

Rural and Regional Affairs and Transport References Committee

ANSWERS TO QUESTIONS ON NOTICE

Effect of market consolidation on the red meat processing sector

Department/Agency: Australian Competition and Consumer Commission
Topic: Inquiry into the effect of market consolidation on the red meat processing sector - Cattle and Beef Market Study
Date: 10 August 2017
MP: Sterle, Glenn

Question:

The committee would like to give ACCC the opportunity to raise anything further in relation to its Market Study.

QUESTION 1: The committee is interested in ACCC's reasons for giving RMAC the responsibility for overseeing/implementing recommendations.

QUESTION 2: How does the ACCC react to the suggestion that RMAC doesn't have the capacity to deliver the change required – because it doesn't have the legal authority or organisational remit necessary to take on this role?

QUESTION 3: Would the ACCC like to comment on suggestions that it requires additional powers – both in relation to its investigatory powers and its ability to make 'binding' recommendations?

Answer:

The committee would like to give ACCC the opportunity to raise anything further in relation to its Market Study.

The ACCC initiated the market study into the cattle and beef industry following concerns about anti-competitive behaviour and market structures. These concerns included complaints and allegations about anti-competitive behaviour at saleyards, misuse of buyer power, and an unfair distribution of profits in the supply chain. As this market study was self-initiated, the ACCC did not have the power to compel information and documents from market participants.

During the course of the study we consulted with a wide range of interested parties, including industry bodies, producers, agents, commission buyers, processors, supermarkets and live exporters. We received 85 submissions, issued several information requests, held five public forums across the country and issued an interim report for further consultation.

We analysed this information carefully and released a final report which contained a diverse range of recommendations mostly for action by industry bodies, rather than Government. These recommendations are aimed at delivering reforms in the industry which would lead to an increase in transparency, efficiency and competition.

It is important to clarify that the ACCC itself is not in a position to mandate that the industry adopt particular practices. However, we strongly believe that change is necessary in the industry. Accordingly, the ACCC will monitor whether progress is made in line with our recommendations. If progress is limited, we will consider the need to strengthen our recommendations. In particular we will look closely at whether we need to advocate for legislative change, rather than industry-led change.

Answer 1:

The ACCC's Interim Report encouraged the Agricultural Ministers' meeting (AgMin) to consider the ACCC's recommendations, with a view to monitoring the implementation of these recommendations. The ACCC's consultation on the Interim Report indicated practical difficulties with the recommendation regarding AgMin. Stakeholders were concerned that AgMin meetings would be held infrequently and that AgMin typically deals with high level policy issues (for example biosecurity, live export, nationwide legislation and general adoption of technologies in agriculture), rather than issues more specific to the cattle and beef sector. Consequently, the ACCC determined that AgMin was not likely to have the capacity to adopt an oversight role for the implementation of the ACCC's recommendations.

It is important to note that the ACCC proposed that various industry bodies should take direct responsibility for implementing the ACCC's recommendations. Distinct from recommendations identified for action by other organisations, the ACCC recommended that RMAC adopt direct responsibility for implementing recommendation 8 (an industry-wide dispute resolution process), and recommendation 15 – an oversight role for the implementation of the recommendations as a whole. The ACCC saw benefit in leveraging existing industry structures to implement the ACCC's recommendations, rather than imposing additional costs by recommending the creation of a new organisation to do so. Of the various organisations, RMAC was considered the most representative body of stakeholders as it includes bodies representing processors, producers and live exporters across the red meat industry.

We are aware that RMAC meets regularly to hold discussions with a wide range of industry participants and advocates for measures and policies that are aimed at improving the performance of the red meat sector. We also note the leadership roles that RMAC has previously adopted, including managing the Red Meat Industry Strategic Plan. Accordingly, the ACCC considered that RMAC was in a unique position to oversee the implementation of the recommendations and their effectiveness.

