Role of the Australian Competition & Consumer Commission's with Farmers and Small Business

Presentation to

NSW Farmers Association

by

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I was delighted to receive this invitation to speak to the NSW Farmers association.

I was appointed as a Commissioner at the Australian Competition and Consumer Commission (the ACCC) just over 12 months ago. My "portfolio" is focussed on small business but I am also taking a special interest in the needs of rural and regional Australia.

The impact of the Trade Practices Act (the TPA) and the ACCC has increased significantly during the past decade. The ACCC has been given additional powers and responsibilities, partly as a result of competition policy and partly as a result of the higher profile that the Commission has developed under its current Chairman, Professor Allan Fels.

In my discussion with you today, I would like to explain the role the ACCC is playing in encouraging compliance with the Trade Practices Act by emphasising how it can benefit business - especially farmers – in terms of performance and profitability.

I will focus on the following matters:

- Why we have a Trade Practices Act;
- Your rights and responsibilities under the TPA and how they can benefit small and rural businesses;
- Efforts to increase user friendliness for small business
- How the flexible application of the TPA through the authorisation provisions helps all business benefit from competition ; and
- some developing areas such genetically modified food.

The ACCC's functions are based around the Trade Practices Act (the TPA).

The object of the Act is to enhance the welfare of Australians with the promotion of competition and consumer protection through fair and informed markets.

The role of the Commission is to apply the TPA properly without fear or favour, for the benefits of consumers of all kinds throughout Australian including:

- Household consumers;
- Small, medium and big business;

- Farmers; and
- Local State and Federal Governments.

The Commission, through its Regional Offices in each State and Territory ensures that it is close to where the real trade and commerce are taking place. In NSW we have offices in Sydney and Tamworth, which are headed up by Glen Barnwell and Albert Julum respectively. With their dedicated staff these regional offices are actively pursuing the Commission's objectives of compliance with the TPA.

I am sure that in recent times you have all heard a lot about competition policy. Although it is only in recent years that competition policy has been at the forefront of Government policy, the TPA has been around since 1974. However, as part of the national competition policy reforms, the reach of the TPA was extended to cover almost all business enterprises in Australia, many of which, like government enterprises and sole traders, had previously not been covered. At this time, provisions giving the Commission a role in respect of the promotion of access and competition in the area of former public utilities, such as gas, electricity, airports and telecommunications, were also added to the TPA.

While its functions and powers have increased and diversified since 1974, the objective of the Commission has remained constant; it remains the promotion of competition to the benefit of all Australian consumers.

All people, especially businesses in rural and regional Australian have an interest in being supplied competitive and efficiently and at reasonable prices. In addition, where business are selling goods, their interest is to sell to buyers who have to compete for their product.

The rural sector stands to gain from competition policy in a number of ways. Inputs into rural production are likely to more competitively priced and this should lower costs overall, improving international competitiveness of Australian primary producers. If cost savings are passed onto consumers in the form of lower prices, rural producers should be able to expect increased demand for their output and increased sales volumes.

Rural Impact

Of course, the application of trade practices to legislation to areas previously exempt will involve some change in the way in which some rural enterprises do business. Competition between producers in many rural industries has traditionally been regulated by a statutory marketing authority or some other form of arrangement exempt from the TPA.

For many rural producers the adjustment involved in moving from a highly regulated environment where often prices are fixed, market quotas were allocated and entry restricted, to open competition, will be substantial. The Commission has recognised that many smaller agricultural producers may have to deal with large buyers who have considerable market power. The Commission's authorisation procedures (which I will discuss in further detail shortly) will assist producers in their negotiations with their

more powerful customers. The Commission has already dealt with a number of industries seeking assistance in the adjustment process.

Rights and Responsibilities under the Trade Practices Act

The Act and its implementation by the ACCC demands obligations but offers considerable benefits to business.

It offers businesses protection from, but demands they avoid being involved in:

- Price fixing
- Market sharing
- Boycotts
- Misusing market powers
- Exclusive dealings
- Refusal to supply
- Resale price maintenance
- Misleading or deceptive conduct
- False and misleading representation
- Unconscionable conduct

In addition the Act has provisions covering a role for the Commission in respect of the following:

- Authorising arrangements that may have anti-competitive elements, but which are outweighed by public benefits (eg voluntary codes of conduct); and
- The promotion of competition in public utility sectors such as gas, electricity, airports and telecommunication.

