

## Chapter 2

### The ACCC's Cattle and Beef Market Study

2.1 As indicated in its interim report, the committee has major concerns about the culture of collusion which exists in cattle saleyards. The committee shares the concerns of stakeholders – particularly producers – in relation to a number of saleyard practices – including the behaviour of commission buyers. The committee has also placed on record its concerns in relation to competition between cattle buyers and the need for transparency in pricing and grading methods. The committee has argued consistently for these issues to be addressed.

#### Matters specific to the Victorian saleyards

2.2 This inquiry was triggered by events at the Barnawartha saleyards when, on 17 February 2015, agents agreed to a post-weigh system of selling without "consultation with producers who pay all the sale yard fees".<sup>1</sup> The committee's interim report detailed the impact of this event together with the non-attendance of up to ten commission buyers at the sale, on the price that producers received for their cattle.<sup>2</sup>

2.3 Saleyards remain the main method of sale in southern Australia and are most commonly utilised by producers who have small herds and sell in small lot sizes. In some regions, such as Victoria, many farmers are reliant on saleyards as they don't produce livestock in volumes that would provide them bargaining power with meat buyers. At the same time, it should be noted that sale by auction establishes the value of other forms of sale. Therefore, the saleyard sets the benchmark on cattle prices.

2.4 The ACCC's investigation into the events at Barnawartha revealed that certain processors strongly opposed the pre-sale weighing method at saleyards.<sup>3</sup> This was confirmed in evidence to the committee. When asked about the preference for post-sale weighing, Mr Bradley Teys of Teys Australia argued the point that post-sale weighing in combination with a curfew gave all involved the "best and most consistent results" when purchasing cattle.

2.5 However, the only evidence provided to support the claim that post-sale weighing was the better method of purchasing cattle, was that of a scientific study

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1 Ms Loretta Carroll, *Submission 63*, p. 1. See also, Victorian Farmers Federation – Ovens Valley Branch, *Submission 62*, p. 1.

2 Senate Rural and Regional Affairs and Transport References Committee, *Effect of market consolidation on the red meat processing sector, Interim report*, May 2016.

3 Australian Competition and Consumer Commission, 'Alleged Barnawartha boycott concerns investigated', *Media release*, 9 December 2015, cited in Senate Rural and Regional Affairs and Transport References Committee, *Effect of market consolidation on the red meat processing sector, Interim report*, May 2016, p. 9.

conducted by Dr Jennifer Wise in the 1980s. According to Mr Teys, the study indicated that scientifically, post-sale weighing provides for the most consistent result. He informed the committee that the paper's findings had been verified by anecdotal experience.<sup>4</sup> At the same time, numerous other bodies including the Victorian Farmers Federation (VFF) have made clear their view that pre-sale weighing provides maximum information to all buyers and is a far more transparent method of selling.<sup>5</sup>

2.6 As a means of restoring confidence to southern producers, consideration should be given to undertaking contemporary scientific research into pre- and post-sale weighing. Such research would provide an evidence base for the industry.

### **Recommendation 1**

**2.7 The committee recommends that the Minister for Agriculture and Water Resources consider requesting Meat and Livestock Australia to conduct a study into pre- and post-sale weighing to provide the southern industry with an evidence-base on which to consider selling methods at saleyards.**

### **Saleyard selling practices**

2.8 The issue of selling practices at saleyards is one that was raised consistently by stakeholders throughout the inquiry. The events which took place at Barnawartha in early 2015 were described by a number of producers as a misuse of market power; while others suggested that the processor 'boycott' of the prime cattle sale was done with the primary purpose of changing the selling practice at the saleyard from pre-sale to post-sale weighing.<sup>6</sup>

2.9 One of the major consequences of consolidation and rationalisation across the processing sector has been that fewer buyers actually attend cattle markets. A situation such as Barnawartha – where processors withdrew at short notice – or where they don't attend at all – can have a significant impact on the market price of livestock. As noted in the committee's interim report, the events at Barnawartha were viewed by many producers as a reminder of the excessive level of market power buyers and processors are able to demonstrate.

2.10 The events at Barnawartha also gave rise to concerns about market competition, the reporting of livestock sales, the selling systems at saleyards and the role of commission buyers. Submitters told the committee about a number of practices used by buyers designed to influence the purchasing price for livestock and limit market competitiveness. The committee also heard evidence about stock agents

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4 Mr Bradley Teys, Teys Australia, *Committee Hansard*, 27 August 2015, p. 2.