Answer 2:

The ACCC understands that RMAC does not have legal authority to mandate that industry participants implement the ACCC's recommendations. Nevertheless, it is the appropriate body to deal with the issues given its broad membership. The ACCC identified the industry participants who we considered to be in the best position to implement or progress certain recommendations. For example we identified that both MLA and the industry participants who hold the relevant data were the appropriate bodies to be responsible for Recommendations 4 and 5 regarding price reporting. The ACCC instead recommended RMAC adopt an oversight role, with the responsibility of reporting on progress across the industry. The ACCC has also recommended that RMAC report back to agricultural ministers who will have the ability to act if legislative or regulatory change is required. In addition, the ACCC will continue to monitor the progress of the recommendations we have made.

Answer 3:

The ACCC made submissions to the Competition Policy Review ('Harper Review') concerning competition policy, laws and the ACCC's statutory functions and powers for enforcing these.

In these submissions we proposed, among other things, that the ACCC should be allocated a broad market study function to enable it to assess whether competition problems exist in sectors of the Australian economy, and to support better targeted action by the ACCC or others in response. However, the ACCC does not consider that this should or could (for constitutional reasons) include a power to impose legally enforceable remedies for problems identified in a market investigation.

The ACCC currently has some scope to conduct market studies:

- Under section 28 of the CCA, the ACCC has functions in relation to dissemination of information, law reform and research. However, the information gathering powers set out in the CCA do not apply to this section.
- The ACCC can conduct price inquiries under Part VIIA of the CCA. Currently, this is subject to the approval of a Minister. The ACCC may issue section 95ZK notices requiring the production of documents or information by a supplier of goods or services which are the subject of a Part VIIA price inquiry.

As provided in our submissions to the Competition Policy Review, the ACCC considers that Part VIIA of the CCA should be amended in various ways, including to:

- enable the ACCC to initiate a market study rather than require the approval of a Minister to hold a price inquiry; and
- allow section 95ZK notices to be issued to persons in addition to a relevant supplier of the goods or services the subject of a market study.
- increase the scope for sharing information gathered during market studies with other Australian Public Service organisations.

Please refer to the ACCC's submission to the Competition Policy Review dated 15 August 2014 for further details.

Rural and Regional Affairs and Transport References Committee

ANSWERS TO QUESTIONS ON NOTICE

Effect of market consolidation on the red meat processing sector

Department/Agency: **Australian Competition and Consumer Commission**
Topic: Inquiry into the effect of market consolidation on the red meat processing sector - Competition and Consumer Amendment (Competition Policy Review) Bill
Date: 10 August 2017
MP: Sterle, Glenn

Question:

Would the ACCC care to comment on the practical implications of the amendments proposed by the Competition and Consumer Amendment (Competition Policy Review) Bill, the consultation undertaken prior to the introduction of the bill (including the Harper Review) and the effect of the bill?

Answer:

The Competition and Consumer Amendment (Competition Policy Review) Bill gives effect to a number of the 56 recommendations of the Competition Policy Review, consistent with the Government's response to those recommendations. The ACCC made a number of submissions to the Competition Policy Review and was consulted during the development of the Bill.

The ACCC strongly supports the amendments proposed for section 46 and the introduction of the "concerted practices" prohibition to section 45.

Rural and Regional Affairs and Transport References Committee

ANSWERS TO QUESTIONS ON NOTICE

Effect of market consolidation on the red meat processing sector

Department/Agency: Australian Competition and Consumer Commission
Topic: Inquiry into the effect of market consolidation on the red meat processing sector - Dispute resolution for OTH sales
Date: 10 August 2017
MP: Sterle, Glenn

Question:

The ACCC's interim report included a recommendation that:

Processors and buyers should review, and in many cases improve, their internal processes for responding to inquiries and complaints and OTH sales.

Cattle processors should develop a uniform and independent complaints and dispute resolution process, with AUS-MEAT filling the role of an independent and binding arbitrator. [Recommendation 7]

The ACCC's recommendation was changed for the final report to read:

The Red Meat Advisory Council should develop a uniform and independent complaints and dispute resolution process.

Some processors have their own dispute resolution systems. However, an independent system would provide an additional and independent dispute resolution option to the industry.