In the administration of the TPA, the Commission has a dual role as:

- A provider of education and information for business and consumers in relation to compliance with the Act; and
- A national enforcement agency.

It is this latter role that gains most publicity. But it is the information and support role, especially to small business that is gaining momentum as the means of securing wider business understanding and acceptance of good Trade Practices compliance.

The Commission is involved currently in 40 cases before the courts. However, the majority of the Commission's actions do not end up in court, but result in administrative settlements or most often, court enforceable undertakings being provided by the offending party or other forms of mediated settlement.

I will now outline some of the specific provisions of the TPA and how the Commission's action in these areas can benefit primary producers and rural consumers.

Price Fixing and Market Sharing

The TPA prohibits agreements between competitors to fix, maintain or control prices (s.45A). Such an agreement does not have to be in writing. It could be just a "nod and a wink" understanding that could take place anywhere - in the pub, at an association meeting or a social occasion. The important point is not how the agreement was made or even how effective it is but that competitors are determining their prices collectively and not individually.

The practice of market sharing - that is, competitors agreeing to divide the market so they do not compete against each other in certain geographic areas, or for certain customers - is illegal if the arrangement is likely to substantially lessen competition (s.45).

In one court case brought by the Commission in 1995, two of Australia's largest processors of chicken meat each consented to a then maximum penalty of $250,000 for making price-fixing agreements and market-sharing agreements in the wholesale chicken meat market in South Australia. Senior managerial staff of both companies had organised a series of meetings, attended by nearly all SA chicken processors, at which it was agreed that each processor would retain existing retail customers and there would be no more discounting to "poach" other processors' retail customers. Such conduct would now be liable for a maximum penalty of $10 million per offence.

Rural producers regularly purchase a variety of goods and services for use in their business. Keeping the cost of these inputs down is obviously vital to the success of their business, so it is important that anti-competitive practices amongst suppliers do not prevent producers from negotiating the best deal in terms of quality, price and service. This is where the TPA can act as a positive force to assist producers.

An example of the kind of situation that could arise with suppliers was the attempt, in 1991, of a group of aerial spreaders to fix the prices charged for spreading superphosphate. The Commission investigated the matter following complaints by a group of farmers on the Northern NSW Tablelands. The conduct ceased and undertakings were given by the air spreaders not to be involved in any price fixing agreement in contravention of the TPA. The Commission has also taken action against anti competitive conduct in the concrete and freight industries, which are also closely connected to the rural industry.

Primary produce is an input for many goods. Anti-competitive conduct by the manufacturers, distributors or retailers of these products can lead to an increase in the price of these goods and therefore a fall in demand for not only those goods, but also the inputs to those goods, such as primary produce. Accordingly, primary producers benefit from Commission action to ensure that all markets are competitive.

For example, in 1997 the Commission took court action against George Weston Foods for price fixing and resale price maintenance of bread. The Federal Court imposed a penalty of $1.25 million on George Weston Foods Limited, trading as Tip Top Bakeries, for this conduct. George Weston admitted that it had stopped supplying retailers who were discounting bread, and that it had attempted to stop others from discounting. Further, it had reached an agreement with Safeway to increase the retail price of bread sold at one store.

Boycotts

A supply agreement may not always stem from an agreement between the suppliers themselves. It could be due to members of a trade union taking action to hinder or prevent a supplier dealing with a customer. This is known as a secondary boycott and is prohibited if it leads to a substantial lessening of competition or causes substantial damage to the business of the customer (s.45D). Section 45E prohibits contracts, arrangements or understandings which have the purpose of preventing or hindering the supply or acquisition of goods or services (primary boycotts).

A simple example of a secondary boycott is when an outside party enters a dispute between an employer and employees e.g. truck drivers refuse to allow their employer to deliver goods to an employer locked in dispute with its own employees.

Sections 45D and E generally prohibit secondary boycotts, unless the action is taken by employees in relation to a dispute with their own employer about their pay or conditions. Consumer and environment boycotts are exempt. Peaceful, non-obstructive picketing is not generally an offence.

In the 1990s the Commission took court action in regard to a number of secondary boycotts – two against the Transport Workers Union (both involving transport companies in Queensland), one against the Construction Forestry Mining and Energy Union (involving a transportable buildings supplier in Western Australia) one against the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union (involving a fire protection contractor in Queensland) and two against the Maritime Union of Australia. More recently the Commission has received court enforceable undertakings from the Builders Labourers Federation not to engage in this conduct.

