**Senate Rural and Regional Affairs and Transport References Committee**

ANSWERS TO QUESTIONS ON NOTICE

Public hearing held on 19 June 2020

**Department/Agency:** Australian Competition and Consumer Commission
**Senator:** Canavan
**Topic:** Unfair Contract Terms
**Hansard page number:** 43
**Date:** 19 June 2020

## Question:

Senator CANAVAN: You're probably not going to have the answer to this now, so I'm happy for you to take it on notice. Through this audit process you've got these contracts. Could you get the committee a figure on what percentage of those agreements are below the thresholds for unfair contract terms?

Mr Keogh: We can certainly take that on notice. I think one of the issues that we may run into is that the volume is typically not specified in quite a few contracts. So that may be a complication, but we'll certainly take that on notice and look into it.

Senator CANAVAN: It does sound like there's a fair chance that a large number of dairy agreements would be above the thresholds in the existing legislation. Is that a fair comment?

Mr Keogh: I think it probably is. I would note that we have, in our submissions to the government in relation to the reform of unfair contract terms law, recommended a different approach to the threshold: that is to use the small business threshold applied by the tax office, which is $10 million annual turnover. We anticipate that would incorporate most dairy farms.

Senator CANAVAN: Thanks for that.

## Answer:

To fit within the thresholds of the business to business unfair contract (UCT) terms law, at least one party to the relevant standard form contract must employ fewer than 20 persons and the upfront price payable under the contract must not exceed $300 000 or, if the contract has a duration of more than 12 months, $1 000 000.

The ACCC's position is that for the purposes of determining whether a contract falls under the relevant threshold, any amounts that cannot be calculated with certainty at the time the contract is entered into should not be included in the calculation of the upfront price payable. Additionally, the ACCC notes that a standard form contract may be utilised for a range of suppliers, some of whom may have contract values under the UCT threshold.

Consequently, it is the ACCC's position that the upfront price payable for a milk supply contract cannot be calculated when the agreement is entered into, where there is uncertainty regarding either the volume of milk that the farmer will supply to the processor, or the price to be paid by the processor for that milk. It should be noted this position has not yet been tested in a Court.

We note the following estimates of the value of dairy production in Australia:

- according to ABARES, average farm output is around 1.5 million litres of milk per year (2017-18), and
- a forecast milk price is 47.9 cents per litre for the 2020-21 season.

On this basis, we estimate that where the volume and price are known upfront with certainty, the value of a significant number of milk supply agreements could be considered to be above the UCT threshold.

The ACCC is not presently able to state whether the specific details of each milk supply agreement published since 1 June 2020 would enable the respective upfront prices payable to individual farmers to be calculated with certainty, and whether the individual contracts would be within the UCT threshold.

However, the ACCC has previously enforced the business-to-business UCT law in the dairy industry on the basis that there were at least some standard form contracts that fell within the thresholds of the law. On that basis, it is our expectation that a number of milk supply contracts published since 1 June 2020 would similarly be subject to the current UCT law.