The independent system should apply to all purchasers and sellers of cattle, including for OTH and electronic cattle sales. The Red Meat Advisory Council, AUS-MEAT and buyers should publish information about how parties can use the independent process.

[Recommendation 8]

QUESTION: Once a 'uniform and independent complaints and dispute resolution process' has been developed, does the ACCC believe it should be made mandatory, and adopted by all processors?

Answer:

The ACCC considers that an independent complaints and dispute resolution process would deliver consistency and certainty for both producers and processors.

The ACCC's view is that the independent system should apply to all purchasers and sellers of cattle, which would include all processors. The ACCC does not consider that such a system necessarily must be mandatory, as a successful voluntary dispute resolution process is possible, if all industry participants were to participate. The introduction of a mandatory dispute resolution process would involve additional regulatory burden on the industry. For this reason, the ACCC considered it prudent to encourage the industry to develop a robust and cost effective system.

Rural and Regional Affairs and Transport References Committee

ANSWERS TO QUESTIONS ON NOTICE

Effect of market consolidation on the red meat processing sector

Department/Agency: Australian Competition and Consumer Commission
Topic: Inquiry into the effect of market consolidation on the red meat processing sector - Objective Carcase Measurement
Date: 10 August 2017
MP: Sterle, Glenn

Question:

The ACCC's interim report (October 2016) recommended that:

The industry, **led by the processing sector**, should allocate a high priority to the adoption of technology to enable objective carcase grading to be introduced as soon as possible. This will, of necessity, include the development of appropriate auditing and verification systems that instil confidence in the integrity of such systems. [Recommendation 6, p. 12]

In its final report (March 2017) this recommendation had changed to read:

The introduction of objective carcase measurement technology should be prioritised by the industry and adopted by all processors in a consistent manner as soon as possible. Objective carcase measurement technology will increase accuracy and transparency of value assessments. Appropriate auditing and verification systems will be needed to support the technology. [Recommendation 6, p. 12]

QUESTION 1: In the interim report, the ACCC recommended that the processing sector should take the lead in the adoption of OCM technology. The final report doesn't indicate who should take responsibility for its implementation – what is the ACCC's view of who should be taking the lead in relation to OCM?

QUESTION 2: Does the ACCC have a view on who should be funding the installation of OCM technology?

QUESTION 3: Does the ACCC have a view on who should be responsible for calibrating and auditing the OCM machinery?

Answer 1:

The ACCC considers that industry should take the lead on implementing this technology and that ideally it should be adopted by all processors in a consistent manner. That noted, the decision to invest in the technology required is clearly a decision for individual meat processor companies. In this regard, the ACCC notes that subsequent to a commissioned review of the costs and benefits of the technology, AMIC has endorsed its adoption and progress is currently being made by MLA and AMPC with the introduction of DEXA technology across the industry.

Answer 2:

The ACCC did not consider funding sources for this technology in the course of its study, therefore we cannot offer an informed opinion on who should fund the installation.

Answer 3:

Currently the Australian Meat Industry Language and Standards Committee (AMILSC) and AUS-MEAT are responsible for developing meat language standards and ensuring that these standards are

adhered to at AUS-MEAT accredited processing facilities. These standards are currently used during non-OCM grading of carcasses at AUS-MEAT accredited facilities.

The ACCC would expect that AUS-MEAT and AMILSC will undertake similar roles in relation to OCM technology. The ACCC expects that standards for calibration will be developed in conjunction with AUS-MEAT and AMILSC. These standard calibrations would then be audited on a regular basis by AUS-MEAT, as is the case with current AUS-MEAT standards. This process, in conjunction with an independent dispute resolution system should provide sufficient oversight and avenues for appealing the OCM grading process.

Rural and Regional Affairs and Transport References Committee

ANSWERS TO QUESTIONS ON NOTICE

Effect of market consolidation on the red meat processing sector

Department/Agency: **Australian Competition and Consumer Commission**
Topic: Inquiry into the effect of market consolidation on the red meat processing sector - Price transparency
Date: 10 August 2017
MP: Sterle, Glenn

Question:

A recent article in Beef Central reported that MLA currently pays approximately \$200,000 per year for price data. The question was asked – "If the ACCC or another Government body was to require that all supermarkets pass their retail price data back to MLA for transparency purposes, it would be powerful information for industry".

