressive group. And, at the last meeting, all bar one of the sixteen or seventeen farmers were seeking sub-divisions. In other words, looking to get out of a farm. So if the most aggressive, most committed people in the country, are all looking to get out of farming, there is a very serious problem there.

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And, I don't want to reflect upon the last people that were sitting here, but really, I mean, really I mean what we are here to talk about is the fact that the only country in the world where two buyers completely dominate the food market, is Australia. And I mean, if you have any doubts as to the malignant influence - and I don't mean to reflect upon Woolworths and Coles here - - - the malignant influence of allowing a concentration of market power. I mean, it doesn't matter who they were. In fact, I would think that Woolworths and Coles should be sued by their shareholders if they didn't take advantage of the concentration of market power. I mean, if you fought like a tiger and you get 82% of the marketplace and then you didn't use it, well you'd have to be a damn fool, in my opinion, and you most certainly wouldn't be doing the right thing by your shareholders.

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But, we want to say the mandatory code of conduct - - I listened. I came in pretty ignorant to this issue, and I listened to the arguments, and all they want is the docket from the end seller. They just want a piece of paper saying, yes, I bought that amount and I paid that amount for it. I mean, this is not a big request. I mean, I don't care. I just went down to Coles and they gave me a docket and I bought it. I don't think this is unreasonable. We had a clothing store and a picture theatre. We gave everyone a docket when we sold them something.

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But, where the great importance of that comes - and the last group that were here touched upon it - is it's a very grey area. You know, you send fruit in. It might have an odd little speckle on it. We'll leave it there for a week, and it's got a few more speckles on it and at the end of that week, they decide to send it back. But, most of the fruit and vegetables in Australia are very perishable commodities, so they deteriorate very badly. If you get a return, you're dead in the water. You've lost everything.

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Now, the example that was given to me - and I can't remember, I think they were avocados - but when you start picking the early farmers, you get a terrific price. We used to get \$35 for our mangoes if we got first off. If we weren't, we got \$12, but what happens is - and this was the case - he said I sent them down - and I better not mention whether it was Woolworths or Coles, I can't remember which one it was, but to one of the chains - he send them down. He got, I think it was \$17 a tray or \$26 a tray, whatever it was, and the next week, on the Thursday, his agent management told him he had \$26,000 or whatever it was coming back. It was a very large amount of money. And, on the Tuesday the agent rang him back and said they'd all be returned. And he said why were they returned. And he said, well, the reason was because it was substandard and diseased fruit, and he said what's the real reason? He said the real reason is that the market's dropped clean in half, and they'll return yours for \$26 a box and buy in the marketplace today for \$12 a box. And, that was the reason why they needed the invoicing, to overcome that, you know, rapidly rising

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situation, which anyone would be tempted to find any excuse to return the product. And, in a lot of these areas, as I say, it's a very, very grey area. I wouldn't like to be contesting some of those cases before. So, I mention those things.

5 I've chosen three case studies, simply because I was heavily involved in the battle over milk, so I had a very good handle on it. Also, it is the biggest product - or should I say range of products. Bananas are the biggest individual product, but milk and - - - it's very hard to use banana figures because they're so dependent upon where the last cyclone hit, and that's very true of management.

10 But, the milk industry, it's a very interesting case study. You know, I mean, if someone wants to write - - get their thesis, a PhD at the university, they should write it on milk. But, I've included eggs, because we have a very big egg growing area in North Queensland, and I've included sugar. Obviously, I represented 30% of the
15 Australian sugar industry, and it's a very big commodity. I mean, everyone here today, will have consumed quite a large amount of sugar, you know, whether it's your tea or your Corn Flakes or whatever, virtually everything. You include soft drinks, of course, and their container.

20 So, I'll move to eggs first. Now, you know, the government made a decision to de-regulate the egg industry, and they said very definitively what they were doing it for. It was to increase competition. It was a lowering of price to consumers, and it would deliver more international competitiveness. Now, as far as competition in the marketplace goes, if you reduce the number of actually egg growers in Australia, you
25 reduce competition. Well, the number of egg growers dropped from 1500 to 300. It was a pretty substantial reduction in competition from the producer, and in North Queensland, we went from ten major producers, to only one producer.

30 And, I'm quoting here the ABS catalogue 6403, *Retail Prices of Selected Items*. Each of the figures that I'll be quoting, unless they say - -

COMMISSIONER KING: Yes, I know that.

35 MR KATTER: Unless I say differently, will be from that series. It shows that for the June quarter 1992, egg price, 185 cents per dozen. This was before deregulation. Post deregulation, the price was 299 cents per dozen. So, understand, we were doing this, to provide a benefit for the consumer. I mean, this is outrageous. I mean, it went from 185 cents to 299 cents. You might like to raise the issue of CPI, but I'll deal with that in due course.

40 The price paid to the producers in 1992 is 117 cents, and the price received by the producer in 2002 had fallen to 105 cents.

45 Now, let me deal with CPI. In that time, you say well, you know, the retailer should charge more because, you know, prices have all gone up. Well the costs for the growers went through the roof during that period. I mean, in the last two years, we've seen a trebling, almost, of petrol prices in our areas, and I think throughout

Australia, most certainly a doubling of petrol prices, and a doubling of fertilizer prices. Just in the last twelve months. So, I mean, you know, they have to take extraordinary CPI for producers, so to absorb that, and it was never passed on to the consumers. They absorbed it, and the price dropped was never passed.

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So, the outcome of deregulation, was consumers paying over 50% more. Producers getting paid over 10% less, and the retailers and others in between, picking up \$302m a year in extra profits. Now, I mean, if anyone thinks that that is a good outcome, they really have to be crazy.

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Now, the reason, Mr Chairman, that you're not getting growers in here, is that growers are terrified. They only have two people to sell to: Woolworths and Coles. If you can't sell to them, you are dead in the marketplace. You may as well close your farm down. And, they would die before they would whisper a word. So, none of them have come here. And I can't ask them the reason - - I mean, that will tell you. You know, we don't hesitate to put four thousand people out into the street when we need them, as we did in the sugar industry, and two and-a-half thousand, as we did in the banana industry. You know, we can raise cane all right, but I can't ask people to stand out there and have photographs taken of them, and that to go back to the supermarket chains, and even those supermarket chains may not be vindictive at all. I mean, they're human people, if someone is out there, saying you're the baddies, you know. I wouldn't be game to do it, and I know with my growers, that they're very terrified, and they will say nothing bad. In fact, they will say everything positive and good about them, and so would I, if my livelihood depended on being nice to them.

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Let me move to sugar. The tariff was \$115 a tonne, which was in line with - - well, it wasn't, it was about half the tariff in - - three - - one-third of the tariff in Europe, and about half of the tariff in the United States. They were getting \$660 and \$1,200 a tonne and we were getting \$473 a tonne when we had statutory marketing - in other words, collective single best seller in the sugar industry, and when we have a tariff protection, right.

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When they were removed, the price for the sugar producers dropped down to \$279 a tonne. So, for everybody here, let me repeat it slowly: they were getting \$473 a tonne. After deregulation and tariff removal and everything, they were getting \$279 a tonne. Did the consumer benefit from this drop in price of 41%? I mean, there should have been a drop in the price to the consumers, commensurate with that 40% drop. I mean, I did economics at university, and my lecturer told me, you know, that if you have a competitive marketplace then of course if the price drops, competition in the retail sector will ensure that the price drops to the consumer. But, of course, as with eggs, there was no drop at all. The price to consumers actually went up from 104 cents a kilo, to 116 cents a kilogram.

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Now, you know, when I did these things at that time - I haven't got the time and nor the staff that enables me to upgrade everything here.

So, the producer was getting 191 per tonne less. The consumer was paying \$120 per tonne more, and since there are a million and sixteen million zero one six billion tonnes, was the average annual home consumption in 2002, someone was getting 311 million a year in extra profits, that they shouldn't have been getting, and that's the economic rent that flows to you if you've got an oligopoly or a duopoly.

Right, now, we come to milk - and this is a more full issue. And, we're in the heart of dairying country here, too, I might add. Milk deregulation had a triple effect. Predictably, it reduced the income to farmers by one-third. Again, predictably, the price to consumers increased by other 30%. You would be aware, Mr Chairman, that the price was regulated to the consumer in Melbourne.

One of the few success stories Australia had in the export arena was seriously damaged. We'd gone from virtually no exports in milk. Under the Kerrin plan, we went to \$2,677m. It was one of the very few really exciting success stories that we had.

After deregulation, it dropped down to \$1,980m. Clearly, a drop of a third, nearly a half. So, I mean the - - the results of deregulation, or what followed from deregulation was a collapse - and I haven't got time to explain today why that occurred. But, everyone knew that your export market would collapse through the floor when the Kerrin plan was abandoned.

The price to consumers rose 41 cents from 115 cents per litre - it started at 99 - to 150 cents per litre in December 2002 after deregulation. The price to farmers fell 19 cents from three cents per litre pre deregulation, to 34 cents per litre after deregulation.

If the New South Wales and Queensland figures - and I must emphasise here they do not include the Victorian figures. It happened over a longer period of time, and the deregulation was much more complicated. But if you extract - - and in actual fact, if you phase in Victoria, the figures are much worse. They got hit worse than anyone, for reasons I again haven't got time to explain today.

One can see serious profits were made from deregulation. In fact, someone was getting \$1,130m every year in extra profits that they shouldn't have been getting, if this was a properly regulated marketplace.

Now, this is the really nasty part - and you know, we have great passion about this, Mr Chairman. We really do have great compassion about this. I mean, we have mass suicides in the farming sector throughout Australia. And, why? And I'm going to say some things here which do reflect upon the ACCC - and I don't know what riding instructions, what, you know, parameters you were given by the Federal Government.

Just before I go into that area, I haven't done a case study on pawpaws or potatoes or peanuts or bananas, but I just went into a store today, and bananas, the price being

paid to growers was \$1.13. The price in the Coles store here today was \$2.77. I mean, that's a very, very good mark-up indeed. I'm sorry, that's wrong. It's \$1.96.

5 COMMISSIONER KING: Sorry, that \$1.96 is a - - ?

MR KATTER: \$1.96 was the retail price, and now, I mean, it's a terribly volatile market. I'd hate to use that as an indicator.