Boycotts and secondary boycotts can be damaging to small business and exporters. Accordingly, the Commission's objective in taking action against boycotts and secondary boycotts is to get the conduct stopped and to seek compensation for damage suffered by small business and exporters.

The Commission was able to reach a mutually agreeable resolution with MUA that achieved those objectives.

The Commission alleged that the MUA had organised boycotts against ships being unloaded and loaded with non-MUA labour, and that this had breached the boycott and secondary boycott provision of the TPA. The outcome reached between the ACCC and the MUA provided for the following:

- A damages fund of $7.5 million, funded by Patrick Stevedoring Holdings Pty Ltd, for small businesses damaged by the boycotts during the dispute; and
- A formal undertaking to the Federal Court, provided by the MUA not to repeat for two years the boycotts alleged to be in unlawful by the Commission.

More recently, in May this year, the Commission secured an undertaking by the Builders Labourers Federation and a union organiser to the ACCC in relation to secondary boycott against a mobile crane hire firm as a result of threats to various

building contractors and sub contractors. The result not only assisted small business in the mobile crane industry in Queensland and those business wishing to use their services but it also demonstrates the ACCC's far reaching presence in regional Australia.

Country of Origin Labelling

The TPA prohibits manufacturers from making false representations about the origin of goods. When manufacturers claim that a good is 'product of Australia' or 'Australian made' the goods must be exactly that. A new division of the TPA, Division 1AA, sets out the tests which must be met to ensure that claims made in respect of country of origin are not misleading.

Australian business benefit when international competitors are forced to compete on their merits, rather than making use of misleading claims to gain market share.

Recently a leading manufacturer and importer of electrical components HPM Industries has provided enforceable undertakings to the ACCC after misleading claims concerning the country of origan of fluorescent light starters. HPM have undertaken to cease distribution of the misleading packaging, provide corrective advertising and refunds and review business processors to ensure that such errors are detected.

Codes of Conduct

The Commission is also involved in the development of voluntary industry codes of conduct. In the past there have been some industries, such as the cinema industry, about which the Commission has received a lot of complaints. One solution to is for the Commission to work with that industry and resolve the issues through a voluntary code of conduct rather than enforcement action or seeking a more regulatory resolution through Parliament.

In March 1997 the ACCC commissioned an independent report in response to a large number of complaints from small independent film exhibitors. The independent exhibitors alleged misuse of market power and anti-competitive agreements by major exhibitors and distributors. The report recommended the establishment of a code of conduct and a dispute resolution mechanism.

After discussions with the ACCC, the industry agreed to the development of a code of conduct. The 'Film Distribution and Exhibition Code of Conduct' has been operating for over two years. The Code aims to provide a framework for fair dealing in supply arrangements and to minimise the cost and number of disputes.

In December 1999 the Commission completed a review of the operation of the first 12 months of the Code. The purpose of the review was to determine whether the Code operates effectively and meets its objectives.

The review found that rural cinemas have been the first beneficiaries of the Code. Until recently, small country cinemas had had to wait many months after the first release of a film before they gained access to a print. As a result of the Code, some

distributors are willing to try new arrangements that benefit both exhibitors in small country towns and distributors. For example, one distributor, UIP introduced an innovative arrangement where small country cinemas form a circuit to rotate a first release film over each of their cinemas. These sites receive films from UIP much earlier than would otherwise be the case.

However, while the Commission was pleased with this outcome, there are still some areas of concern which the Commission is continuing to look into.

Many of you here today run small businesses, and as such I thought it would be appropriate for me to discuss the Commission's small business program.

The Commission over the past 2 years has upgraded the level and style of its dealing with small businesses to inform them in relation to the *Trade Practices Act*. The ACCC program of outreach to small business resulted from the Government's decision in 1998 to strengthen the Act and provide resources to assist dealing with unconscionable behaviour by larger business dealing with small business.

The activities of the Small Business Unit in the ACCC and the appointment of a Commissioner responsible for small business, have also focussed on demonstrating to small businesses how to avoid or handle *TPA* related problems well before they require litigation.