QUESTION: Does the ACCC want to respond to the question of whether it would be appropriate to 'require' supermarkets to provide this information?

Answer:

The question of whether private firms should be obliged to provide their proprietary information to MLA is a matter for Government policy and one which the ACCC does not consider it is appropriate to comment on.

Rural and Regional Affairs and Transport References Committee

ANSWERS TO QUESTIONS ON NOTICE

Effect of market consolidation on the red meat processing sector

Department/Agency: Australian Competition and Consumer Commission
Topic: Inquiry into the effect of market consolidation on the red meat processing sector - RMAC and AGMIN
Date: 21 August 2017
MP: McKenzie, Bridget

Question:

- 1. In the interim report of its Cattle and Beef Market Study, the ACCC stated AGMIN should be charged with implementing recommendations arising from its findings. On what basis was this statement made**

Answer:

The ACCC was concerned that in making recommendations, there was no single body or government authority that would logically have responsibility for their implementation, and that there was a danger that any recommendations would simply be ignored. To ensure that the recommendations would be acted upon, the ACCC's Interim Report encouraged the Agricultural Ministers' meeting (AgMin) to consider the ACCC's recommendations, with a view to monitoring the implementation of these recommendations.

The ACCC considered that this would be especially important to ensure that the ACCC's recommendations, which we considered would benefit transparency, competition and efficiency in the industry, were progressed. The ACCC considered that AGMin was a relevant body, and in a position to oversee action regarding the ACCC's recommendations, given the diverse industry and public interests in the issues that the ACCC studied.

- 2. In the final report of its Cattle and Beef Market Study, the ACCC stated that RMAC should have prime responsibility for overseeing and implementing ACCC recommendations into the red meat sector.**

- (a) What was the basis for the ACCC's decision that RMAC, rather than AGMIN, should be charged with implementing the recommendations?**

Answer:

The ACCC's consultation on the Interim Report indicated practical difficulties with the recommendation regarding AgMin. Stakeholders were concerned that AgMin meetings would be held infrequently and that AgMin typically deals with high level policy issues (for example biosecurity, live export, nationwide legislation and general adoption of technologies in agriculture), rather than issues more specific to the cattle and beef sector. Consequently, the ACCC determined that AgMin was not likely to have the capacity to adopt an oversight role for the implementation of the ACCC's recommendations and this recommendation was subsequently altered such that RMAC was identified as the most appropriate organisation to oversee and monitor the industry's progress with implementing the ACCC's recommendations.

(b) What consultation took place between the ACCC and RMAC in relation to responsibility for implementing these recommendations prior to the publication of the final ACCC report?

(c) If consultation took place, please report to the Committee the frequency and nature of any discussions or meetings, including details of which party instigated the contact.

Answer:

Responsive to (b) and (c): Commissioner Mick Keogh spoke with the Chief Executive Officer of RMAC prior to the release of the ACCC's final report to discuss the ACCC's recommendation regarding its oversight role.

3. What reason did the ACCC have to believe that RMAC was the appropriate entity to implement the reforms contained in its final report?

Answer:

It is important to note that the ACCC proposed that various industry bodies should take direct responsibility for implementing the ACCC's recommendations. Distinct from recommendations identified for action by other organisations, the ACCC recommended that RMAC adopt direct responsibility for implementing recommendation 8 (an industry-wide dispute resolution process), and recommendation 15 – an oversight role for the implementation of the recommendations as a whole.

The ACCC saw benefit in leveraging existing industry structures to implement the ACCC's recommendations, rather than imposing additional costs by recommending the creation of a new organisation to do so. Of the various organisations, RMAC was considered the most representative body of stakeholders as it includes bodies representing processors, producers and live exporters across the red meat industry.