10 COMMISSIONER KING: No, that's all right.

MR KATTER: And, in fact, usually the figures are much, much worse than that. Peanuts, the lady Anne Sarah that gave - - she didn't raise it when she was here before you, which I was disappointed, but they're being paid much the same for peanuts as they were getting paid four years ago, and the government, for reasons
15 best known to themselves, allowed Australians to eat more cadmium levels - a highly dangerous poison. It's rat poison, highly dangerous to humans, and they raised the cadmium levels, to quote the government, so that Texas and Chinese peanuts could come into Australia. I mean, I don't know why you want to look after these people, at the expense of the health of Australians. I mean, I don't understand that, but that's
20 peanuts.

Potatoes, the average prices varied between \$350 for potatoes to \$500 over the last twelve months, which is an average price, \$425 a tonne, \$2.30, which is \$2,030 a tonne. So, we're being paid \$425 a tonne. Now, this is not a perishable commodity.
25 It's not like the bananas or mangoes. These could sit there for three or four months. So, every potato you buy, you will make, what is it, 500% profit.

Now, Mr Chairman, in a properly competitive market, would you be able to make that sort of margin? I mean, would you be able to make that sort of margin? No, of course you couldn't. If there was any competition in the marketplace at all, those
30 figures would be absolutely ridiculous, and they've prevailed for as long as I've been the Federal Member of Parliament.

In pawpaws - and I should have got you a copy of that, but it's a printout from the last three years of pawpaw prices, but it's now over a 350% mark-up in pawpaws, just to quote one other example.

But, I return to the milk, and a piece I read intentional or unintentional deceitfulness, the retail chains increased the price of milk dramatically in the year prior to
40 deregulation, and then in the first year of deregulation, they reduced the price by a little tiny bit. Like a well oiled machine, the government industry spin doctors, quoted the significant benefit to the consumers and answered to howls of outrage coming from the dairy farmers.

45 The dairy farmers typically received a brief letter in the mail - and I represent about 4% of Australia's fresh milk production, represent a big, or what was a big milk area. They received a letter with the extract below from their local dairy factory.

Currently supplies receive 58.9 cents a litre. From the first of July 2000, the price to North Queensland farmers will be 41.5 cents per litre. This is due to a movement from a regulated to a deregulated market - and you just can't have it spelt out any more clearly in black and white that is spelt out there - and this is the actual letter.

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The price we are paying is between two cents and four cents a litre above the level of our competition in Queensland, New South Wales and Victoria, and that was in fact true. We got a better deal than the poor buggers got in New South Wales, and what was left with the industry in Victoria. I mean, it's still a huge industry, but what it was left to financially. I mean, you know.

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The ACCC took the price at the time of deregulation, at 140 cents per litre and then the price six months after deregulation of 137 cents per litre as its benchmarks. It concluded there had been a significant consumer benefit. That is, the milk industry deregulation was beneficial to the public interest.

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Now, I hope you understand what I'm saying here. There was a report done, commissioned by the government, and I suspect that they put those dates in, but I can't prove that, so I'll just have to drift along with the information I've got.

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But, any proper assessment would have been over a period sufficiently long enough to eliminate spikes and troughs, and would have, in this case, shown a very different reality indeed. I stress it is not - - my point is - - to illustrate the gross inadequacy of the ACCC's approach, it is necessary to provide some statistical detail. There were four distinct periods telling the whole story of deregulation. You must understand, this is an industry, \$4000m, and the whole of Australia only spends \$500,000m a year. This industry, by itself, was worth four or five thousand million to the Australian economy. This is one of the most important industries in the country.

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The era before deregulation - and this is just - - - I mean, this is just so beautiful: "There is an average price rise of 2.5%" which is almost exactly what CPI is. So it is everyone's happy. The farmers are happy. The consumers are happy, the government should be happy, everybody is happy. But somebody here obviously got greedy. Obviously, somebody here got greedy or carried away with some sort of religious zeal about the free market.

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Now, Mr Chairman, when I went to university and did economics - I hate to tell you this, but I've got to be honest and disclose it to the committee. I failed my first exam at economics at the university, and I said to Mr Guff, my lecturer, I said, "That was a bloody good paper." He said, "It was." I said, "Well, I'd have hated to have done a bad one because I got an F" and he said, "Supply and demand determines price, Katter. You're right, and you did a very good paper, mate, right. But, you just left out that that's only where there's an infinite number of buyers and sellers, when there is no bar to the free-flow of goods and services between the buyers and sellers." I mean, and he said, "There are 12 assumptions, and you, Katter, never put one of those assumptions."

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Well, Mr Chairman, I dearly wish the people in Canberra had been to the Queensland University School of Economics and been taught that, and to quote Milton Freedman, "It must always be remembered that supply and demand only determines price upon certain assumptions, and that is an infinite number of buyers and sellers."

5 And when I went to university, I was told that if you have 13,000 sellers of milk and you have two buyers, then it sure is going to be unpleasant. What happens to those sellers? And, it was.

10 But the era before deregulation, a happy little period in which we have 2.5%. One would say this was a very good outcome, everything was working well. We had a fight and a punch-up with the dairy farmers and the Woolworths and Coles, and they put their arguments, we put our arguments, and there was a referee, but now we're playing football without the referee. And, the big Willy Mason's are always going to win in that sort of situation.

15 Period two - now, this was when the deregulation announcement was made, and it was effectively made by the President of the Dairymen's Association, which was a very, very sad thing to say, but it was. And in 1998 he announced that it was inevitable, it was going to happen, and everyone had to accept it, which of course
20 guaranteed that it was going to happen.

Between the deregulation announcement and the actual deregulation, this was the period of public relations manoeuvring preview regulation. The price had been 118 cents a litre, in 1998, the December quarter, when this statement was made. By the
25 June quarter, 2000, the average price had risen to 140 cents per litre, a rise of 12.7% on an annual basis. So, there was a huge rise before deregulation. And everybody in this room knows exactly why the price was put up before deregulation. So that the supermarkets could be big heroes, by reducing it, after deregulation. So they put it up from 118 to 140 cents - what's that, 22 cents a litre, and then they bring it down
30 three cents in the six months afterwards.

Now, Mr Chairman, please, I say these things not to be nasty to the ACCC, but, please don't do this again, don't break our hearts again. I mean, the report came out and said in that six month period after deregulation, the price had gone down three
35 cents, completely ignoring the fact that it had gone up 18 or 22 cents or whatever it was, just in the year before. I mean, obviously, setting them up for the PR battle that would take place. We're out there pouring milk all over the steps of Parliament House in Brisbane and having mass, you know, rallies all over the place and great anger and rage everywhere, and the newspapers gave us a pretty fair run, too, I must
40 say. And, of course, there was a huge advertising campaign - I didn't bring down the advertisements - from the major chains, saying look how we've reduced the price. Well, they did, by three cents after the year before they'd taken it up by 20 cents.

Now, the third period, was the period of public scrutiny, where the price came down
45 a tiny little three cents in that six months.

The fourth period, after the public scrutiny was removed, the ACCC published a report. Only ten of the 149 pages referred to the farmers. "The report notes that farm price in New South Wales, Queensland and Western Australia have been reduced by 29, 24, and 30 percent respectively." And, in fairness, I've got to say the ACCC did say that. That's in their figures.

In the December quarter 2000, the average price was 137 cents. By the December quarter 2000, the average price was 157 cents. So, it leaped up twenty cents. The minute nobody was watching, up it went 20 cents again. So, the year before it goes up 20 cents. The year after, the year and-a-half after, it goes up another 20 cents, and we concentrate on the little tiny period where it went down three cents.

"The Report does not state the plight of farmers is a problem, but pointed at the growing export sector may be their salvation. This was very unfortunate for the authors of the Report. Deregulation would, on the contrary, go on to shaft the export market. See page four of the Report."

In the summary conclusion of the Report, there is a series of most extraordinary statements. "In the cost of de-regulation, an important step, the abolition of the retail prices form led to a higher retail pricing of fresh milk."

Now, it says here that it led to higher retail prices. And then later on, it says that the retail prices have been reduced by \$118m per year. So I mean, I don't know who was doing this part. You know, I think they should have checked it out before they published it.

"A key goal of the ACCC's monitoring has been to determine the impact on consumer price of dairy industry de-regulation." Well, I would think the ACCC here, either their conscience pricked them or they were pinning the tail back on the government.

"Six months would normally be considered a relatively short period to fully assess the impact of such a substantial change." Well, God bless the ACCC if they were trying to pin the tail back on the donkey. But, here they're saying it should never have been that short a period, and of course it shouldn't have been a six month period. Of course, it should have taken the lead up to deregulation and the period after deregulation, a one or two year period at least. This was breathtaking in its audacity, but worse was to come. In one of the English language's finest examples of hyperbole understatement, the Report concludes by saying, "Farmers groups are seeking new ways to lift their bargaining power." True bloody right they were, because they were shooting themselves all over Australia, and that's not an exaggeration. Sadly and unfortunately - and we'll come to that issue in a moment - the Report said that \$118m a year was the reduction to the consumers. "Supermarket chains" - this is another quote - "have indicated that these lower prices will apply indefinitely." Well, who would believe the supermarket chains when they tell us these lower prices will apply indefinitely?

Now, Mr Chairman, if they have any credibility at all, it vanished when they told you people that these lower prices will apply indefinitely. Within one year, they put them up 20% - 20 cents, I'm sorry, 20 cents. Within one year, they put them up 20 cents, and here they were telling you people that the lower prices will apply indefinitely.

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"Dairy de-regulation was announced by the Federal President of the Dairy Farmers, Pat Reilly, in November 1988. This unfortunate statement, absolutely assured that deregulation was going to happen." See, this was the base year and up to this year, we had a benign market, and this annual increase parallels CPI, as it should. At the start of 1999, milk price was 118 cents per litre. By December 2002, the price had risen to 150 cents per litre. There is no saving in milk consumers for \$118m a year. Rather, since annual milk consumption is 1.8m litres, there is an increased cost to consumers of \$735m a year. I hope if there are press here, that they take that figure down. It wasn't a \$118m saving, it was a \$735m increase in price that the poor old housewife had to pay.