5 Mr Ian Feldtmann, Victorian Farmers Federation, *Committee Hansard*, 2 September 2015, p. 30.

6 Mr Norman Sharp, *Submission 27* and Ms Loretta Carroll, *Submission 63*, p.1, cited in Senate Rural and Regional Affairs and Transport References Committee, *Effect of market consolidation on the red meat processing sector: Interim Report*, May 2016, p. 15.

operating on both sides of a transaction – by representing both vendor and buyer. As noted in the interim report, evidence provided to the inquiry built a clear picture of practices and conduct used specifically to influence market prices.<sup>7</sup>

### ***ACCC's Cattle and beef market study***

2.11 The committee therefore welcomed the ACCC's announcement (on 5 April 2016) that it would be undertaking a market study into Australia's cattle and beef industry and that it would be examining issues such as competition, efficiency, transparency and trading issues in the beef and cattle supply chain. In announcing its study, the ACCC acknowledged that it was a combination of the issues raised during the committee's inquiry, and its own work that had led to the market study.<sup>8</sup>

2.12 In its May 2016 interim report, the committee signalled its intention to review the findings of the ACCC's market study – including its final recommendations – to determine whether the issues raised by stakeholders echoed the concerns raised during its inquiry. For this reason, the committee sought an extension to report from the Senate.

2.13 The ACCC's Cattle and beef market study was conducted in two parts. The ACCC commenced its market study in April 2016, and its *Cattle and beef market study – Interim Report* was released for comment in October 2016. The ACCC's *Cattle and beef market study – Final report* – which incorporated some minor changes – was released on 7 March 2017. The committee notes that the recommendations contained in the ACCC's final report are closely aligned with many of those in the committee's interim report – tabled in May 2016.

2.14 The following chapter provides an overview of the process undertaken by the ACCC in conducting its study. It also outlines some of the issues considered by the Commission, its findings and its recommendations. The chapter also examines the question of whether the ACCC's current investigatory powers are sufficient to protect witnesses, gather useful evidence and make binding recommendations.

### **Purpose of the market study**

2.15 In undertaking the market study, the ACCC indicated that its purpose was to:

- examine competition and transparency in the supply chain; and

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7 Senate Rural and Regional Affairs and Transport References Committee, *Effect of market consolidation on the red meat processing sector: Interim Report*, May 2016, pp 16-32.

8 Australian Competition and Consumer Commission, Media Release, *ACCC launches market study into cattle and beef industry*, 5 April 2016, p. 1 and Australian Competition and Consumer Commission Media Release, *Cattle and beef study reveals price transparency issues and allegations of anti-competitive conduct: ACCC*, 31 October 2016, p. 1.

- consider whether there are impediments to competition and efficiency at various stages of the supply chain in cattle and beef markets.<sup>9</sup>

2.16 The key issues examined as part of the ACCC's market study included:

- competition between buyers of cattle, and suppliers of processed meat to downstream customers;
- the implications of saleyard attendees bidding on behalf of multiple buyers;
- impediments to greater efficiency, such as bottlenecks or market power at certain points along the supply chain;
- differences in bargaining strength, and the allocation of commercial risk between cattle producers and buyers;
- the transparency of carcase pricing and grading methods;
- information on the share of profits among the cattle and beef production, processing and retailing sectors; and
- barriers to entry and expansion in cattle processing markets.<sup>10</sup>

## Consultation

2.17 In conducting its inquiry, the ACCC indicated that it had sought evidence through both written and oral submissions and held five public forums in a number of regional areas. It was also noted that, in undertaking its inquiry, the ACCC had accepted confidential submissions (and additional information) from anonymous sources.

2.18 The ACCC received 85 written submissions and consulted with a wide range of interested parties "including industry bodies, producers, agents, commission buyers, processors, supermarkets and live exporters".<sup>11</sup>

2.19 It was also noted that the market study had involved "consultations with all parts of the supply chain, and analysis of available market information and industry data".<sup>12</sup> The final report does not specifically indicate whether feedback was sought (or received) in relation to its interim report. However, the committee notes comments made by the CCA which indicated that it had been engaged throughout the review period, and had:

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9 Australian Competition and Consumer Commission, *Cattle and beef markets – a market study by the ACCC: Issues Paper*, 7 April 2016, p. 2.

10 Media Release, *ACCC launches market study into cattle and beef industry*, 5 April 2016, p. 1.

11 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 3.

12 Cattle and beef market study – Final Report/Australian Policy Online, <http://apo.org.au/node/74287>, accessed 10 March 2017.

