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Australian Competition and Consumer Commission

Via email: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Sir/Madam

### **Collective bargaining class exemption – submission**

Australian Pork Limited (APL) welcomes the opportunity to make a submission to the Australian Competition and Consumer Commission (ACCC) on the collective bargaining class exemption discussion paper.

APL is the peak national representative body for Australian pork producers. It is a producer-owned company combining marketing, export development, research and innovation and strategic policy development to assist in securing a profitable and sustainable future for the Australian pork industry. The Australian pork industry employs more than 36,000 people in Australia and contributes \$5.2 billion in gross domestic product to the Australian economy.

APL supports a class exemption that would allow pork producers to collectively bargain in their negotiations with processors and feed suppliers. Our preferred options for implementing a potential class exemption are discussed below.

#### **1. Competition in the Australian pork industry**

The Australian pork industry consists of roughly 410 commercial piggeries with a combined total of 260,000 sows (breeding females). In addition, there are approximately 2,500 producers that collectively own 14,000 sows that are deemed as small holders or pig keepers. A profitability crunch which started approximately eighteen months ago has been exacerbated by drought and high feed prices. This is having the greatest impact on smaller pork producers, many of whom are having difficulty finding markets for their product and are facing prices below their cost of production.

The nature of the Australian pork industry is such that market power of producers varies greatly across the industry depending on the size and scale of production and the level of vertical integration implemented. Smaller producers are much more vulnerable to price fluctuations in the pork market often trading through saleyards (spot market) or at the discretion of prices offered by processors. Smaller producers also have a reduced ability to secure contracts and bulk discounts from feed suppliers.

Smaller producers are also more likely to be the first producers “turned away” by abattoirs during oversupply due to the lack of a supply contract. During the current situation, this has occurred even where the supply relationship has been long standing, albeit without a contract.

#### **2. How would a “class exemption” improve competition**

For markets to work efficiently and fairly, APL understands how important it is to strive for competition that is evenly distributed both horizontally, between competing producers, and vertically, across the supply chain. This is particularly true in agricultural industries like the pork industry where processors, retailers, and input suppliers often have substantially greater leverage in comparison to smaller producers. Within the pork industry, larger pork

producers are capable of vertical integration and other efficiencies that give them greater bargaining power, but these factors are often not accessible to small producers.

Collective bargaining, via producer cooperatives and other kinds of networks, is one way that smaller producers can work together to increase their bargaining power against larger processors and feed suppliers. Cooperation also has other benefits for producers enabling the sharing of market and production information as well as the cost of accessing inputs, expert advice (e.g. vets and nutritionists) and other resources amongst the group. This would potentially assist smaller pork producers to gain strength in numbers, reduce their cost of production and bring their bargaining power closer to that of the larger producers, processors and feed suppliers.

The current application process required to access an ACCC exemption for collective bargaining is time consuming, costly and legally challenging. The law around collective bargaining is complicated enough to pose a disincentive to many producers who may not realise that exemptions exist or may not wish to be seen as anti-competitive. Adding to these barriers are the application fees, the cost of legal or other advice and the time it takes for the application to be processed, which can mean the exemption, if granted arrives too late to be of assistance.

A class exemption would reduce these barriers and enable pork producers to access the exemption in a timelier and more cost-effective way. For example, a class exemption would mean that a producer could start a conversation with their neighbours about a collective bargaining arrangement and begin negotiations with processors and suppliers much sooner than if they had to face the uncertainty and time constraints of the current application process.

### **3. Implementing a “class exemption” for the pork industry**

APL notes that access to a class exemption for collective bargaining has potential to increase competitiveness and fairness across the pork supply chain, without resulting in market distortions and increased costs to the consumer. Considering this, APL’s preferred option for implementing a “class exemption” is that the “class exemption” should be made available to pork producers.

APL recommends that it is unnecessary and unfair to attempt to set parameters that will limit participation of producers and reduce potential benefits of the “class exemption” to participating producers, considering so many variables exist in the pork supply chain. These include supply and demand factors in both the pork and feed markets, competition in the local market, and the nature of individual supply relationships and negotiations. These variables will make it impossible to set a limit on access to a potential “class exemption” that is appropriate and fair.

Moreover, market, social and geographical barriers exist in pork supply chains that will naturally limit the size and bargaining power of collective groups that can effectively form. These include:

- the number of producers in a locality and the geographical proximity of those producers to each other, to feed mills and processors in the area
- the willingness and ability of those producers to cooperate and negotiate palatable terms of cooperation
- the size and number of processing facilities and feed suppliers in a locality, and the competitive environment in which they operate
- the willingness and ability of those processors and feed suppliers to negotiate with each group of producers.

Considering these barriers exist naturally, APL recommends opening access to a “class exemption” for collective bargaining to all pork producers.

**In Summary**

- APL supports a “class exemption” that would enable interested pork producers to increase their competitiveness through collective bargaining arrangements.
- APL notes a “class exemption” would reduce the barriers that currently prevent producers from accessing an exemption to collective bargaining through existing application processes.
- APL recommends a “class exemption” for collective bargaining should be made available to all pork producers, noting enough natural barriers exist in pork supply chains to limit the size and bargaining power of the collective bargaining groups that could form.

APL would appreciate the opportunity to be involved in further consultation on this issue and would be happy to discuss any of the comments provided in this submission. If the ACCC requires further information or has any questions, please contact \_\_\_\_\_, Policy Analyst on \_\_\_\_\_ or \_\_\_\_\_.

Yours sincerely



Deb Kerr  
General Manager, Policy