15

And, what happened to the farmers? And, I can't really make a submission today, because whilst you're emphasising the grocery retailing, I mean, the fact that the price of all these commodities have come down - and Pat will talk about this shortly - but, Mr Chairman, for every person to come to food in Australia you must understand that there are two classes of country that export food. One, are the OECD countries. About a third of the world's population lives in the OECD countries. They're not small, they're big.

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The OECD countries, the average subsidy tariff level is 49%. So, when they are able to produce sugar, beet sugar, and stay alive, that's because they've got this huge tariff. I mean, they can produce it for \$270 a tonne because they're getting tariff subsidy - support level it's called - - they're getting a support level of \$400 from the public purse and from the consumers. Their government has given them \$400 a tonne, so they can produce at \$270 a tonne. We have to try and start off at \$270 a tonne. But there should be huge benefits to the consumers of Australia. If it's a 49% support level, then your food prices in this country should be 50% less than all of the OECD countries.

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Now, the other class of country are the poor countries, if you like, the Philippines, the South American countries - although Brazil is rapidly ceasing to fall into that category. And, they are people that work for nothing.

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We're looking at bananas coming into Australia, and I strongly endorse the statements made by the last group here on quarantine. I mean, the proposition that - - we were never an agricultural country. Up to 150 years ago, there was no agriculture in this country. You know, the Australians that lived here, they had black faces then, and there was about 350,000 of them; they did no agriculture. So, we didn't have any agriculture. We're not like other countries. We don't have any of these diseases. So, we have a right to protect ourselves against those diseases. But, I'm on the frontiers, and we have fruit fly, which cost us about \$70m or \$80m when it got in. We got the black Sigatoka in the banana industry and it was about \$120m. The citrus canker,

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which had very serious implications for the southern states as well as us, but there was another \$60 to \$100m, and in each of those cases - - in the citrus canker they brought the material in from overseas and they obviously brought the disease in with it.

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But, the proposition, if you allow bananas into this country, what you are saying is that we're going to bring in - because there will be no banana industry. We can't - - you know, they pay their people ten dollars a day, whereas we have to pay by law, and that's a good thing, \$16 an hour, and they're \$10 a day. Well, \$16 an hour, and they have a lot of conditions, and they look good either - - but we can't - - so 20 million cartons of bananas will come in, 20 million cartons. And, the quarantine people are putting to us that not one single micro spore of disease will come in with those 20 million cartons, not one. I mean, the proposition is just ridiculous.

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15 But, they're making, whether it's with apples or pears or whatever it is, they're just bringing all of these things in the country, and of course we're getting the diseases as a result.

I just want to go back - -

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COMMISSIONER KING: The others are nodding time, so - -

MR KATTER: Yeah, I know we're running late.

25 COMMISSIONER KING: Because I also - - I will ask you some questions on the study.

MR KATTER: Right, so I'll move pretty quickly. I just want to go back to the farmers for one moment. There were 12,888 farmers in Australia. I don't know how many there are now, we get conflicting figures, but they're dramatically reduced. In my own area, we had 240 farmers, and we now have under 80 - - around 240 and we now have under 80 farmers. And, our production has dropped to about 30%.

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We bring in milk from down south now in the North Queensland - -

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MR BYRNE: I'll just give you the figures. From 1990 to 2000, the number of dairy farmers went from 15,396 to 12,896. We're reducing at around about 250 a year. Post deregulation from 2000 to 2003, they were decreasing at 774 - - 247 per year as in the three years post deregulation.

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COMMISSIONER KING: They're national figures?

MR BYRNE: Yeah, national figures.

45 MR KATTER: But with 12,000 farmers, selling to two people that have 82% of the supermarket sales, few would give the farmers much chance. If the government had taken away 28% of the farmers' gross income, this would be greater in most cases

than the net sales income, so most would have moved to an operating loss. If you take 30% of the gross off him, you've taken all of his net off him.

5 I visited 11 farms in the two days after deregulation. There were no employees on any of the farms. The husband and wife, both of them were working. The farmers were all run by - - they rose every day of their lives around 5.30 am. Both husbands and wives herded the cows, cleaned udders, attached milking suction caps. Over a number of hours, worked the herd through. Prior to milking, they had to put feed in the troughs and cleaned down. They both fixed fences, delivered cans, collected
10 feed, concrete and wash-aways. Most of them had a midday siesta, and then started afternoon work and evening milking, which started - - which finished well after 7 pm. They did this every day of the year, for most every year of their lives. Many, possibly most, are now working at an operating loss.

15 By 2005 - in a fine example of historic irony - Jeff Kennett was appointed Chairman of Beyond Blue. Mr Kennett's government had deregulated the industry in this state - the organisation for combating suicide. "Kennett had been the Premier, and had participated in national de-regulation and reduced his own state to dairy de-
20 regulation. Kennett, on taking the position, announced the particular sad situation, where there was a farmer committing suicide every four days in Victoria." Now, that was a misquote. A farmer committing suicide every four days in Australia, but most of them, at the time of that statement, would have been dairy farmers, and most dairy farmers, of course, are in Victoria.

25 Now, Woolworths and Coles. They set up an inquiry into Woolworths and Coles. It produced its Report in 1999. It was set up, and the first sentence in the Report, Fair Market or Market Failure. The Bad Committee Report, as some call it, and the Woolworths/Coles Inquiry, as some call it, are we going to sustain a viable
30 independence sits on a one-way street to oblivion.

"The National Association of Retail Grocers said about the growth of the large supermarket chains, and the implication it says, the ongoing viability of small
35 independents. At a micro level, Australia is sitting in the mires of hundreds of small grocery stores, which is bakers, florists, greengrocers, pharmacists, newsagents, liquor outlets, and other small retailers as a result of continuous expansion of major supermarket chains. At a macro level, the process of globalisation has been increased pressures on the supply side of the market, primary producers."

40 Now, there's a table here which just gives food, which is four point seven thousand million or a quarter, which is forty thousand, near enough, annually, when the total spending on everything was \$531,000m. So, nearly ten percent, therefore of Australia's entire spending, is taken by the supermarkets, which are 82% controlled
45 by two corporations.

On the next page, page 14, in Japan, the top five retailers, have 17% of the market. In Germany, the top five have only 37% of the market. In France, the top two have

only 30% of the market. In the United States, the top three have 21% of the market. In spite of - - this was 1999. In spite of the predominance of Wal-Mart. Italy, the top two retailers had 30 percent. The United Kingdom, yes, they're up a bit. But the top four have 65%, and at that time, the top three in Australia had 75%.

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So, clearly we were out of step. The third one was Franklins, which really isn't anything much at all now.

10 It goes on to talk about the Sites Act, and how the oil companies were reduced to 420 sites. There were somewhere between 6,000 and 8,000 services stations in Australia, and they were only allowed to have 420 of them, and I'd say probably they've got 90% of them now. And they certainly would have that sort of control of that sort of throughput.

15 Evan Jones, an Associate Professor of Economy at the University of Sydney in January 2004 - this is in Pat Byrne's newspaper - they published a paper put out by Evan Jones, and the quote is well worth reading here.

20 "Moreover, the rampant colonisation by Coles and Woolworths of new terrain, facilitates strategic territorial expansion of market share by cross subsidisation."

25 I will just go sideways for one second. The last group that were here said retailing in fruit and vegetables, independent retailing, is increasing. Well, I don't know. That might be true in Victoria. I would doubt it. In Queensland, we've been completely wiped out. I do not know of a single fruit and vegetable shop in North Queensland. There's a million people, five percent of Australia's population up there. I don't know of one. There might be one, but you know, I shop in Townsville and I travel sometimes, and I don't know.

30 And, Joe Natoli, who is now the Mayor of the second biggest city in Queensland, the Sunshine Coast, the City of Sunshine Coast, Joe Natoli was President of the fruit and vegetable retailers in Queensland, and he was a most hostile critic of Woolworths and Coles. He did the thing on Channel 9, which I thought even by my standards, may have been a bit aggressive. But, they've just been turkey trampled.

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"Finally, the monopoly rents" - I'm going back to quote - "made by Woolworths and Coles get capitalised in the share pricing, forcing the two mega beasts into another round of colonisation, to feed the equally insatiable appetite of the market analysts."

40 So, I mean, we're not trying to blame anyone at Woolworths and Coles, but if you were employed by them, you know, your shareholders want an increase every year. Where are you going to get it from? I mean, where are you going to get it from? I mean, you put up prices, and that's obviously occurring, right. But you've got to be a bit careful on that one. You know, the government will come after you if you go too
45 over the fence, and - -

COMMISSIONER KING: Can we come forward, Mr Katter? Just, the solutions - -

MR KATTER: Yeah, righto, righto, righto. Righto, well, there's one other thing I want to say, Mr Chairman, and then I will jump to the solutions.

5 The market share - and this is the vital part. The table on page 15 shows Woolworths and Coles as having 50.5 in 1991. Now, this is done by AC Nielsen and published in the Retail Award. Very reputable people, and no one has ever argued about it. In fact, Coles and Woolworths actually skite a bit about the figures.

10 And, you can see by 1999 when this Report came out, they'd grown from 50.5% to 67.9%. They'd grown from 50% to 68%, and the committee came out and virtually said do nothing. I mean, you wonder why people hate politicians in this country.

15 2000 - - by the year 2000 - and this wasn't in the government report, but this was AC Nielsen, it was up to 69.9. By 2002 it leapt to 76.7%. The series was then discontinued. It was discontinued in the year that the Report was supposed to be reviewed, or the year before, which leaves one with some suspicion in their minds as to why it was discontinued.

20 The ABS has a similar - - this is very critical, Mr Chairman, because Woolworths and Coles are arguing that they don't have. I mean, in their Annual Reports, their skiting about their increase in market share, but, you know, when it comes to these hearings, they suddenly - - their market share shrinks dramatically, but the ABS has a separate series, and they have a different definition. But they have them at 57.8 in 1995, 57.8, and by 1998, it's 64.4. So the ABS wasn't all that different from AC
25 Nielsen, and their growth figure of over 2% was almost identical. The growth figure in AC Nielsen and ABS was almost identical. So, if you extrapolate that growth figure on, you end up with 75 to 90% of the market, depending upon what definition you want to use.