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...provided significant feedback on the draft recommendations – particularly regarding existing policy positions and the relevant work already being undertaken by Meat and Livestock Australia at our direction.<sup>13</sup>

### **'Boycott' at Barnawartha**

2.20 The ACCC's interim report noted that prior to commencing its market study, it had conducted a detailed investigation "into an alleged collective boycott by cattle buyers at the Barnawartha saleyard on a day in February 2015".<sup>14</sup> The ACCC reported that evidence obtained during the investigation:

...did not demonstrate that any of the processors entered an arrangement or reached an understanding not to attend the sale, which is required to establish that the behaviour of buyers amounted to anti-competitive agreements pursuant to the *Competition and Consumer Act 2010*.

However, these matters prompted the ACCC to examine the dynamics of the industry in depth and in a context broader than the specific provisions of the Act.<sup>15</sup>

2.21 The ACC's final report did not expand further on the comments made in the interim report in relation to the 'alleged' collective boycott by cattle buyers at the Barnawartha saleyard in February 2015.<sup>16</sup>

### **Summary of findings<sup>17</sup>**

2.22 In providing its findings, the ACCC prefaced its comments by suggesting that any concerns about particular industry practices (and any impacts they may have on farm profitability) can vary between small and large-scale producers. It was noted, for example, that smaller scale producers tend to rely more on saleyards than large-scale producers – who often sell direct to abattoirs.

2.23 The ACCC also suggested that there is a cyclical element to many of the concerns raised about the competitiveness of market structures in the Australian

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13 Beef Central, *Beef sectors react to ACCC beef and cattle market study*, 8 March 2017, [p. 2].

14 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 3.

15 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 3.

16 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 3.

17 The following section is based on material contained in Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016 and Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 3.

industry. The report noted that strong concerns about market concentration and buyer power were being expressed during the peak of the 2013-14 drought. By 2014, the industry was characterised by high rates of cattle turn-off and strong overseas demand for Australian beef in export markets – conditions which were favourable to the profitability of cattle buyers. Export processors in particular, found themselves in a stronger than usual bargaining position. At the same time however, producers' profits were considerably down, due largely to the high costs of supplementary stock feed and low cattle prices.

2.24 The ACCC argued that since 2015 (and the end of drought conditions in a number of areas) the supply of cattle to processors has altered significantly. It was noted that many producers have taken advantage of good seasonal conditions and have started to rebuild cattle herds, and that this has resulted in a decrease in cattle turn-off and producers purchasing re-stocker cattle. In turn, there have been greater numbers of buyers in cattle acquisition markets which has been putting upward pressure on prices. The reduction in the supply of cattle has also resulted in the under-use of processing facilities – with processors reporting significant excess capacity during 2016.

### ***Competition for the acquisition of prime cattle***

2.25 The ACCC reported that in most regions of Australia, producers have a range of potential buyers – including the major supermarket chains, re-stockers, processors and live exporters – competing for their cattle. It was acknowledged, however, that the presence of buyers in particular regional markets and the competition between them, will vary according to a number of seasonal and commercial factors. As a result of these findings, the ACCC reported that:

...there are circumstances where further consolidation in the processing sector through mergers or acquisitions, or other conduct, could substantially lessen competition and the ACCC, as it has previously, will carefully scrutinise proposed future aggregation.<sup>18</sup>

### ***Conflicts of interest***

2.26 The ACCC indicated in its interim report that, not only does it share the concerns of many in the industry about collusion in saleyard auctions, it considers that conflicts of interest "between individuals who bid for livestock on behalf of multiple clients or cattle vendors and buyers are likely to be common".<sup>19</sup>

2.27 The ACCC's inquiry found that conflicts of interest are also a regular occurrence in saleyard transactions "when agents represent both a cattle seller and a

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18 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 4.

19 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 5.

cattle buyer in the same transaction".<sup>20</sup> Further, it was noted that, as cattle producers are generally unaware of these arrangements, it can reduce competition for their cattle.

### ***Collusion in saleyard auctions***

2.28 The ACCC reported that it had heard serious allegations regarding bid-rigging among buyers in particular saleyards. Allegations also emerged during the market study about anti-competitive agreements between livestock agency businesses. The ACCC noted that because "cartel conduct has a serious impact on competition" it is currently investigating these allegations separately from the market study.<sup>21</sup>

### ***Price transparency***

2.29 In reporting its findings in relation to price transparency, the ACCC indicated that cattle prices are not "usefully transparent, particularly prices for prime cattle".<sup>22</sup> It argued that there are significant gaps in reporting and that the prices for paddock sales and over the hook (OTH) and saleyard transactions are "inconsistently reported and in some cases incomplete in terms of the cattle types and geographic locations".<sup>23</sup> The ACCC argued that, as a consequence, it is difficult for producers to compare historical prices between sales channels on a like-for-like basis. It was also argued that this lack of transparency has the capacity to distort pricing signals (used to guide production decisions) and create information asymmetries between industry participants.