The Small Business Unit has developed a considerable network of contacts for getting messages out to small business. The messages emphasise how understanding and compliance in relation to *TPA* matters reflects good management practice and hence assists business success and profitability. It is a pro business message and one that has good effect.

The reality is however is that the new unconscionable conduct provisions under s.51ac of the TPA have had to be tested and the Commission has already taken three court cases alleging unconscionable conduct.

I am pleased to report that on 15 June the Federal Court of Australia granted a declaration against the landlord of Adelaide International Food Plaza finding that it had engaged in unconscionable conduct toward one of its tenants. This was the first such declaration under the new provision s.51ac which deals with unconscionable conduct in commercial transactions.

However many other breaches of the Act involving small business do not result in court proceedings and the ACCC has in various instances obtained undertakings and or compensation to the parties suffering detriment

While it is early days there is a clear indication that the unconscionable conduct provisions and the related provision underpinning the new Franchising Code of Conduct are being taken seriously by substantive larger businesses.

It is notable also that over the past three quarters complaints to the ACCC in relation to unconscionable conduct and franchising problems have shown signs of dropping

off. However the trend is not yet clear and we will be monitoring it closely throughout 2000-2001

GST implementation is the biggest challenge facing all businesses in Australia.

Pre and post1 July 2000, business and public attention has been focused heavily on tax related price changes.

For the ACCC the task set by the Government has been to ensure that, in general, prices rise by no more than necessary and that tax and cost reductions are also passed through.

All indications are that the pricing transition to the New Tax System has been relatively smooth. The ACCC is well advanced in investigating the complaints it has received since July 1.

While it is too early to predict the final outcome, initial results suggest that most business have been responsible in setting new prices. The fact that the ACCC's price line has not been bombarded with millions of calls is another indication that most businesses have acted responsibly.

Overall since 1 July there have been over 80,000 calls to the ACCC Price Line, of which around 45% were complaints.

Just over 3,500 letters have been sent out to businesses in relation to pricing concerns but almost two thirds of these have alerted the business but required no specific response. The main areas of complaint have been retail, petrol, cafes, restaurants, takeaways, accommodation, telecommunications and transport.

The Commission will shortly have available results of the first major post 1 July survey of prices.

Restructuring and Deregulation

Mergers and acquisitions

Section 50 of the TPA prohibits mergers and acquisitions that would have the effect of substantially lessening competition in a substantial market in a State or Territory.

In the Commission's experience, most mergers do not raise competition concerns and therefore do not raise problems under the TPA. For example, from 1 July 1999 to 30 June 2000, the Commission considered 234 proposals for mergers and joint ventures, of which it objected to nine on the basis that these were likely to lead to a substantial lessening of competition. In five of these nine matters, the Commission accepted Court-enforceable undertakings pursuant to section 87B of the TPA, following which the proposals proceeded.

It is well recognised that mergers can yield significant benefits. These might take the form of internal efficiencies such as economies of scale and scope, or transaction cost savings through vertical integration. In a number of cases Australian industries may

strive to reach a sufficient scale of operations, or "critical mass", in order to compete effectively in international markets.

However, mergers can, at the same time, threaten to reduce domestic competition. When firms merge with the aim, for instance, of enhancing exports, there is the prospect that domestic prices may rise until they reach import parity. A merged entity may use its market power to increase domestic prices and so subsidise its export price. Ultimately, Australian consumers and industry may be forced to pay a higher price in order to underpin the merged entity's export sales. The concern that the merged entity may have greater scope to set prices above competitive levels is the rationale behind Commission investigations into such matters.

Authorisation should be considered where a merger or acquisition is likely to conflict with s.50, yet the proposal appears to have redeeming features, such as producing efficiencies that assist an Australian industry to compete in overseas markets. I will talk about this further later on.

Exposure of firms in the traded sector of the economy to the disciplines of international competition has reduced Commission concerns with mergers in that sector. The Commission's focus has therefore switched to mergers in the non-traded sector. Regulation of mergers in the non-traded sector, particularly in service and infrastructure industries, is critically important to ensure firms in the traded sector have competitive input markets so as to be better placed to compete internationally. The costs associated with infrastructure based services, for example water, power and freight, constitute between 15 and 25% of the total costs of business within the agri-food industry. By prioritising the promotion of competition in infrastructure industries the Commission can ensure, as far as possible, that input costs to exporters are minimised.