30 But, according to their own growth and market share, they are over 82.3% I think is the exact figure.

35 So, the committee had put to it capping and divestment - we're getting on now to the suggestions, capping and divestment as urged by NAGA. Capped over eight years timeframe, and by law, this market share would be reduced to a maximum 45%. Two - these were Chris Shackled and I also put to the National Party member of this committee, but you know, there was no Albert Einstein job, everyone knew it, and the day I was there, Chris Shackled, the Labor Senator put it, he was on the committee. US Dilanti trust anti-monopoly legislation, Theodore introduced - -
40 introduced that to break up Rockefeller's Eastern Standard Oil company in New Jersey. It was broken into 13 companies I think under that legislation.

45 "Amendment of the Trade Practices Act, prescribing market concentration as inhibiting the free-flow of market forces." Well, I don't think that will have any effect at all. That pits new people, with very limited resources, against two mega giants who have a veritable army of mercenaries out there, that are really going to give you a lot of trouble. Unless there is an objective criteria in there, such as NAGA

put in, then I don't think there is any solution to this, and the Australian consumers, will be taken to the cleaners as in pawpaws, potatoes, peanuts, bananas, as in these three case studies that I've given to you, and every other industry, if I had the time to go into them, I'm quite sure would reinforce that. And, they wouldn't be surprised. I mean, everything's that is taught at universities throughout the world says that if someone owns - - if two people own 82% of the market, that's going to be real bad for the sellers in that sort of situation.

COMMISSIONER KING: Yes.

MR KATTER: So, that's my presentation to you. And, I just add this at the end, because I've got to add this at the end: when I had three months' in hospital, operations, heart attacks, etc, when I crawled into the land of the living my first telephone call was to the sugar mill outside of Cairns, because I was desperately worried that it was going to close, because the sugar industry is collapsing.

My first incoming call was from Pramoxine, and Pramoxine said Bob we've got terrific news for you, and I was shaking in my shoes. He said, "We've got a way of producing Pramoxine now where it can't be used for suicide." Now, he rings me up because it's such a huge issue. My area captain, Johnny Segeb and beautiful Sharon Gidella - you've seen her on the television - their neighbour, a lovely young person with three kids, took Pramoxine. A terrible way to die. It takes you three days and it's irreversible, and you're in dreadful, dreadful pain, and we all know every one in the industry knows what Pramoxine does. But there have been so many suicides with Pramoxine, that the company has worked like a dog to try and find some way of formulating it so that you can't take enough of it to kill you. And, God bless them, we think that they have achieved that.

The last three funerals I've been to, when they were burying the sugarcane farmer, he played that beautiful song of Graham Connors, *Let the Canefields Burn*. Let the politicians and the bankers look up at the glow in the sky. It's about a person incinerating himself to death, rather than giving his farm, which had been handed down for generations, to the banks. That actually occurred, Mr Chairman, at Goppy Point Mill. A bloke drove his car into the middle of a cane paddock and incinerated himself.

We are averaging one every two months, and if you ring my office, there may be a lady there called Tanya Pascoe that answers the question. She was off her game a bit, and I said what's going on, and they said her sister rang me yesterday and said the husband cannot continue. The bank wants to see them, and they had cut-backs in the banana industry, because bananas were going to be brought in from overseas and he lost his job there as well, and he waited for - - - well, the daughter came home from university, and all four of them, an explosion had blown them to smithereens. But he said, "I can't go on, I've got to finish it off" but he said, "I can't leave you behind." That's what he said, and that was why the person who worked in my office was off her game a bit.

So, it's not just a set of figures to us. These are real people, these are real people.

And, Mr Chairman, no one's helping us, no one is helping us. There's not a single person in this country being in a position of power, that has done anything to help us.
5 It has just got worse and worse and worse. And, agriculture in this country, please understand it's simply closing down. Our cattle numbers are down 20%. Our sheep numbers are down 50%. We're closing four mills a year every three years in the sugar industry. We've only got 24 left. I mean, the dairy industry is down about 17%. I mean, they're just simply closing down, and the pain that is going on in
10 Australia with those four people, is just dreadful. And the government has sat idly by and watched two people - and I'm not blaming them - take 82% of the marketplace. That's the reason why. Thank you very much, Mr Chairman. Please, God, do something for us.

15 COMMISSIONER KING: I do have some questions that I want to put and I also really don't really want to hold Mr Wilson up, because he's been very patient. Perhaps - - it would probably be better - - but if I can flag two issues with you, but if I can ask you - -

20 MR KATTER: I'll be very brief now.

COMMISSIONER KING: Actually, it would be good if you rolled it into sort of questions to take away and I really would like you to come back to us on these. The first is on the products and the prices - and obviously we're talking on an ongoing
25 basis with the ABS to make sure we really understand these prices. One of the things - and I'll pick on eggs and milk, and that's not a criticism or any bias against sugar.

MR KATTER: No.

30 COMMISSIONER KING: But sugar is the most distorted commodity I can think of in the world. So if we look at milk and eggs - - let me just grab the figures on milk.

MR KATTER: That's a very perceptive observation by the way on sugar, Mr
Chairman.

35 COMMISSIONER KING: You don't need to look at the industry very long to realise that. If we look at milk and we look at the price of milk, sorry. I'm just trying to find the numbers quickly here.

40 MR KATTER: Brazil is building 24 mills a year. We only have 24 mills in Australia, and America is building forty - - or they claim they're building forty ethanol plants a year, and they go pretty close to it, actually, which are effectively a sugar mill. They process corn instead of sugar.

45 COMMISSIONER KING: Okay. If you look at the price of milk, the December quarter 2002, you note the average price is 157 cents a litre, which is the ABS price. Mr Katter if you get on to - - - if you walk into Coles - - and again, please take this

away, because I really would like sort of some feedback on it. You walk into Coles, as you've done with the potatoes or the other firm, Woolworths, and you look at the range of milk, which I did in preparing for this, and the cheapest per litre price - - you can buy your Smart Buy three litre bottle, a buck six a litre. You have a buck
5 twenty six a litre, all through to full cream milk, so it's comparable, through to one of the branded milks, in a one litre - obviously not in the HDDL bottle but in the carton, at \$2.03 a litre. So, you've got almost from \$1.06 to \$2.03 a litre.

MR KATTER: I'm not - -
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COMMISSIONER KING: For milk.

MR KATTER: Mr Chairman, I'm not the bureau of statistics.

15 COMMISSIONER KING: No, no, I understand.

MR KATTER: They have a consistent figure that they use, and the only change they've made is to go from one litre to two litres and again that was done - - please
20 excuse me for being paranoid - -

COMMISSIONER KING: No, no, no - -

MR KATTER: That was done the year before the revision was supposed to take place from the Baird Committee Report.
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COMMISSIONER KING: No, I understand that.

MR KATTER: No, I know what you're saying, but the Bureau of Statistics - -

30 COMMISSIONER KING: And similarly in eggs, though, you've got the cheapest ones are \$2.80 a dozen - this is 700 gram eggs - up to - - I'll pull out my free range, because that's sort of cheating. One of the brands, \$4.69, so not quite double, but you know, probably about an eighty percent difference there.

35 MR KATTER: Mr Chairman, please don't take this the wrong way, but if you want to get a jaundiced idea you pick spikes and troughs. You and I both know, that right, and that was my bitter complaint against the ACCC last time.

COMMISSIONER KING: Last time, I understand.
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MR KATTER: You can also cheery pick into which sort of milk.

COMMISSIONER KING: Yes.

45 MR KATTER: But the ABS produces figures.

COMMISSIONER KING: Yes.

MR KATTER: I mean, I'm willing to play by the rules. The ABS is saying these are the rules. That's what it was then. That is what it is now. And all I know because my farmers are getting this amount now and they were getting that amount then, you know, there's no question about it.

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COMMISSIONER KING: It's all right. It was really I just wanted to know if you had any thoughts on this.

MR KATTER: The ABS produces those figures, you know. They compile them on a consistent basis, and in fact, as per our discussion in Cairns, rang them up, and it was a fairly complicated formula but I want away quite happy that they were being consistent. I mean, we were measuring apples with apples, not apples with pears. And if we move away from the ABS figures, I would suspect that we are comparing apples with pears, you know.

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Woolworths and Coles will claim that the two litre - - well, I mean, the packing is much cheaper on two litre, obviously into one litre.

COMMISSIONER KING: One package.

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MR KATTER: And packaging is a very considerable price. The price of water is almost the same as milk, and that's got a lot to do with the cost of packaging. But the price on the two litres has gone up much more than the price of one litre.

COMMISSIONER KING: But even on the three litres between the Smart Buy and the Pura, I will get a seventy cents - - seventy percent, sorry.

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MR KATTER: Oh, I mean you can compare them - -

COMMISSIONER KING: I understand the - - no, I agree with you entirely.

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MR KATTER: You've got to just take a consistent pattern right through, and the ABS is doing - - well, they assured me, and they convinced me on the telephone, but it was a complex formula. I mean, in twenty minutes, I can explain how they put it together, you know. But I mean, they're the people that tell you what it was then and what it is now. They are comparing apples to apples, except they've done two litres but that's much worse for the supermarket chains. If you have a look and analyse the figures on the two litres. So that's all I can say to you, is I'm just working off the ABS figures. I'm not as I said - - I gave you - - this is definitely not ABS. That's definitely not ABS.

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COMMISSIONER KING: No, okay, and obviously we've got to really get behind those ABS numbers, and an understanding exactly what's happening.

MR KATTER: Mr Chairman, can I just ask you, though: you understand that you've got to get objectivity in there, and that Baird Committee did make recommendations.

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The government did take them up, and the Senator from Queensland, the Birdsville Amendments, you know, but it's just useless.

COMMISSIONER KING: Yeah.

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MR KATTER: I mean, there's no ability to be able to back this up. I mean, are you going to take on less monsters? You know, their resources are - - you know, they've got resources of obtaining over 5,000 - - I'm sorry, whatever it is, 10% of everything, Australia's - - how are you going to go and fight them in a court, you know. And so unless there's some objective criteria put in there by you, I just can't see that any recommendation, short of an objective criteria. And NAGA, it's very cold blooded. You might say that it was a very sanguine proposal, but I'm damned if I can think of any other way of doing this.

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15 COMMISSIONER KING: Sorry, by the NAGA proposal you mean the - - - ?

MR KATTER: Well, they put an objective of 45% you know. They're setting a figure, but outside of that, well, you know, they'll just argue that, you know, there's competition there and you'll argue that there's not.