2.30 The ACCC also found that:

- direct sale prices are frequently not reported, and the prices reported for OTH transactions actually reflect the prices offered to producers, rather than the prices subsequently paid; and
- pricing grids are difficult to interpret and sometimes difficult to access.<sup>24</sup>

2.31 It was noted that some data does exist in relation to cattle prices, OTH sales, saleyard purchasing and online auctions and this data is published on a regular basis by MLA (and other sources). The ACCC highlighted, however, that some gaps and inconsistencies still remain in relation to this information. Further, it was argued that

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20 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 4.

21 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 10.

22 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 4.

23 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 10.

24 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 4.

not all of the data that is available and published is easy to interpret or use comparatively, which reduces its usefulness to the industry.<sup>25</sup>

2.32 The ACCC's final report did acknowledge, however, that while there are still some gaps in useful price data, the industry has started to take steps to address this situation. It was noted, for example, that MLA had launched an update of the market reports section of its website, "which allows producers to access and interrogate historical data more easily".<sup>26</sup>

### *Pricing grids*

2.33 The ACCC once again acknowledged the complexity of price grids, and added that:

An important test of the usefulness of pricing grids is whether a seller of prime cattle can easily compare the price the stock would realise if sold to any one of a number of competing processors. Some producers experience difficulties in doing this.<sup>27</sup>

### *Mandatory price reporting*

2.34 At the present time the debate regarding the mandatory reporting of all non-saleyard cattle sales is finely balanced. The ACCC argued that Australian beef and cattle markets are currently so complex it could make mandatory price reporting difficult to implement, and perhaps reduce its potential benefits. Importantly, the ACCC once again indicated that it does not recommend the introduction of mandatory reporting at this time. It was again stressed, however, that:

... if market participants do not take steps to improve the market reporting in line with recommendations on price reporting ... the arguments in favour of mandatory reporting will become more compelling over time.<sup>28</sup>

### *The grading system*

2.35 The ACCC's interim report raised concerns about some aspects of the grading system. Specifically, it was argued that there is a lack of independence and transparency in the process of grading carcasses at abattoirs, and that this is particularly concerning, given that the existing audit systems are not sufficient to ensure the integrity of the grading process. The ACCC concluded that "integrity and trust in the

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25 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 9.

26 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 8.

27 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 9.

28 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 9.



grading system are essential, given its role in determining pricing received by producers".<sup>29</sup>

2.36 The ACCC asserted that the "quality assurance process for grading carcasses to AUS-MEAT and MSA standards is rigorous, and AUS-MEAT's audits and training of chiller assessors (graders) lessen the risks of unfair grading".<sup>30</sup> At the same time, however, it was argued that the potential for conflicts of interest in the trimming and grading process does remain "because AUS-MEAT's audits of grading in individual plants are infrequent".<sup>31</sup>

2.37 The ACCC's findings about the meat grading system echoed views expressed during the committee's inquiry:

Although there is a detailed training and oversight system administered by AUS-MEAT, a conflict of interest remains during the process of grading carcasses at abattoirs. Existing audit systems do not appear to give many producers faith in the integrity of the process, and there is no industry wide standard for dispute resolution. Integrity and trust in the grading system are essential, given its role in determining prices received by producers. AUS-MEAT, processors and other industry participants need to work together to extend education about the existing grading and oversight processes to producers.<sup>32</sup>

2.38 Further, the ACCC argued that some producers may be more likely to view a negative grading result as procedural unfairness, rather than a case of a carcass not meeting the required grade or specification. It was also acknowledged that these are problems that are not necessarily isolated to producers and processors, but "are also known to occur between the feedlots and processing plants of vertically integrated players in the industry".<sup>33</sup>

2.39 Both the committee's inquiry and the ACCC's study have brought to the fore the shortcomings in price reporting, a lack of trust in the carcass grading system and concerns about anti-competitive conduct affecting competition in cattle and beef

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29 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 4.

30 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 9.

31 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 9.

32 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 4.

33 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 9.

sales.<sup>34</sup> The ACCC's final report stressed that changes are required if there are to be improvements in transparency in Australia's cattle and beef markets.