Joint Ventures

In some industries, the necessary economies of scale to enhance international competitiveness can be gained by combining certain functional areas of activity. Arrangements like joint ventures may prove more appropriate than mergers in these sorts of cases. Joint ventures, like any arrangement between competitors, can have anti-competitive consequences. That is, while a joint venture may aim to facilitate exports, it may establish a platform for the joint venture parties to engage in conduct that may substantially lessen competition in a domestic market.

Joint Ventures are prohibited under the TPA if they substantially lessen competition (under either s.50 or s.45 depending upon the exact structure of the venture). In both circumstances, the parties to a joint venture may apply to the Commission for authorisation on public benefit grounds. In examining joint ventures the Commission will take account of international competitiveness issues just as it does with mergers.

Mergers and Joint Ventures in the Rural Sector

Many former Statutory Marketing Authorities ('SMAs') and former government owned monopolies in the grain industry are in the process of, or have been, deregulated and privatised. An important concern from the Commission's perspective

is that statutory monopolies do not simply become private sector monopolies. Accordingly, the Commission will look closely at proposed re-aggregation of assets via subsequent mergers or joint ventures.

This is particularly relevant to the grains industry. Press reports over the last few years have speculated on a number of joint ventures and/or mergers amongst the existing former statutory marketing authorities. The most extreme of those reports suggested that the end result will see the 9 bodies rationalised into 3, although I stress that that was highly speculative and it is yet be seen to what extent rationalisation will be allowed under the TPA.

Proposed AWB/GrainCorp Joint Venture

In 1994/95 the Commission considered a proposed joint venture arrangement between AWB and GrainCorp. In that matter staff considered the relevant markets were the markets for trading or marketing grains produced in NSW and the market for storage and handling of grains in NSW.

The joint venture raised concerns relating to the potential for a trader which would be structurally linked to the bulk storage and handling facility to restrict access to the facility, increase prices, and obtain competitors' commercially sensitive information to use to its advantage. It was therefore considered that the joint venture was likely to result in a substantial lessening of competition in the market for grain trading.

Under these circumstances, the Commission decided to oppose the joint venture. The parties subsequently offered undertakings, which the Commission decided not to accept. The Commission took the view that it could not envisage any form of behavioural undertakings that would have addressed the structural problems the joint venture would have put in place.

Proposed Merger Between Vicgrain and Graincorp

Towards the end of 1999, the Commission considered the proposed merger between Vicgrain Ltd, the Victorian grain storage and bulk handling provider, and GrainCorp Ltd, the NSW grain storage and bulk handling provider, in the market for grain storage and bulk handling in NSW and Victoria. Vicgrain and GrainCorp were already involved in a joint venture grain marketing arrangement and GrainCorp held a 25% interest in Vicgrain.

The Commission considered two potential competition issues that may arise from the proposed merger. First, whether the proposal may remove a competitor or potential competitor from the bulk handling and storage market in NSW or Victoria. Second, what effect, if any, the proposed merger may have on the ability of grain traders/end users to compete with the grain marketing arm of Vicgrain/GrainCorp.

In its consideration of this matter, the Commission conducted extensive market inquiries with users of grain storage and bulk handling facilities in NSW and Victoria. These discussions indicated that there was limited competition between Vicgrain and GrainCorp. Neither party had a strong presence in the market of the other, and neither party appeared likely to enter the market of the other independently, as it was not

considered feasible to duplicate the storage facilities that are already in place in each state.

Therefore, the Commission concluded that there was not sufficient evidence to suggest that the proposed merger would, or would be likely to, have the effect of substantially lessening competition in a substantial market.

Authorisation

Authorisation under the TPA is a concept that is important to many rural and resource industries. The TPA recognises that competition is not always the best method for encouraging efficient markets and to promote the welfare of all Australians. There may be distinct and substantial public benefits from not prohibiting anti-competitive conduct and allowing agreements between competitors to proceed. In response to this argument, the TPA has an "authorisation" provision, a section that gives the Commission a role in judging whether the public benefit from a proposed arrangement or from other prohibited conduct outweighs the anti-competitive effect from that conduct. If the Commission determines that this is the case, then it provides authorisation for the conduct - the conduct is then immune from any action under the TPA.