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COMMISSIONER KING: It'll be interesting to see the - -

MR KATTER: Well - -

25 COMMISSIONER KING: The court battle on what exactly is a market, a 45% market share.

MR KATTER: Well, Mr Chairman, I think you'd be like the Julia Creek seconds playing Balmain - - it's not Balmain, Broncos, you know. I think I'd be putting my money on the Broncos, you know, with all due respects. I have great respect for the ACCC.

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COMMISSIONER KING: Thank you. Thank you very much Mr Katter. Thank you very much Mr Byrne.

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MR KATTER: Well, Pat wanted to add - -

COMMISSIONER KING: Sorry, Pat.

40 MR BYRNE: Just a couple of minutes?

COMMISSIONER KING: Yes.

MR BYRNE: Or just a specific time?

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COMMISSIONER KING: Look, if we could keep it just to a couple of minutes. I really - - you know.

MR BYRNE: Could I just make three comments: one is Mr Katter explained you using - - you have a thousand farmers selling basically to a duopoly. I just want to give you two examples to underscore it. There is no market power with farmers. The industry was in an situation that until deregulation where they had mandatory
5 final offer for arbitration, that is where both sides would meet before a judge or whatever, whether a Supreme Court judge or a technical advisor. They would put up a proposal for a figure for what they'd be paid that year, and the judge would pick one or the other. There was no in between, so they were both forced into a situation where they were able to - - - where they were forced to be moderate and reasonable
10 in their price. There is no bargaining power whatsoever, even though, technically they are meant to get it collectively bargained. The mills will listen for three months, and then they'll present a formula or a contract to the farmers that bears no relationship with three months' of discussion.

15 Now, one of our farmers in our group actually held out. He wrote his own contract. His mill - - his harvest was half-way through. The mill rang him and said, "You come in and sign this or we will decide on your cane." He had no - there is no contract - - there is no provision in any of the contracts to the mills to provide for value-adding on their sugar cane, other than for the raw sugar. So if they produce
20 ethanol, they produce other by-products, they get absolutely - - almost absolutely nothing out of it.

In the dairy industry, a dairy farmer has virtually no bargaining power. The concept of bargaining power, I think is misunderstood. It works for trade unions, because the
25 person is able to link through with their labour. A dairy farmer is not even allowed to withdraw his labour. In the 1980s in Victoria when the Victorian dairy industry was threatening to go on strike, ceased producing milk, the State Premier told them that he would legislate they were an essential service, and force them to provide it. If they don't provide, their milk goes sour and sits in a tank and the EPA then will
30 prosecute - -

MR KATTER: The EPA not the - -

MR BYRNE: Will prosecute them and they are not allowed to dump the milk. If
35 they stop producing from their cows, their cows dry up and they get no milk for nine months, until the cows calved again. They have absolutely no bargaining power whatsoever. And, I want to underscore this, because this is not what you learn in basic economics.

40 The second thing in relation to this is when deregulation occurred, if you look at milk production, it actually went up. Why? Because the laws of supply and demand say it should have gone down. It went up, because every farmer says, hell, I've got to produce more if I'm going to survive, and that only therefore forces the price down even further.

45 A lot of the economics of farming is almost the opposite of what is conventional economic thinking.

The third thing I wanted to refer to - - I want to take up - - I believe you met with Bernie O'Shea with Mr Katter in Cairns last Friday week, and he referred to the McGovern research, which I've brought along for you, the contacts with Mr McGovern.

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COMMISSIONER KING: Yes.

MR BYRNE: For the last twenty, twenty-five years, we have told in Australia we export eighty percent; consume twenty percent. And this is very important, I think, as an understanding of where the ACCC and the national competition policy fits in.

10

On that assumption, it's been said, well, let's deregulate farmers, let's make them more productive by competing against each other, a more tolerant attitude towards the influence coming in. That will make them more productive, get a higher productivity. When the WTO opens the USEU in Japan, those big markets, we'll get in there and making a killing. That underpinning of the policy of that for the last twenty-five years, McGovern shows is fundamentally wrong. He's an input, output analyst, QUT. His paper was refereed by Professor Ted Colson, the former head of the Queensland Uni Economics Department, and I think the second one was Rod Jensen, an Associate Professor, who was the former Deputy Head of that department.

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At first stage production, it is 70% of the domestic market; 30% export. You lose just ten percent of the domestic market, and farmers have to export 30% more to compensate.

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Those figures were then taken in the year 2000 to a meeting with the ABS, at a place called Customs House in Brisbane, and it became known as the Customs House Agreement. The ABS analyst, input/output analyst who basically provided the set of data that McGovern used, agree with them, and the words were roughly this: there is absolutely no foundation for the claim that we export 80% and consume 20%. At first stage production it's 70% domestic market.

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Now, what it means is the deregulation of so many of these industries, has left them, then, at the mercy of the supermarkets by and large, because most are selling product to the supermarkets.

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The export markets, well, we'll know by the end of this year when the WTI opens up Japan and the US and the EU. I see no likelihood of a put-off whatsoever. It's happened, and a lot of the economists I've talked to have said exactly the same thing. Those companies talk free trade, but when it comes to agriculture, they regard agriculture as strategic infrastructure. I mean, Europe, the EU's budget is 80%. The subsidies are there to unite Europe, so they united Europe virtually around the subsidy system. So, we've got our farmers now competing against, as Mr Katter has pointed out, product on a world market that's got roughly almost a fifty percent subsidy.

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45

The OECD produces figures in which it does the ratio of Australia's Farm Gate prices to the world price. So you take the Farm Gate price of say, milk, and you compare it to, roughly, whatever the world price is on the export market.

5 The ratio is one. Australians have the lowest farm gate price in the western world, the developed world. It is equal to the corrupt world price. That's what the supermarkets have beaten them down to.

10 The average farmer in the OECD gets a price around 32% higher than a farmer in Australia, and consumers pay roughly around 36, 37% more. These are based - - OECD figures, comparative figures that are produced I think it's on an annual or two-yearly basis. If you want the references, I can get them for you. This is what's beating them into the ground.

15 And, there's one thing I would love - - I've written to the Agriculture Minister about this. I'm saying to the ACCC, what is urgently needed in this country, aside from the legislation Mr Katter is talking about, is an urgent examination, a serious examination, of what is the primary market for agriculture. Is it the domestic market or is it the export market? Those figures have to be teased out, because they've been
20 used as the wrong foundation as far as I can see, and as far as these academics can see, it's been using the wrong foundation, for a whole series of policies, including the major deregulation of these industries.

25 And if there's one thing I'd love to see the ACCC do, is make that recommendation to the government urgently. Does that give you some picture?

COMMISSIONER KING: Yes.

30 MR BYRNE: I've got a short paper which I'm happy to give to you on this. I've got McGovern's original paper and the Customs House Agreement.

COMMISSIONER KING: If you've got those, and can pass them over that would be very useful for us, and if you are able to, just in an email or at a later time, just give us the OECD reference.

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MR BYRNE: Ah, they're in - - I'll give you actually - - I'll actually take it off here. There's a paper from the government, but it's got the references in it, which I gave to your secretary here today.

40 MR KATTER: Mr Chairman can I just - - sorry Pat.

MR BYRNE: Can I just finish off one last thing: I've had people say to me over time, why should we subsidise farmers? The subsidy on the - - the OECD figure for Australia was 45% in terms of subsidy and generally it's drought stuff, but in
45 addition to that, it is an overestimate, because my understanding is that there are levies put on the farm industries which are then sort of paid back to them and that's

considered a subsidy, which is I think it's a wrong way to count them. So, the farm subsidy for Australia is virtually nothing.

5 The question I put to people, and I put to you: why should farmers go out and get a second job, send their wives to work and use their kids as unpaid labour on the farm, to subsidise, when you look at the OECD figures, putting the cheapest food on the plates of the Australian consumers of any other country in the western world? Why should they have to subsidise the production of food, and even APIA has started to talk about this. It's a question I put to you, and I put in the rhetorical way.

10 COMMISSIONER KING: Thank you very much, Mr Byrne. That's been very useful, thank you. We will grab those papers.

15 MR KATTER: Mr Chairman, my point made again is that it's not as cheap as it should be.

COMMISSIONER KING: No, I understand.

20 MR KATTER: The benefit, that suffering that we're suffering, it is not being passed on to the consumers.

Mr Chairman, thank you very much for your time. We'll be saying our prayers that you give us a fair go.

25 COMMISSIONER KING: Thank you, Mr Wilson and Mr Plunkett.

MR WILSON: Mr Plunkett is Deputy Chair of the Fruit Growers of Victoria.

30 COMMISSIONER KING: Okay. Thank you Mr Wilson and Mr Plunkett for coming in.

35 I note again, just to remind you, 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 without which the evidence is misleading. Do you both again understand that? Thank you.

40 First off, Mr Wilson, could you just give me, for the record, a very brief run through of what is the Fruit Growers Association of Victoria - - - the Fruit Growers Victoria Limited - - I'll make sure I've got the exact right name, and who do you represent?

45 MR WILSON: The Fruit Growers of Victoria is limited, is an unlisted public company limited by guarantee. It's member owned, and it's the peak representative body of the apple and pear growers in the State of Victoria, and we represent orchards in the Goulbourn Valley, Gippsland, Mornington Peninsula, Yarra Valley, Harcourt, and north-eastern Victoria. We also provide secretariat services for a number of other fruit growing organisations, and our membership overlaps into other commodities, stone fruit and cherries, etc.

COMMISSIONER KING: Now, without in any way wishing to put you on the spot, you were here for the Apple and Pear Association?

MR WILSON: Yes.

5

COMMISSIONER KING: Discussion had earlier. Is there anything that you heard earlier on - and I don't want to put you on the spot, and if there are things that you disagree with, but it would be helpful, obviously, from our perspective, were there things that you heard earlier on today that you either disagree with or from your members' perspective, would like to clarify, and are there things that you heard earlier on today, that again, from your members' perspective you would like to reinforce? If I can put the disagreements first, if there are any, and then the reinforcements second.

