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Australian Government

Australian Government response to the
Senate Select Committee on Agricultural and Related
Industries report:

Pricing and supply arrangements in the Australian and
global fertiliser market

June 2013

Inquiry into the pricing and supply arrangements in the Australian and global fertiliser market

Report of the Senate Select Committee on Agricultural and Related Industries

Government Response

The Australian Government welcomes the Senate Select Committee on Agricultural and Related Industries report into pricing and supply arrangements in the fertiliser market.

The fertiliser industry is an important contributor to the Australian economy, underpinning much of our agricultural production. Fertiliser is a critical agricultural input. According to farm surveys data collected by the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES), in 2011-12 fertilisers represented 11 per cent of total cash costs for broadacre farms.

The Australian Government notes that its role in fertiliser regulation is facilitative, with responsibility for regulation lying with the state and territory governments. The Australian Government will continue to work with the fertiliser industry and state and territory governments to ensure standards, specifications and labelling requirements for chemical fertilisers are consistent across Australia and support the safe and effective use of fertilisers in agriculture.

The Australian Government also publishes information on fertilisers, including pricing, through the ABARES website. The ABARES annual Australian Commodity Statistics publication provides quarterly and annual international fertiliser price data and annual average prices paid by Australian farmers for a number of fertiliser types, as well as quarterly and annual fertiliser import volumes and values by state and generic fertiliser type.

The Australian Government additionally promotes competition, fair trading practices, consumer protection and transparency in the market place, in particular through the provisions of the *Competition and Consumer Act 2010* (CCA) (formerly the *Trade Practices Act 1974*).

The Australian Government thanks the committee and the stakeholders who contributed to this report.

Recommendation 1

The committee recommends that the states and territories should consider, as a matter of priority, adopting uniform description and labelling of fertiliser products to ensure consistency between jurisdictions.

Noted

The Australian Government notes that this recommendation is primarily for the consideration of state and territory governments as the jurisdictions responsible for regulation.

The Australian Government supports a nationally consistent approach to fertiliser regulation. The Australian Government has engaged with state and territory governments and the fertiliser industry on fertiliser issues through the Primary Industries Standing Committee (PISC).

In 2002 the PISC established a Fertiliser Working Group (FWG) which developed a policy framework to progress a nationally consistent approach to fertiliser regulation. The framework included the setting of a national standard for contaminants and the requirement that all fertiliser product labels contain accurate and nationally consistent information about the product and its use.

As part of its involvement in the FWG, the Fertiliser Industry Federation of Australia (FIFA) developed a Code of Practice for Fertiliser Description and Labelling designed to harmonise these elements of fertiliser regulation across state jurisdictions. The code was circulated to all states and territories for comment and, following a number of revisions, was accepted by the FWG in March 2011.

The code has yet to be considered by the PISC as progression of the COAG Agvet reform work has taken priority. The Australian Government understands that PISC consideration of the code is expected soon. Formal adoption by all states and territories is expected to follow PISC acceptance of the code.

Recommendation 2

The committee recommends that all state and territory agriculture departments should consider undertaking regular sample testing for specified ingredient levels, such as nitrogen/phosphorus/potassium (NPK) levels, in fertiliser products.

Noted

The Australian Government notes that this recommendation is for the consideration of state and territory governments, with monitoring of specified ingredients being the responsibility of the states and territories.

Consultation by the Australian Government with state and territory agricultural departments has indicated that the issue of specified ingredient levels is already addressed under the respective fair trading legislation of each state and territory. The state and territory department representatives also noted that the committee reported

only a small number of instances where ingredient levels did not match the levels specified in the labels. The state and territory department representatives therefore suggested that these isolated incidents did not reflect a widespread problem nor warrant the imposition of regular testing.

From the Australian Government perspective, consumers are protected from misleading or deceptive conduct and false or misleading representations under sections 18 and 29 of the Australian Consumer Law (ACL). The ACL is located in Schedule 2 of the CCA. The ACL is based on the consumer protection provisions of the former *Trade Practices Act 1974* and draws on provisions in State and Territory fair trading laws. The ACL applies in all States and Territories and is administered jointly by the Australian Competition and Consumer Commission (ACCC) and the State and Territory fair trading agencies.

Section 18 of the ACL prohibits a supplier from engaging in misleading or deceptive conduct or conduct that is likely to mislead or deceive. Section 29 of the ACL provides that a supplier must not falsely represent that goods are of a particular standard, quality, value, grade, composition, style or model or have had a particular history or particular previous use. The ACCC, consumers and competitors can bring legal action for breaches of the ACL.