2.40 Further, in making its final recommendations, the ACCC again emphasised the importance of objective carcass measurement (OCM), arguing that OCM technology "will increase accuracy and transparency of value assessments". It also welcomed moves by MLA to "introduce objective carcass measurement technology throughout the industry, as recommended in the Interim Report".<sup>35</sup>

2.41 In supporting MLA's proposal to introduce OCM throughout the industry, the ACCC argued that any data produced as a result of OCM grading would be of increased benefit to the industry if it was aggregated and shared. The ACCC suggested that the sharing of data would allow producers to measure their own performance against the rest of the industry "and make any production adjustments necessary to achieve higher cattle grades and prices".<sup>36</sup>

2.42 The ACCC argued that the development of common data standards across the meat industry and the implementation of industry-wide agreements (to cover data access rights) would increase stakeholder confidence in data systems and facilitate better risk management options. The ACCC also noted, however, that while conducting the market study, producers had raised various concerns about the grading technology – including who would be responsible for overseeing its calibration.<sup>37</sup> The ACCC concluded therefore, that while it may provide certain benefits, "technology is not a panacea", but something that "should be implemented in conjunction with suitable auditing systems and an independent dispute resolution system" to maximise system integrity.<sup>38</sup>

### *Analysis of margins and profits*

2.43 The ACCC noted that its ability to undertake an assessment of margins and profits had been limited. While it was able to engage positively with the industry in general (and a number of organisations had provided useful information) it "did not receive sufficient data showing the prices paid for cattle purchases, prices received for the wholesale supply of beef, or margins for the retailing of beef". Therefore, more information would be required to "identify how profits are distributed throughout the

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34 Cattle and beef market study – Final Report/Australian Policy Online, <http://apo.org.au/node/74287>, accessed 10 March 2017.

35 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 12.

36 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 12.

37 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 77.

38 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 77.

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industry, and to identify the existence or exercise of market power with greater certainty".<sup>39</sup>

### ***Pre-sale versus post-sale weighing***

2.44 The ACCC received insufficient information to "analyse any differences in outcomes resulting from pre-sale versus post-sale weighing of cattle at saleyard auctions". For the purposes of the *Competition and Consumer Act 2010* the market study has, however:

...revealed the categories of information that would be relevant to future assessments of competition issues arising under the CCA [Act]. In specific circumstances where the ACCC considers there may have been a breach of the CCA [Act], it has the capacity to compulsorily obtain information and documents to inform its investigations.<sup>40</sup>

### ***ACCC's conclusions***

2.45 In making its conclusions, the ACCC noted that the diversity of the cattle herd, production regions and producers are key features of Australia's cattle industry. This diversity means that commercial outcomes for producers will vary and are not necessarily an indication of market failure. It was also noted however that "certain long-standing and accepted practices, when combined with other industry features such as intersecting personal and professional relationships, are characteristics which risk damaging transparency, competition and efficiency in the industry".<sup>41</sup>

2.46 Regardless of whether mandatory reporting is introduced at some time in the future, the ACCC stressed the importance of producers, processors and stakeholder groups such as MLA, the Australian Livestock and Property Agents Association (ALPA), the Australian Livestock Markets Association (ALMA) and the Red Meat Advisory Council (RMAC) working together. It was the ACCC's expectation that stakeholder groups work cooperatively to: educate industry participants about carcass grading; expand data collection; improve market and price reporting; increase transparency in the saleyards and standardise licensing of livestock agents to benefit the industry as a whole.

### **ACCC recommendations**

2.47 The ACCC's market study identified a number of areas that require improvement across the cattle and beef supply chain. The ACCC indicated that some

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39 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 5.

40 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 5.

41 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 5.

of its recommendations are intended to improve the work of specific organisations, while the implementation of some of its more general recommendations will, however, require industry leadership and stakeholder cooperation.

2.48 The following are the recommendations contained in the ACCC's interim report:

### **Transparency in cattle markets**

#### **Recommendation 1: Availability of price grids**

All processors and major cattle purchasers should routinely make price grids publicly available in a timely manner to increase market transparency.

#### **Recommendation 2: Price grids**

- All buyers should consider whether their price grids can be improved to make it easier for the industry to understand and compare grids.
- Buyers, agents and producer representative bodies (led by the CCA) should improve their engagement with producers to enhance industry understanding of price grids and their interpretation.

#### **Recommendation 3: Improvements to existing market reporting**

The ACCC encourages MLA to make changes to the way existing cattle sale prices are collected and published to improve transparency and usability, including specifically:

- standardising cattle types for reporting across channels;
- publishing time series data of saleyard prices in a format which allows for easy interpretation (prices are currently only reported weekly in .pdf files, making comparison through time difficult);
- producing a co-products index for comparison with cattle prices; and
- improvements to the domestic retail beef price series.

#### **Recommendation 4: Additional market reporting**

The ACCC encourages MLA, ALPA and ALMA to work together to expand data collection and reporting of prices, including specifically:

- direct (paddock) sales prices;
- actual prices paid for OTH sales;
- saleyard prices for additional saleyards of regional market importance which are not currently reported; and
- actual prices for cattle sold to the live export market.