10

MR WILSON: I don't think we've had anything fundamentally in disagreement to what was said before. We do work closely as an organisation with Apple and Pear Australia. In fact, the Deputy General Manager, works out of our office. It is a very close relationship. There were some items, for instance the cannery, we paid closer contact to that and some of the people at that table. We are aware of the pear intake issue, if that is of any interest to you.

20

The average of the last three years in pear intake is about 44,000 tonnes. This year we went to growers with a quota of 36,000 tonne, a reduction, and this morning I was advised it failed at 29,000 tonnes, which is a significant down turn in the pear intake.

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COMMISSIONER KING: Can I just stop you there. Obviously, this is a substantial drop over the average of the last three years, where you had 15,000 tonnes decrease. Is that driven by a lack of fruit, or is it driven by commercial pressures on the cannery or a mixture?

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MR WILSON: It's definitely a mixture. Our understanding is that the Australian dollar has had a significant impact on the cannery's ability to take a larger intake and that's why the 36,000 tonne quota. I was led to believe that they would take slightly more than that if they could cut the fruit. They are coming out with that table - - that quota. I think they encouraged some growers to put the fruit normally at a cannery into a coolstore, albeit their win there which you heard before was just - - they normally just have it for the cannery. Is that a fair comment?

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MR PLUNKETT: Oh, yes, seasonal conditions, more crop.

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COMMISSIONER KING: So there is a smaller crop - - on the dollar side, is that - - obviously the dollar, the high line has two effects: one is that it makes our product more expensive on the world markets and also makes imports cheaper. Again, do you have any feel? Is it import pressure that the Australian market is shrinking from the cannery or is it just that they can't get a return on the world market?

45

MR PLUNKETT: Both. The markets have been Germany historically and that's now no longer viable.

5 COMMISSIONER KING: It's no longer viable because - -

MR PLUNKETT: Because the currency and the import pressure from other cheaper producers.

10 COMMISSIONER KING: Now if we're looking at the Australian dollar, though, as compared to the Euro, which would presumably be the currency you trade in Germany, our dollar hasn't appreciated a great deal. I think it's up a little bit.

MR PLUNKETT: It's probably more relevant to the price of the South African and the southern hemisphere produces what they are able to - -

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COMMISSIONER KING: Okay, so it's really the lower cost of production or the lower price of sale of the South Americans - - the South Africans you were saying?

MR PLUNKETT: The South Africans.

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COMMISSIONER KING: All right, sorry, I'm just - -

MR WILSON: I take it would be a fair comment to point out that Mr Plunkett is an exporter as well as a grower.

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COMMISSIONER KING: Just actually on the export or on the alternatives, if you're a grower of William pears and you're in a situation where there just isn't the demand from the canneries - - you said, Mr Wilson, there's pressures to hold off on fruit. You used different terms, sorry.

30

MR WILSON: Put it in a cool store.

COMMISSIONER KING: Put in a cool store, thank you.

35 MR PLUNKETT: For fresh market.

COMMISSIONER KING: To what degree is there a fresh market for William pears? I would confess I'm not a pear connoisseur. But is the William pear a pear that you can put on to the fresh market and sell or is it - - ?

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MR PLUNKETT: Yes, it sells well, but it has that supply window from February to May. It doesn't have the full storage life like the Packham pear, and they do sell well, but there's only a limited time of the year you can actually get a sell, and both supermarkets now or most retailers, the William pear is the pear that you sit on the shelf.

45

COMMISSIONER KING: Okay. Just as a matter of interest, is it called the William pear or - -

MR PLUNKETT: Yeah, William or William Bon Cretian.

5

MR WILSON: It's referred to as the WBC as well.

COMMISSIONER KING: I notice that my local fruit and vegetable store had honey pear, which they are obviously a different one again.

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MR PLUNKETT: Yes, Crown pear.

COMMISSIONER KING: Purely for my own benefit, I was wondering if I'd missed it somewhere. Okay, now if we go to your submission - -

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MR WILSON: May I make a comment on the submission?

COMMISSIONER KING: Okay, if you could, thanks, because there's a number of very specific questions I actually do what to ask you on the submission.

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MR WILSON: Whilst I am listed as the author of this submission, my role is actually that of a compiler.

COMMISSIONER KING: Yes.

25

MR WILSON: The contributors to the submission were the growers, and I'm happy to identify those, but should we proceed to that area, I would ask that that be in confidence.

COMMISSIONER KING: That's fine. I really don't need that we need that detail. I understand that any submission that you're putting in would reflect the views and opinions of your members.

30

MR WILSON: Our membership would have across varying members of supermarkets, very much dependent on whether they are or are not suppliers of the supermarket chains.

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COMMISSIONER KING: Now, I understand that your view in relationship to unit pricing is that it would not be worthwhile. Would you mind just expanding on that a little bit for me. Sorry, Mr Wilson?

40

MR WILSON: Yes, sorry, I will just refresh my mind.

COMMISSIONER KING: Let me give you a bit of background. Unit pricing is one of those things where almost everybody who has come forward to the inquiry, certainly in the public session, has sort of said, oh, yes, unit pricing, of course you want unit pricing. Yours is one of the submissions that, you know, I guess if I can

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paraphrase, it's not particularly practical, and regulation for regulation's sake, and so I am particularly interested in your views here, because they do seem to run counter to a lot of what we've heard.

5 MR PLUNKETT: Well, a case - - a comment, we're talking about a price per piece of fruit, rather than a price per kilo.

COMMISSIONER KING: Yes.

10 MR PLUNKETT: So, we're saying per kilo is the way it runs.

COMMISSIONER KING: Okay.

15 MR PLUNKETT: In the case of apples, say for a Coles specification at the moment, the weighting brands that we're allowed to put in as loose apples on the shelf ranges from Pink Ladies from about 150, 160 grams to 250 grams. Obviously, it's going to be very difficult to come up with a price per piece of fruit for the 150 gram fruit that represents that fair price and for the 250 gram piece of fruit as well, but there's such big variances in the weight of each piece of fruit that coming up with a price per
20 piece would be just too difficult to determine, and obviously, if that was the case, everyone would want to go for a bigger piece of fruit, and that becomes very difficult for the supermarkets or anyone to really have break it. You would just have small, medium, large, extra large, all of a different price per piece. Unpractical.

25 COMMISSIONER KING: Okay, so it really goes down to the fact that once you - - when you're dealing with fruit and vegetables, I mean, going away from the per kilo pricing - - perhaps putting it another way, per kilo pricing is the sensible unit pricing? Would that be - -

30 MR PLUNKETT: Yes.

COMMISSIONER KING: Okay. Does your views on the unit pricing go any further than that? So, if we were talking about bottles of Coca-Cola or bottled - - - or you know, biscuits or something like that. Would you have a similar view of toilet
35 rolls? Toilet rolls are actually a good example. I mean are you happy to say - - would you think unit pricing was a good idea there or are you happy - - do you think it would be a bad idea, or are you happy to say, look, that's just outside our area of interest?

40 MR PLUNKETT: No, just what the market says.

MR WILSON: Well, when you come to the non-perishable product it's a different scenario again. There can be a quite separate pricing of the fruit. But, as a general
45 concept, we would prefer it to be by the kilo.

COMMISSIONER KING: Yes.

MR WILSON: And when you do mention fresh fruit and vegetable, that would be one issue that may go the other way.

5 COMMISSIONER KING: Okay. Would you be in favour of - - if there's a price per kilo, obviously fruit and vegetables are sold in different ways. Sometimes they are sold in pack form, and sometimes those pack forms are not priced per kilogram. Do you believe there should be a requirement for transparency that they are all priced with reference to a kilogram? So, if for example there's - - it's probably lesser for pears as opposed to say some of the green leafy vegetables. Supermarkets may have
10 a 200 gram or a 300 gram packet of those vegetables. Should they be required, in your opinion, to put a per kilo price, or again is that just regulation for regulation's sake?

15 MR WILSON: Well, it certainly assisted - - I think a similar packaging is on the meat nowadays. So, as a personal view, I would have no problems with that.

COMMISSIONER KING: I think I now understand your position, so I thank you for that. If you can go down through just through the Horticultural Code of Conduct, which you comment on. Again if I can just paraphrase my understanding of your
20 view of the Horticultural Code. It seems to be pretty negative, that there's been little change, and there's been a cost increase, had a cost effect, a real effect in the market.

MR WILSON: Administration, yes, it has a cost increase.

25 COMMISSIONER KING: Yes.

MR WILSON: In the implementation of the agreements, has seen a massive duplication in many areas for a one-on-one . An area where there has been duplication was as in Mr Plunkett's case, where it came from government to have a
30 contract. We fundamentally believe that the code missed its mark by being applied to the first farm gate - - - post farm gate transaction, and the market it should have been is the price setter in the supply chain. It doesn't necessarily reflect the price pack.

35 In the case of retailers not being involved in the - - - under the code, you know the price when you're dealing with the retailers, but you're not necessarily going to know the price when you do it with fruit to an agent. And, on that basis, that agent could be acting as a sub-agent for somebody down the - - - up the supply chain. As a consequence, you really lose control of that marketing position.

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MR PLUNKETT: I think to clarify that, Mr Chairman, in the case here - - in my case, and it's a case where many happen to share this area, is that we pack our own fruit, and we also pack fruit for about twenty other growers. Under the current definition of the code, the code applies from the first transaction from the farmer, so
45 the code is applying between myself and the grower next-door.

COMMISSIONER KING: Yes.

MR PLUNKETT: The code has no impact on the actual sale of the wholesale market, and that's one of our concerns. That's where the code was originally aimed to impact at the wholesale market level, but under its current definition it's impacting between neighbours.

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COMMISSIONER KING: Yes.

MR PLUNKETT: So, I'm doing paperwork for my next-door neighbour. In my case, my packing shed business runs as a separate agent to my growing business, so the code applies between our two companies with no code - - not covering any of the fruit that goes to the wholesale market, so that's one of the key question areas. The paperwork's happening in an interregional area, rather than at the wholesale market, where we believe that was where the intention was, the code - - where the code was to apply.

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COMMISSIONER KING: Have you got a feeling how - - how should the code be - - well, first off, given the limitations of the current code is it a case of starting again with a blank sheet of paper, or is the current code able to be modified to actually achieve its objectives?

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MR PLUNKETT: It can be modified I think, but that's completely re-working it, and we appreciate it's difficult because getting one code to apply to every sector of the fruit and vegetable is doing to be very difficult.