Additionally, the ACL contains a statutory guarantee that goods supplied to consumers by description must correspond with their description. Consumers and the ACCC can bring legal action to enforce this guarantee.

Recommendation 3

The committee recommends that the Commonwealth review Part IV of the Trade Practices Act 1974 relating to restrictive trade practices with a view to amending these provisions of the Act so as to more effectively regulate anticompetitive practices and prevent abuse of market power.

Noted

The Australian Government notes the Committee's recommendation.

The Government believes it is important that Australia's competition laws provide a strong, robust framework that guards against anti-competitive conduct, but otherwise leaves businesses free to act as they see fit. The Government considers it unacceptable for businesses to engage in any conduct in breach of our competition or consumer laws.

Since 2007, the Australian Government has made significant reforms to Australia's competition laws, including:

- Amendments to the prohibition on misuse of market power to strengthen the laws against predatory pricing by: clarifying that there is no need for a corporation to demonstrate that it can recoup its losses from predatory pricing; and, amending the definition of 'take advantage' to ensure that it was not interpreted unduly narrowly.

- Making it a crime to engage in serious cartel conduct—individuals and companies that fix prices or reduce choice by distorting competition now face some of the toughest penalties in the world for cartel behaviour, including jail terms for individuals.
- Clarifying the mergers and acquisitions provisions in relation to ‘creeping acquisitions’.

It is only after the laws have been suitably tested in the Courts that a review of current provisions should be considered.

The Australian Competition and Consumer Commission (ACCC) has publicly stated that it is currently investigating claims regarding the potential misuse of market power and unconscionable conduct in other sectors of the economy which may provide further guidance as to the application of Australia’s *Competition and Consumer Act 2010* (CCA).¹

Recommendation 4

The committee recommends that ABARES:

- *collect and publish international input price information on fertiliser products on a regular basis on its website; and*
- *disseminate this information widely to farmers through the ABARES website, farmers’ organisations, the rural press and other appropriate avenues.*

Agree in principle

ABARES collects and publishes international and other input price information on fertiliser products on both a quarterly and annual basis. The Australian Government will ensure that this information continues to be presented in a timely and accessible fashion.

ABARES’ quarterly *Australian Commodities* publication contains an annual fertiliser index of prices paid by farmers, including a forecast for the year ahead. ABARES’ annual *Australian Commodity Statistics* publication provides quarterly and annual international fertiliser price data and annual average prices paid by Australian farmers for a number of fertiliser types, as well as quarterly and annual fertiliser import volumes and values by state and generic fertiliser type. This information is available on the ABARES website at <http://www.daff.gov.au/abares>. Subscribers to the website, including farmers and the rural press, have access to a range of data including the above fertiliser information. Subscription is free.

Recommendation 5

The committee recommends that in the interests of transparency the industry improve its business practices to ensure that fertiliser companies:

- *publish general information, including arrival of shipments, detailing the amount of fertiliser available in stock; and*

¹ Sims, R. *Current ACCC priorities* Australia Israel Chamber of Commerce, Western Australia, Business Leaders Lunch (13 September 2012).

- *provide greater certainty in the filling of orders, especially orders for fertiliser products placed earlier in the season.*

Agree in principle

The Australian Government considers the publication of general fertiliser stock information, including arrival of shipments, to be a business decision for individual organisations.

With reference to the recommendation that fertiliser companies provide greater certainty in the filling of orders, the Australian Government notes section 36 of the ACL prohibits a supplier from accepting payment for goods where there are reasonable grounds—of which the supplier is aware or ought to be aware—for believing that it will not be able to supply the goods within the period that the supplier has specified or within a reasonable time. Like the other provisions of the ACL, this prohibition applies in all States and Territories.

Recommendation 6

The committee recommends that, wherever possible, supply agreements between suppliers and customers be more structured and equitable, and, where appropriate, include standard contractual terms and conditions.

Agree in principle

The Australian Government considers the content and structure of fertiliser supply agreements to be a matter for individual companies and their clients provided the agreements do not breach the CCA.

The Australian Government currently provides general protection for consumers in their dealings with business through the ACL including through its provisions prohibiting unconscionable conduct and voiding unfair contract terms in standard-form consumer contracts. The government notes the role of the ACCC in providing guidance to consumers and businesses about fair trading. In particular, the Australian Government notes the ACCC's general guidance for consumers entering into contracts, which is available on the ACCC website (www.accc.gov.au).

The Australian Government strongly encourages businesses and consumers who believe the ACL may have been breached to contact the ACCC.