The public benefit of the conduct for which authorisation is sought is assessed within the context of the market. The TPA requires the Commission to have regard to all the circumstances that relate to the public benefit. Public benefit is not defined by the TPA, but left to the discretion of the Commission. Some outcomes that have been recognised as public benefits in the past include:

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- fostering business efficiency;
- industry rationalisation;
- expansion of employment;
- promotion of industry cost savings;
- promotion of competition in industry;
- promotion of equitable dealings in the market;
- development of import replacements;
- growth in export markets; and
- arrangements which facilitate the smooth transition to deregulation.

The last two public benefits mentioned are the most relevant to the rural sector at the moment. Accordingly, I will outline some case studies demonstrating how the authorisation provisions have assisted the rural sector.

Growth in export Markets

Under the TPA, the Commission is required to consider a significant increase in the real value of exports as a public benefit.

Australian Wool Exchange Ltd

The Commission granted authorisation to the Australian Wool Exchange Ltd for its articles of association and code of conduct and business rules. The application for authorisation was made following the withdrawal of the Commonwealth Government from its involvement in the administration and marketing of wool. The major industry group established AWEX to fill the void left by the government's withdrawal.

The Commission was concerned that AWEX would have such a large share of the market that it may stifle innovation and competition and that many participants in the industry would feel that they must join AWEX if they were not to be disadvantaged in relation to their competitors. However, the Commission recognised that the wool industry needed a period of stability to adapt to the dramatic changes it had recently undergone while AWEX reviewed its selling regulations and business rules to reflect the move to a deregulated market.

The Commission also accepted that there were public benefits in AWEX maintaining quality control in the industry, considered a key factor in the wool industry's international competitiveness, and in maintaining the existing wool selling rules to provide for efficient functioning of the market during the transition phase. It granted authorisation for a period of three years, subject to a number of conditions. The substantial contribution which the wool industry makes to the Australian economy from its export arrangements was an important consideration in the decision.

Arrangements facilitating a smooth transition to deregulation

Arrangements facilitating a smooth transition to deregulation has been used quite considerably in the context of deregulation of many rural industries. The removal of statutory protection measures and statutory marketing authorities has meant that many primary producers have suddenly gone from concentrating on producing grains, eggs and dairy products to becoming marketeers overnight.

The Commission has dealt with a number of rural industries that have sought authorisation for various marketing schemes following the withdrawal of government support for those industries. In assessing these applications, the Commission accepted that in most cases there would be a public benefit in mechanisms that facilitate the transition from a regulated scheme to a deregulated regime. This position helped to avoid a dislocation in the functioning of a market that would be caused by too sharp a move from regulation to deregulation.

Winegrape Growers' Council of Australia Inc.

Thus, authorisation was granted to the winegrape industry to enable various groups in the industry to hold meetings to reach an indicative price for winegrapes. This contrasted with previous arrangements where prices had been fixed. The new arrangements were found to improve information and to assist growers to adjust to an environment in which they had to negotiate their own prices.

Australian Tobacco Leaf Corporation Ltd

Contrasting with this, the Commission refused authorisation to tobacco growers for a voluntary marketing scheme to replace the Tobacco Industry Stabilisation Plan which

the Government had decided to phase out. The proposed new plan was virtually identical to the previous arrangements for setting prices, grades and production quotas, the only difference being that it would be voluntary.

The applicants claimed that it would give the industry and tobacco growers time to adjust to operating without protection from the world market. However, the Commission considered that a scheme which simply replicated the previous statutory arrangements lacked any real commitment to deregulation and would not help the industry make the adjustment that the government clearly intended. In the Commission's view, the scheme would simply prolong adjustment to a deregulated market by insulating inefficient growers from competition. At the same time, the restrictions on competition and associated inefficiencies would continue to impose costs on the broader community.

South Australia Chicken Growers' contracts

During 1997 authorisation was granted to Inghams in South Australia covering joint negotiation of standard five year agreements between Inghams and its contract chicken growers. The agreements provided for a benchmark growing fee to be negotiated each six months between the processor and grower representatives, with actual fees being paid on the basis of the relative efficiency of each grower.

