

29 September 2016

Manager  
Competition Unit  
Market and Competition Policy Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600



Australian Dairy Farmers Limited  
Level 2, Swann House  
22 William Street  
Melbourne Victoria 3000

Phone +61 3 8621 4200  
Fax +61 3 8621 4280

[www.australiandairyfarmers.com.au](http://www.australiandairyfarmers.com.au)

ABN 76 080 549 653

To Whom It May Concern,

**Re: Competition and Consumer Amendment (Competition Policy Review) Bill 2016**

Australian Dairy Farmers (ADF) appreciates the opportunity to provide a submission to the Competition and Consumer Amendment (Competition Policy Review) Bill 2016 exposure draft.

The clear intent of the major retailers' strategy is to extract as much value as possible from the supply chain with consequent pressure on those at the start of the chain, namely farmers. They are also seeking to increase their own market share to the detriment of competitors and to increase the share of home brand products in store. In Queensland, where almost 100 per cent of production goes to fresh drinking milk, significant numbers of dairy farmers have left the industry since the supermarkets aggressive discounting tactic began.

**Effects Test**

Given this, it is important that the ACCC has the ability to examine the impact of such strategies in the longer term, with particular emphasis on the impact on consumer choice, farmer viability, the supply chain and future prices. It should also be noted that ADF is of the firm opinion that the ACCC must take a longer term view of market issues than it currently does on all issues and in all its investigations; including those related to the proposed Food and Grocery Code.

It is for these reasons that ADF, and other dairy industry stakeholders, have advocated for an Effects Test for so long.

The importance of the Effects Test has been recognised and endorsed by the ACCC Chairman Rod Sims, who has stated that inclusion of such a test in the Competition and Consumer Act would assist the ACCC in its objective to maintain strong competition by curbing abuse of market power and discovering the true impact for consumers, farmers and others of strategies undertaken by those with significant market power.

ADF notes that:

- In any policy and law, a key principle is consistency. The proposed amendment provides an opportunity to make section 46 consistent with section 45 (anti-competitive arrangements) and section 47 (exclusive dealing) which apply if the purpose, effect or likely effect of the conduct is to substantially lessen competition and section 50 (mergers) which applies if the effect or likely effect of the conduct is to substantially lessen competition.
- An Effects Test is in line with competition policy around the world – the vast majority of developed nations have an Effects Test. Almost all western nations except for Australia and New Zealand.
- The proposed change to section 46 would move Australian law closer to international best practice, which prohibits unilateral conduct by a dominant firm that has a harmful effect on competition.

- As mentioned above ADF notes the support of competition experts for the proposed changes to Section 46, including the Harper Panel, the ACCC, former Chairmen of the ACCC and small businesses and suppliers across Australia.

### **Predatory Pricing**

ADF notes the proposed changes relating to Predatory Pricing, namely that:

- The current provisions expressly prohibiting predatory pricing and other forms of conduct are replaced by a general provision focusing on damage to the competitive process.

ADF has long advocated for an investigation of Coles for a potential breach of section 46, of the Competition and Consumer Act 2010 in relation to predatory pricing.

ADF has concerns that the removal of this express provision may lead to the potential for difficulty in enforcing or proving predatory pricing, leading to further activity of this nature.

ADF requests that the removal of this express provision be closely monitored and reviewed three years after the passage of the Competition and Consumer Amendment (Competition Policy Review) Bill 2016.

If it proves that an express provision is needed to provide clarity and certainty, then ADF urges it be reinstated.

### **Mergers**

ADF also notes that the amended Bill will make the decision-maker at first instance for merger authorisations the ACCC. Currently the decision-maker at first instance for merger authorisations is the Australian Competition Tribunal (ACT).

The ACCC's determination on a merger authorisation can be reviewed by the ACT on appeal. Currently the ACT's determination on a merger authorisation cannot be appealed.

ADF hopes these changes will streamline the approval process and, similar to the proposed predatory pricing change, urge that it be reviewed in three years.

ADF would like to take this opportunity to thank the Federal Government for taking strong action on the Effects Test. Ultimately, the Effects Test will benefit consumers, small businesses, the competitive process and the economy as a whole.

A previous submission to the Harper Review is attached to provide further detail and background. If you wish to discuss this submission or require further information on this matter, please do not hesitate to contact ADF Senior Policy Manager, David Losberg, on (03) 8621 4200.

Yours sincerely,



**David Basham**  
Acting President