#### **Recommendation 5: Mandatory reporting of non-saleyard transactions and prices**

The ACCC considers the arguments for and against mandatory reporting of all non-saleyard cattle sales are finely balanced, and does not recommend its implementation at this time.

If market participants do not take steps to improve market reporting in line with recommendations 3 and 4, the arguments in favour of mandatory reporting will become more compelling over time.

### **Over the hook transactions and grading**

#### **Recommendation 6: Objective carcass grading**

The industry, led by the processing sector, should allocate high priority to the adoption of technology to enable objective carcass 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 7: Dispute resolution for OTH sales**

- Processors and buyers should review, and in many cases improve, their internal processes for responding to complaints about 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 8: Auditing of carcass grading**

The industry should implement a more robust auditing system for carcass grading, with AUS-MEAT implementing random and unannounced audits in addition to the current audit regime. The result of these audits should be made publicly available on a regular and timely basis.

#### **Recommendation 9: Carcass feedback and producer education**

- All buyers and agents should consider whether carcass grading feedback can be improved.
- Buyers, agents, and producer representative bodies (led by the Cattle Council) should increase their communication and education surrounding the current grading and feedback system to ensure that producers better understand cattle market trends and why some cattle attract a premium compared to others.

### **Conduct in cattle markets**

#### **Recommendation 10: Saleyard buyer register**

The ACCC encourages the introduction of a mandatory Buyers Register to be publicly available prior to the commencement of all physical livestock auctions. This register should include details of commission buyers and livestock agents intending to bid at the sale and the principals that those commission buyers will be acting for.

ALPA should work with its members to have this requirement incorporated into auction terms and conditions at saleyards.

#### **Recommendation 11: Terms of sales at auctions**

The ACCC encourages MLA to work with ALPA to introduce a mandatory requirement that the terms of auction be displayed in a conspicuous position at all saleyards. This should include a notice about the penalties for collusive practices under the *Competition and Consumer Act 2010*, in addition to any notices required by state and territory legislation. The ACCC notes that many saleyards and agents are already demonstrating industry leadership by doing this.

### **Recommendation 12: Livestock agent licensing**

Legislation should be introduced requiring standardised national licensing of livestock agents and professional buyers (applying to commission and salaried buyers), in order to raise the levels of compliance with the *Competition and Consumer Act 2010* and general professionalism within the industry.

### **Recommendation 13: Implementation of recommendations**

The ACCC encourages the Agriculture Ministers meeting (AGMIN) to consider the above recommendations, particularly with a view to monitoring their implementation. This will be especially important to ensure that recommendations are progressed, given the diverse industry interests. Ministers may wish to consider alternative approaches if progress is not made.

## **ACCC concluding comments**

2.49 At the time of releasing its interim report, the ACCC indicated that – in addition to its concerns about cartel and other conduct affecting competition in saleyards – it had identified "serious shortcomings" in areas such as current price reporting and the independence and auditing of carcass grading at abattoirs.<sup>42</sup>

2.50 In summary, the ACCC's interim report concluded that the competitiveness of Australia's cattle and beef markets could be improved by adopting objective carcass grading, making improvements to the nature and coverage of market reporting, and implementing measures to lessen the risk of collusive and anti-competitive behaviour in saleyard auctions.<sup>43</sup>

## **ACCC's *Cattle and Beef market study* - final report**

### ***Recommendations***

2.51 The ACCC released its findings in relation to its Cattle and beef market study on 7 March 2017. In releasing its findings, the ACCC made a series of recommendations aimed at improving transparency and reporting in Australia's beef

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42 Australian Competition and Consumer Commission Media Release, *Cattle and beef study reveals price transparency issues and allegations of anti-competitive conduct: ACCC*, 31 October 2016, p. 1.

43 Australian Competition and Consumer Commission Media Release, *Cattle and beef study reveals price transparency issues and allegations of anti-competitive conduct: ACCC*, 31 October 2016, p. 1.

sector. Whilst they were articulated using slightly different language, the fifteen recommendations made in the ACCC's final report did not differ significantly from those included in the interim report. The ACCC's recommendations again covered the following issues:

- The improvement of price information by requesting that meat processors publish price grids for sales made direct to processors. This is aimed at making it easier for producers to consider and compare price offers. (Nationally, the vast majority of prime cattle are sold this way).
- The need to increase the frequency of AUS-MEAT's random and unannounced audits of cattle grading and trimming in processing plants to improve integrity in the system.
- The introduction of an independent dispute resolution process to apply across the industry.
- The need to prioritise OCM technology to increase the accuracy and transparency of carcass assessments, and the sharing of data arising from the technology with cattle producers.
- The introduction of a buyers' register and post auction buyers report for major saleyards.
- An expansion of the reporting of historical prices to make it easier for producers to compare prices paid for cattle sold through saleyards, paddock sales and OTH.<sup>44</sup>