The Commission recognised that the new arrangements had a number of anti-competitive features, particularly with regard to prices and market entry. However, their effect was limited by the contract provisions encouraging individual grower efficiency, and by the market pressures exerted by competing processors and chicken retailers. The Commission considered it would be unreasonable to expect growers to move from a totally regulated system, in which grower contracts for the whole industry were negotiated by a statutory committee, to one where each grower had to negotiate individually with the processing company, given the significant imbalance between growers and the vertically integrated processor in bargaining power and access to information about growing costs and performance. Authorisation was granted for five years, the Commission regarding the arrangements as temporary whilst the industry progressed to a less regulated structure. The Commission has also recently issued a draft determination proposing to grant authorisation to a similar arrangement involving the other large chicken processor in South Australia, Steggles.

The Victorian Egg Industry Co-operative

The Commission also recently authorised the Victorian Egg Industry Cooperative (VEIC) Agreement. The Agreement covers the franchising of brand names and other intellectual property owned by the VEIC, provides for producers to have exclusive rights to supply certain stores, and sets out guidelines for quality, standards, delivery and supply.

Because the Victorian egg industry had been highly regulated since 1937, egg producers had no marketing skills and no lines of access to the market independent of the former Egg Board. In these circumstances, the Commission considered that the costs of adjustment might cause efficient producers to leave the industry. The Commission saw the Agreement as providing a marketing framework that left the

ultimate marketing decisions to the producer, as opposed to the former regulated system in which all decisions were made by the Egg Board. The Commission granted authorisation to the Agreement for two years while the industry passed through its transition phase.

Provided industry has demonstrated a clear commitment to deregulation, the Commission has accepted there is public benefit in an industry marketing scheme that enables producers to adapt to the conditions of a competitive market.

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Emerging Areas for the Commission

Public Utilities

Governments are now undertaking extensive reforms to introduce competition into the areas of the markets served by public utilities such as electricity, gas, telecommunications, water supply, ports, airports, health and postal services. While I wont outline the specifics of the reforms that have been introduced in these areas, I would like to point out that some of the benefits of the introduction of competition in these areas.

Reforms in the public utilities sector will directly benefit (amongst others) businesses as the costs of significant business inputs fall, this is especially so for items designed for the export market.

For example, in the telecommunications sector there has been significant price discounting since the introduction of competition.

Distance based national long distance call pricing has almost disappeared, with firms offering long distance calls capped at $2 and $3. This promotion is of particular benefit to rural and remote customers who make a high proportion of long distance calls.

Prices for local calls are also falling. Telstra's call prices are capped at 22c. As a result of Telstra's influence in the market, competitors must equal or charge below this price. Most competitors now offer local calls to pre-selected customers at 15-17.5 cents. Telstra also offers a neighbourhood call service at 15 cents per call, for calls within the same local exchange area. This is in spite of the fact that costs vary considerably on a regional basis. The neighbourhood call option is particularly advantageous for rural customers where the local exchange covers a larger area than in CBD and metropolitan areas

Genetically Modified Food

Government policy, the economy and technology are all constantly evolving. The Commission must keep up to date with industry developments and technological

breakthroughs and apply the TPA as effectively in these areas as in the more traditional industries.

One such evolving area that might be of interest to you is the genetic modification of food. Genetic modification raises a wide range of issues. What I want to mention briefly is the labelling of genetically modified food. The prohibition on the making of false and misleading statements applies equally to genetically modified food as to other areas, and the labelling of non-genetically and genetically modified food will be area that the Commission is likely to be involved in the future. For example, just as with Australian made goods, it may be that there is some premium attached to non-genetically modified foods. In that case, business must ensure that when they claim to be selling food free from genetic modification, that the food is just that before they can make such a claim.

The correct labelling of foods offers consumers assurance about what they are buying. As with country of origin labelling, it also forces business to compete on their merits and offers protection to those businesses offering the premium foods.

Other Emerging Areas

In addition technological and increased globalisation have meant that the Commission is now becoming active in emerging areas such as

- e-commerce and the challenges it presents under various parts of the TPA
- detecting and responding to illegal behaviour by international cartels
- cooperation arrangements with counterpart competition and fair trading bodies in other countries.

Conclusion

Sound businesses thrive on strong and vigorous competition and fair and informed markets. That is the ACCC's goal.

The ACCC seeks to promote a culture of compliance with the TPA in Australian business. However, the ACCC is always ready, willing and able to take action against those businesses who do not comply with the TPA.

Finally, I would like to emphasis that while business do have a number of obligations under the TPA, the TPA can also assist business to be successful and profitable by fostering a competitive and fair market for business to operate in.