COMMISSIONER KING: Okay. Would you want, then, the code to apply to direct transactions to retailers, growers who are supplying direct to the retailers, or do you view there's enough transparency there through the contracts that exist?

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MR PLUNKETT: Between the supermarkets you mean?

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COMMISSIONER KING: The supermarkets, sorry, yes.

MR PLUNKETT: Yeah. No, that's not mentioned. Because it's a fixed price I don't think there's any point. It's just paperwork for paperwork's sake. There's no need to generate a piece of paperwork to describe a price that's already described.

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COMMISSIONER KING: And also exporters currently aren't covered by the code. Should they be covered by the code?

MR PLUNKETT: No, again, I don't think so. It's generally an agreed price, and there's no real - - well, unless there's a quality problem, there's no real price discounting.

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COMMISSIONER KING: Okay. So it's really fixing up that middle group which are the people that stand whether it's through the wholesale market. Oh, actually, sorry, I shouldn't jump ahead, because you mentioned contracts are provided in your submission. Do the same issues arise - - is it really a wholesale market issue when

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you're working as an agent through a wholesale market, as opposed to when you're working through, say, an intermediary service provider who operates directly to the major supermarket chains? And, obviously there's different loads of supply. If a problem is really - - if I can call it the wholesale market - and I know that's a lose
5 term, if you can call it the wholesale market as opposed to the service provider to the supermarket, should it apply to both of those methods or is it really just one you should be looking at?

MR PLUNKETT: Oh, look, I guess it's hard to distinguish but the gain with the
10 providers for supermarkets is going at a fixed price, so there's no real greater there. Myself, and my personal opinion, I don't actually think the code applied at all. You know, like I know there's bad agents out there and we all hear about bad agents, but I think as a runner of a small business or any business we should - - I think it's up to
15 each individual business owner to ensure that they've got a good relationship with the person selling their product. I don't think we necessarily need a code to achieve that. Like you were saying before, why haven't the good agents and the bad agents been sorted out, and there's often - - - you know, there's often many reasons why there are disputes. It's not just to do with a bad agent. It's you know, there's
20 disagreements both ways. A personal opinion is that I don't think the code will ever, you know, make every grower happy. I just don't think it's possible.

COMMISSIONER KING: Yes. And it is one of the questions that I've had or that struck me during this inquiry is that - excuse the pun - every barrel has bad apples -
25 not if you're growing in the Shepparton area! I had wondered is it a sledge hammer to attack misunderstandings or annoyances on the one hand, and I think we heard earlier this afternoon, you know, if I was a grower and I had my fruit rejected for whatever reason, you know, I can imagine the first two times that it would happen, I would take it personally and I can imagine it would be damn, I thought I satisfied the specifications. I just don't agree with that decision. How much is the code ending up
30 trying to solve that problem of disagreement, getting rid of a few bad apples that are in the barrel, and creating paperwork for everyone, or is it a broader problem than that?

MR PLUNKETT: No, I think you've hit it on - - I think it's a sledge hammer to crack
35 a walnut, I can imagine. That's speaking from a personal opinion. I mean, if we have a bad situation with our agent, we either work through it and if it's untenable at the end of it, we change agents and find someone that we can work with, but there's plenty of growers out there that have had a - - - you know, have had a few of their agents ripping them off for one reason or whatever, and they ah - - and they feel the
40 code will help them, but you know, I think every fruit grower would have a different opinion.

MR WILSON: We're a grower who's not as sophisticated as the code being helpful, because it's forced the documentation to be - - as a fruit grower association we have
45 people come to us and say had dispute with the packer, and maybe a neighbour, a small packer, it doesn't have to be a major packer in a major chain, and I've asked to see documentation on a verbal agreement. And the code has given the guidelines of

what should have been normal business practice to my mind, and most likely yours. It's not necessarily to everyone's.

5 If I may move to another area of the code, it was mentioned earlier, and that is
pooling it from the averaging of price. Pooling is legal in the code. Averaging the
price is not. The palm fruit industry is quite distinct, and is one of the commodities
10 that fall under the code, in that we have a long storage capacity. David mentioned
that area. I have in front of me some information or data that I took out of the
Melbourne markets in 2006 on the mid price for Gala apples, and that mid price
starts at \$22.50 in a case and immediately at the start of harvest and within a matter
of a couple of weeks, it drops to about \$16 a case. The first fruit in gets the higher
15 price. Bob Katter said that with his mangoes. It then goes along and drops even
further, and that comes up and plateaus for a long time, for about five months up to
about \$20, and then slowly climbs and then ends up at \$27 as the highest price. So,
you have a drop, and in some cases, it's below the cost of production. Clearly, a
grower would prefer to sell at the high-end of the year rather than the low-end of the
year. That high-end price also reflects the cost of putting our fruit into cool stores
and keeping it. But, it doesn't necessarily mean that everybody has the capacity to
20 pick and choose when they're going to let go, because if you are a smaller grower
cannot meet the shipment and you by necessity have to put your fruit in with a
number of growers, in order to make order points for the larger consumers, or larger
retailers etc.

25 The need to maintain individual records of each individual piece of fruit, it's a cost
burden, and in fact a potential falling of the partial market funding, because if a
smaller grower is forced to sell at that low price in the market, they could actually be
going below what they had traditionally enjoyed as a price, an average price, prior to
the introduction of the code. We are both seeing that aspect. We know why it was
put in or when the standard was put in there in the averaging of the market situation,
30 the set the growers to an agent at a mark, but in a long selling season it has a
definitely different connotation to the industry, and the reason that averaging price
came into the industry was because it was a good way of doing business, and it
survived for 100 years.

35 COMMISSIONER KING: Did you agree with a suggestion earlier on that a falling
in price averaging, obviously which is the situation, should be allowed because it's
agreed to by the wholesaler?

40 MR WILSON: Oh, certain problems, certainly it would be very good.

MR PLUNKETT: I think, again, where that confusion is coming in, like John just
said, the original approach was not to have averaging at the market level.

45 COMMISSIONER KING: Yes.

MR PLUNKETT: But because the code is being applied as a packaging level,
everything has become a problem.

COMMISSIONER KING: Yes.

MR PLUNKETT: Most of the problems that we see with the code is because is because the code is being applied at the wrong level.

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COMMISSIONER KING: Obviously, again, it comes back to, you know, a few undesirable agents and the other thing is that where pooling occurs at the market level - - it would be interesting to know if there was ever a grower who actually agreed that theirs was the lower quality fruit and it had been put into a gain, rather than the level being into poorer quality fruit in a box.

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MR WILSON: We're not talking specifically about the pooling of different qualities of fruit.

15 COMMISSIONER KING: Okay, so within the same quality.

MR PLUNKETT: Twice per - - specification and due to fruit - -

COMMISSIONER KING: Okay, so it's purely on that time dimension.

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MR PLUNKETT: It's purely on like a 12 kilo at a supermarket that was suitable.

COMMISSIONER KING: Just as a matter of interest, would that cause any issue? I mean, to what degree can a farmer influence just through their management practices, the likely time of harvest? Can they, through their management, for example, bring the harvest forward, so that they can get more of that early stage high price bit of the market, or call the harvest off, other than through a cold store, to hit the later peak? I mean, are those sort of things possible in apples and pears, and if they are, does pooling potentially undermine them?

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MR PLUNKETT: Those things have an effect by one or two weeks. You can't get like bring apples and bring them later and put them on a container and delay it two weeks, but when we're talking pooling here, we're talking over a fifty-two week period. You know we can pick and store the apples for a long time, and we're not talking about what the impact of a few weeks would be, and it's very unlikely that the pool would be a fifty-two week pool, it would be a mid - - an early to mid to late pool and it's unlikely that the packer shed would pool the first few days pack with the last few days' pack. It's generally split into two or three windows across the year.

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MR WILSON: The fruit is put into the controlled atmosphere and not damp, and they open up a cool store and process all that fruit, and pick and choose from each cool store.

COMMISSIONER KING: Okay, so essentially, it's a case of once you've opened up the cool store - -

45

MR WILSON: You use it.

COMMISSIONER KING: You use it, okay. Is that because they use in the cool store, other than temperature they use actually a gas sort of - -

MR PLUNKETT: There's no opportunity in the room - -

5

COMMISSIONER KING: Oh, okay. Now, have you got a copy of your submission in front of you?

MR WILSON: Yes.

10

COMMISSIONER KING: We want to bring that forward. People who haven't got a copy of the submission because the next couple of questions are going to be - - it would be great if you've got a copy of the submission, but if you don't have a copy of the submission, please bear with me. There are three tables on the second page of your submission.

15

MR WILSON: Mm, mm.

COMMISSIONER KING: And I was just wondering, would you be able to just run us through exactly these calculations in the tables, because I haven't been able to just get on top of exactly what you're trying to show me in these tables.

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MR WILSON: I did give Louise Herd from the ACCC a detailed explanation of this. She's mostly got that or the summary. But I could explain - -

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COMMISSIONER KING: I would appreciate that.

MR WILSON: The first table, says that - - and it uses \$20 as a group price for a carton of fruit.

30

COMMISSIONER KING: Yes.

MR WILSON: It says that, "An early settlement discount is then hooked up." These are two examples from two growers that were submitted to us, and in one case, two and-a-half percent was taken and in another case, four percent, which reduced the actual price that the grower received from \$20 to \$19.50 and \$20 to \$19.20 respectively.

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COMMISSIONER KING: Okay, so that's a - - yes, the one percent is twenty cents, so okay, yep, that's fine.

40

MR WILSON: And fifty cents and eighty cents was deducted for the privilege of getting the cheque early.

45

COMMISSIONER KING: Yep, okay.

MR WILSON: And, then, internally within the supermarket, a distribution fee of 10% was added to the base price so the store, the supermarket branch that buys from their distribution centre, would then see an extra \$2 added on to the \$20 price. So the price going to the local manager, gives them \$22 as his cost price, and he will market from there.

COMMISSIONER KING: Okay, so that's if you like, that \$2 is an internal transfer within the supermarket chain.

MR WILSON: So, before they start calculating their retail price - -

COMMISSIONER KING: Yes - -

MR WILSON: They have taken, in each of these examples, \$2.50 and \$2.80 as internal margins.

COMMISSIONER KING: Yes.