### ***Implementation of recommendations***

2.52 In its interim report, the ACCC indicated that it would be "encouraging" the Agriculture Ministers meeting (AGMIN) to consider its recommendations "particularly with a view to monitoring their implementation".<sup>45</sup>

2.53 In its final report, the ACCC amended this recommendation and indicated that it would be asking RMAC to implement its recommendations on behalf of industry. However, the ACCC stopped short of making the changes compulsory.<sup>46</sup> In giving primary responsibility to RMAC for monitoring compliance, the ACCC also added a requirement that it report annually to Commonwealth, state and territory Agriculture

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44 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017.

45 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 13.

46 ABC Rural, *ACCC calls for more transparency and better reporting on beef markets*, 7 March 2017.

Ministers, "detailing progress in implementing these recommendations and any reasons for a lack of progress".<sup>47</sup>

2.54 The decision to have RMAC take responsibility for implementing its recommendations was questioned in a *Beef Central* article published shortly after the release of the ACCC's final report. The article's author argued that despite having no direct authority to enact the type of change the ACCC had called for, RMAC was being asked to "pick up the ACCC's ball and run with it" – a move that was likened to RMAC being thrown "one serious hospital pass".<sup>48</sup> On-line stakeholder comments echoed the views expressed in the article and argued that RMAC does not have the capacity to deliver change of the scale encompassed by the recommendations, nor does it have the "legal authority or the organisational remit to take this role on".<sup>49</sup>

2.55 In response to questions about why RMAC had been given responsibility for the implementation of its recommendations, the ACCC's Agriculture Commissioner, Mr Mick Keogh, told *Beef Central* that "no single organisation or level of government has the responsibility or the power to implement all of the ACCC's recommendations". While acknowledging that the ACCC has no direct 'power' as such, the Commissioner argued that as the body responsible for 'whole of industry matters' under the industry's Memorandum of Understanding (MOU), RMAC "comes closest to being an overarching body to progress the matters raised".<sup>50</sup> Mr Keogh added that:

The ACCC could have made a recommendation that the Minister direct RMAC to progress the matters raised, but generally took the view that it would be better for industry to progress these matters than the Commonwealth Government, noting that the option is available to the ACCC to revisit this issue in the event it seems progress is not being made.<sup>51</sup>

2.56 Following the release of the ACCC's final report, the committee held further hearings with a number of industry stakeholders. In the first instance, the committee had the opportunity to get a clearer picture of the ACCC's motivation for giving RMAC the responsibility for implementing its recommendations. The committee also sought stakeholders' responses to the ACCC's findings and recommendations.

2.57 At its hearing on 8 August 2017, the committee questioned the ACCC about why, given all the stakeholders in the industry, it had chosen RMAC to take the lead.

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47 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 14.

48 Beef Central, *Has the ACCC thrown RMAC a massive hospital pass?* 22 March 2017, [p. 2].

49 Beef Central, *Has the ACCC thrown RMAC a massive hospital pass?* 22 March 2017, [p. 7].

50 Beef Central, *Has the ACCC thrown RMAC a massive hospital pass?* 22 March 2017, [p. 3].

51 Beef Central, *Has the ACCC thrown RMAC a massive hospital pass?* 22 March 2017, [p. 3].



Ms Gabrielle Ford, General Manager, with the ACCC's Agriculture Unit responded by saying that:

Initially you would have seen our draft report suggested that agriculture ministers take that role. But we know that these recommendations are less about legislation or policy than industry action. So rather than choose, for example, processor representatives or Cattle Council as a representative of producers, there should be more of an umbrella organisation that can oversee all the different aspects of the recommendations because they reach different parts of the industry.<sup>52</sup>

...