We are aware that RMAC meets regularly to hold discussions with a wide range of industry participants and advocates for measures and policies that are aimed improving the performance of the red meat sector. We also note the leadership roles that RMAC has previously adopted, including managing the Red Meat Industry Strategic Plan. Accordingly, the ACCC considered that RMAC was in a unique position to oversee the implementation of the recommendations and their effectiveness.

The ACCC understands that RMAC does not have legal authority to mandate that industry participants implement the ACCC's recommendations. Nevertheless, it is the appropriate body to deal with the issues given its broad membership. The ACCC identified the industry participants who we considered to be in the best position to implement or progress certain recommendations. For example we identified that both MLA and the industry participants who hold the relevant data were the appropriate bodies to be responsible for Recommendations 4 and 5 regarding price reporting.

The ACCC instead recommended RMAC adopt an oversight role, with the responsibility of reporting on progress across the industry. The ACCC has also recommended that RMAC report back to agricultural ministers who will have the ability to act if legislative or regulatory change is required. In addition, the ACCC will continue to monitor the progress of the recommendations we have made.

4. Did the ACCC believe its nomination of RMAC as the entity to be charged with implementing the recommendations in its final report was a binding nomination, and if so, what was the basis for such a belief?

5. What communication, if any, has occurred between the ACCC and RMAC – and at whose instigation – between the publication of the ACCC’s final report in March 2017 and its appearance before the Committee on 8 August?

Answer:

Responsive to Q.4. and 5: Subsequent to the release of the final report, the ACCC contacted RMAC throughout April, May and July of 2017 to attempt to arrange a meeting to discuss Recommendation 15 of the final report and the ACCC’s view of the role RMAC would play. A meeting with RMAC to discuss these matters took place on 25 August 2017.

Rural and Regional Affairs and Transport References Committee

ANSWERS TO QUESTIONS ON NOTICE

Effect of market consolidation on the red meat processing sector

Department/Agency: **Australian Competition and Consumer Commission**
Topic: Senate Rural and Regional Affairs and Transport References Committee Inquiry into the effect of market consolidation on the red meat processing sector - RMAC's evidence
Date: 28 August 2017
MP: McKenzie, Bridget

Question:

Please respond to each of the statements below by Don Mackay, Independent Chair of the Red Meat Advisory Council (RMAC), given in evidence to the Inquiry on 16 August 2017 following the publication of the Final Report from the ACCC's Cattle and Beef Market Study.

“(RMAC wasn't) directly consulted in terms of being the body...that oversees (ACCC recommendation #15).”

On whether the ACCC knows RMAC has a fundamental problem with recommendation #15: “The short answer is that I have not had that direct discussion with either (Mick) Keogh or any others.”

In relation to reforms – “AMIC is now working with the ACCC and is meeting with the ACCC to try to do a gap analysis on what the ACCC is recommending.”

In relation to whether the ACCC raised with RMAC whether it was the appropriate body to oversee implementation of the recommendations in the Final Report of the ACCC's Cattle and Beef Market Study: “Only at the end (the day the recommendations were announced), to the best of my knowledge.”

On whether there had been communication in relation to these recommendations between the ACCC and RMAC, either way, between the publication of the ACCC's Final Report in March 2017 and the resumption of Committee hearings in August: “There has been no contact to my knowledge.”

Answer:

The ACCC refers to its letter to the Committee Secretary dated 28 August 2017 by way of response to all of the above statements by Mr Mackay, except as provided below.

In relation to reforms – “AMIC is now working with the ACCC and is meeting with the ACCC to try to do a gap analysis on what the ACCC is recommending.”

At the time of Mr Mackay's statement to the Committee, the ACCC had not met with AMIC regarding this or commenced any such analysis. AMIC advised Gabrielle Ford (General Manager of the ACCC's Agriculture Unit) during a short phone call on 8 August that AMIC would like to discuss a gap analysis at the upcoming meeting with RMAC on 25 August 2017. During the meeting on 25 August between the ACCC and RMAC, which included a representative of AMIC, the idea of a gap analysis was briefly discussed.