MR WILSON: That's what the first chart is about.

The second chart refers to supermarket margins and how they fluctuate, depending on what they're doing with their market, and an advertised catalogue special might have a minimum margin of 10% up to usually around about 15%. If they have it on a daily special, they'll move to a 20% margin. The local advertised special, they'll try to make 30%, and their normal offer is a minimum of 33%, but more common between 50 and 60% of the price that the consumer will pay.

MR PLUNKETT: I think we should point out that these are for a profit and the impressions from suppliers, and this is not actual you know, data.

COMMISSIONER KING: I understand, so when we're looking at these supermarket margins, so referring back to the first table, they would be charged on the \$22?

MR WILSON: Yes.

COMMISSIONER KING: So, if we're looking at a normal margin - - let's say the normal margin is 50%, which is easy, then you'd be looking at \$33 as being the relevant store price and then you can work back from there, so if it was an advertised catalogue special it may come down to about \$24.20, okay.

MR WILSON: The last one was an example of Granny Smith apples going through in a non-promotional week, and the price per - - I think this is all price per kilo. Now, \$2.24 was the price agreed with the supplier, and the first thing that was deducted was nine cents per kilo, which was for the early payment, which is 2.3% of the store ticket price. That's 9 cents is 2.3% of \$3.98.

COMMISSIONER KING: Oh, okay, okay, sorry. I see what you're getting at. Okay, so it's not - - okay, so it's not 2.3% of the \$2.20.

MR WILSON: Yes.

5

COMMISSIONER KING: Yes.

MR WILSON: And then the distribution warehouse took another 23 cents per kilo, which is another 5.8% of \$3.98, so that it reaches the store, and the store sells it. They were selling it at \$1.42 margin, which is 35.7% profit for the store, and totally, when you add those nine and twenty-three cents back in, they will make a \$1.74 profit, which is 43.7% of their resale price the consumer buys it.

10

COMMISSIONER KING: Mm, mm.

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MR WILSON: So, for every dollar that the consumer was paying the retailer was making 44 cents margin on what is there.

MR PLUNKETT: And again, that's just an example, and is not actual numbers or anything.

20

COMMISSIONER KING: No, I understand. So when you look at the retail markets, what degree of the prices that the supermarkets set, to what degree are they constrained for apples and pears by the fruit and vegetable stores? You know, is there actual competition there? I mean, we heard two different views today. What's your view on that?

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MR PLUNKETT: The price, is it competitive - - ?

COMMISSIONER KING: Are they getting constrained by the fruit and vegetable sellers or is it - - is something else going on?

30

MR PLUNKETT: It varies from week to week. There's some weeks when the suppliers can, you know, put the price up and the supermarket would have to agree and there's other weeks when there's much more supply than they require and they can negotiate. It's just supply and demand.

35

COMMISSIONER KING: Okay.

MR PLUNKETT: And, you know, I would say a lot of the time the price that the supermarkets will pay is probably you know, as good or slightly better than the best price in the wholesale market.

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COMMISSIONER KING: Okay.

45

MR WILSON: I think Coles and Woolworths do operate slightly differently there. Coles almost certainly through their distribution centres. Woolworths will send

buyers into the market on virtually a daily basis, and so they'll buy off the shoulder of the price in the market, and they seem to have an ability to react more quickly to Coles.

5 COMMISSIONER KING: In your experience, have you found also the differences between Woolworths and Coles in their flexibility in dealing with growers? In their ability to accommodate growers in unusual circumstances?

10 MR PLUNKETT: Personally speaking, I'm a Coles supplier and I've always that. I can't speak for Woolworths. I think Chris mentioned earlier about the variations to specs. We supply eight lines of fruit to Coles in a normal year, four apples and four pears. Last year, with the seasonal variations we had six to eight varieties to the specification but we asked for those six to be varied, and they varied them, and so like we said earlier, they couldn't have done any - - they couldn't have helped
15 growers any more than they did last year. We went a lot of - - you know, 75% of the fruit we offer we had problems with, and we went and asked for assistance, and assistance was given.

20 MR WILSON: There was a degree of self-interest in that, because we had the fruit to market - -

COMMISSIONER KING: Yes, I understand.

25 MR WILSON: But in saying that, the variation specification last year by Coles, in particular, was the greatest financial assistance to apple and pear growers in the State of Victoria.

MR PLUNKETT: Far greater than the - -

30 MR WILSON: Far greater. They were extremely good.

COMMISSIONER KING: It's just that, again, when I look at your submission, the sort of example you give under Section E of your submission, tends to give a very different flavour. You talk about the threat of excommunication in their dealings.
35 For instance, coercive demands in respect of quality system, packing, delivery arrangements. In the recent fruit fly outbreak in suburban Melbourne, one major chain took it on themselves to go to a protocol above and beyond the government standard. Okay, you know, when I read that, it gives me a very different flavour from what you've just said about Coles.

40

MR WILSON: Yes, and certainly does, because, as I explained earlier, this is a compilation of separate figures and contributions.

COMMISSIONER KING: Yes.

45

MR WILSON: And, what is said there is true.

COMMISSIONER KING: Yes.

MR WILSON: The supermarket in particular about the fruit fly product was Coles. They immediately when the outbreak happened, that aspect, they immediately went
5 out and said they recalled their fruit from the market, and the Department of Primary Industry in Victoria said, no, that's not required. It's required as long as the packaging is not disturbed, and the DPI went back to Coles very shortly after that, and that requirement was significant. Now, that's Coles being proactive for their quality controls so they are taking it and so quicker off the mark than the DPI.

10 COMMISSIONER KING: Was it quicker off the mark - - I mean, looking at Safeway, was it quicker off the mark in the sense that they actually knew more about what was needed for DPI in the sense that they're looking at a state distribution? I mean, it's not clear to me - - again, the flavour that came through in the submission
15 was, you know, this was almost an abuse of market power, if I can use that term loosely, whereas what you've just said doesn't quite sound the same.

MR WILSON: Well, yes, I can see that and you will take that interpretation from the way that was presented. Rather than a misuse of market power, I think the correct
20 interpretation of that is that it was evidence of what the powers will do.

COMMISSIONER KING: Okay.

MR WILSON: So those growers that were supplying from the market to Coles all of
25 a sudden had an extra cost imposed upon them, which a few days later, was not necessary.

COMMISSIONER KING: Again, there's reference to excommunication in dealings.

30 MR WILSON: I know the specific example that that came from. If you'd like to hear more, I can tell you?

COMMISSIONER KING: I would be. Is it okay to do it open session or does that
35 need a confidential session?

MR WILSON: Ah, I think I can do it without identifying the - -

COMMISSIONER KING: If you could, it would be good to leave it in open session,
40 but please - -

MR WILSON: That was specifically selling to one of the major supermarkets and there's been reference to the distribution fee that had been conducted under - -

45 MR PLUNKETT: Several - -

MR WILSON: Several, and a particular grower/packer supplied into Queensland through an agent, and the fee was no deducted.

COMMISSIONER KING: Okay.

MR WILSON: They advised the supermarket that had been the case, and were told
oh, don't worry about it, it's not your problem. And, the matter went to sleep for a
5 while. Now, after a while, they received a bill for that fee.

COMMISSIONER KING: Ah, ha.

MR WILSON: And then they complained and were told it's not an issue, and it was
10 put to them along the wording of, well, I can lodge a complaint if you want me to.
And, it was interpreted by that grower/packer that you could put it in, but at your
own choice.

MR PLUNKETT: Okay. That's one item in isolation - -
15

MR WILSON: One instance.

COMMISSIONER KING: Okay. Is the threat of boycott or excommunication, not
just by major supermarkets, but also by wholesalers or other service providers, is that
20 a risk in the industry? Is - - I mean, and you know, I want to separate out, obviously
there can be business relationships that go sour between an individual wholesaler and
a grower, for example, where they just don't want anything to do with each other and
it may be the wholesaler or it may be the grower that says, look, if I ever see you
again, it will be much too soon.

25 That's not what I mean by a boycott, but there has, certainly in the confidential
sessions we've had in this inquiry, there have been some claims made about growers
being boycotted by the - - - by further up the chain. Have you heard anything like
that in your experience?

30 MR PLUNKETT: No, I haven't heard anything. It's never sort of been the case of - -
I've never had a situation like that.

MR WILSON: No, I'm not aware of any specific example. I think there is a
35 significant proportion of fruit growers, though, that live in a fear of something like
that, whether it's real or not, because of the significant market share held.

COMMISSIONER KING: And is it just a fear of the supermarkets or is it also a fear
40 through the wholesaler?

MR WILSON: It's a fear of disenfranchisement interwoven with concerns.

COMMISSIONER KING: Okay. I sort of approached your question in a slightly
different starting point from questioning earlier today, but I do need to step back.
45 Your submission notes duopoly, with the Australian retailing, grocery retailing, by
which I assume you mean Woolworths and Coles. To what degree is Metcash also a

significant player - - - or perhaps a better way of putting it, the independents is a player in apples and pears?

5 MR PLUNKETT: Metcash is IGA really. They're kind of - - they really still buy out of the wholesale market.

COMMISSIONER KING: Yes.

10 MR PLUNKETT: And Metcash doesn't buy as one entity. It's more one group of IGA's buy there, and one group of IGA's buy there so they really don't have a - -

COMMISSIONER KING: They don't have the same buying power?

15 MR PLUNKETT: No, they don't have the direct channels set up, really. I mean, there is some fruit that goes that way, but obviously they are again setting that up at the moment and if that happens, that will be a different scenario.

20 COMMISSIONER KING: We had some numbers earlier on today on the percentage of apples and pears going through Coles, Woolworths and the IGAs, but around 50%. Do you think that's about right or is it too low or is it too high?

MR PLUNKETT: I think it's about right. Probably more than, it would be.

25 COMMISSIONER KING: Okay.

MR WILSON: Yes, they would have those factors.

30 COMMISSIONER KING: Okay. In that case is there anything else you wished to add?

MR WILSON: No.

MR PLUNKETT: I don't think so.

35 COMMISSIONER KING: Okay, well, thank you very much for coming in. Apologies for the delay in getting to you. Thank you very much.

40 Can I just now formally close the hearing for today. Thank you all for your attendance and participation.

ADJOURNED

[4.50pm]