The basis of our recommendation about RMAC was that it was in a position of leadership in the industry and, as distinct from any powers to actually make changes, that it was in a position to lead the industry to make the changes itself.<sup>53</sup>

2.58 In correspondence to the committee, ACCC Agriculture Commissioner, Mr Mick Keogh indicated that the ACCC had identified the industry participants it considered to be in the best position to implement or progress certain recommendations and it had allocated specific recommendations accordingly. Further Mr Keogh noted that:

...RMAC is in a unique position in the industry. RMAC is the only organisation that regularly holds discussions with a wide range of industry participants and then advocates on behalf of members directly with the Minister for Agriculture and Water Resources. As a result, RMAC is uniquely placed to facilitate discussions about implementing the ACCC's recommendations and to report back to the Minister on progress.<sup>54</sup>

2.59 Mr Keogh's correspondence also indicated that the ACCC had not wanted to burden the industry with the additional costs associated with establishing an industry body (for the purpose of implementing its recommendations) and therefore had not recommend it. Further, Mr Keogh stated that the ACCC remains of the view that there is no other organisation with capabilities that are more suitable than RMAC's. In making this point, Mr Keogh pointed to RMAC's own evidence, which stated that RMAC:

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52 Ms Gabrielle Ford, General Manager, Agriculture Unit, Australian Competition and Consumer Commission, *Committee Hansard*, 8 August 2017, p. 3.

53 Ms Gabrielle Ford, General Manager, Agriculture Unit, Australian Competition and Consumer Commission, *Committee Hansard*, 8 August 2017, p. 4.

54 Correspondence from Mr Mick Keogh, Agriculture Commissioner, Australian Competition and Consumer Commission, dated 28 August 2017, p. 2.

...was designed to provide a forum so that we could interchange and exchange views. Where it is possible to have a consensus on things, we prosecute that case on behalf of the whole industry.<sup>55</sup>

### ***Stakeholders' responses to the implementation of ACCC recommendations***

2.60 MLA indicated that it had been working through the ACCC recommendations that were within its remit. In addition to making enhancements to its 'reporting and insights services', MLA noted that it had been working toward providing producers with a greater variety of market information. MLA also told the committee that it had prioritised the development and adoption of objective measurement technology – including the proposal to accelerate the adoption of DEXA technology and the investment of \$28 million in new research into the objective measurement of the eating quality of meat.<sup>56</sup>

2.61 MLA representatives also outlined the steps that were being taken in response to ACCC's Recommendations 4 and 12, which go to the issue of price transparency across the supply chain. MLA's response to these recommendations – and some of the difficulties they have experienced in addressing them – are outlined in more detail in Chapter 3.

2.62 Representatives from both AMPC and AMIC provided the committee with an overview of the progress that their organisations had made to address some of the problems being experienced across the industry. Both organisations pointed to a number of positive advancements that had been made, but were less forthcoming about the lack of a common industry position on many of the challenges facing the industry.<sup>57</sup>

2.63 AMIC CEO, Mr Patrick Hutchinson told the committee, for example, that since making its initial submission to the inquiry two years previously, the change in the industry had been "dynamic and vast". However, when pressed by the committee about whether in fact the industry had actually been progressing "as one in one direction", Mr Hutchinson conceded that there continues to be conflict between various industry stakeholders.<sup>58</sup>

2.64 In correspondence provided in advance of the committee's 16 August 2017 hearing, RMAC's Independent Chair, Mr Don Mackay stated that the membership of

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55 Evidence provided by Mr Don Mackay, cited in Correspondence from Mr Mick Keogh, Agriculture Commissioner, Australian Competition and Consumer Commission, dated 28 August 2017, p. 2.

56 Mr Richard Norton and Mr Sean Starling, Meat and Livestock Australia, *Committee Hansard*, 10 August 2017.

57 Rural and Regional Affairs and Transport References Committee, *Committee Hansard*, 8 August 2017.

58 Mr Patrick Hutchinson, Chief Executive Officer, Australian Meat Industry Council, *Committee Hansard*, pp 11-21.

RMAC was concerned that the ACCC's recommendations "would have no material impact or improvement on competition for the beef cattle supply chain".<sup>59</sup> Mr Mackay's correspondence also indicated that whilst RMAC did support aspects of the ACCC's findings, RMAC was also of the view that it is not its "role to lead competition policy reform as suggested in the ACCC's Study".<sup>60</sup>

2.65 At its 16 August 2017 hearing, the committee asked representatives of RMAC to respond to the ACCC's proposal that it be given responsibility for implementing all the recommendations contained in its Cattle and beef market study.

2.66 Mr Mackay took the opportunity to outline the responsibilities of RMAC and argued that the oversight and implementation of the ACCC's recommendations was not within RMAC's jurisdiction. Mr Mackay reiterated the comments made in his correspondence by stating that he was not sure whether the ACCC's recommendations "would assist in growers being in a better place".<sup>61</sup> Further, Mr Mackay told the committee that RMAC had not been directly consulted by ACCC in relation to taking on the role of overseeing its recommendations prior to the publication of its final report.

2.67 Mr Mackay's assertion that RMAC had not been contacted prior to the release of the ACCC's report was disputed by the ACCC's Agriculture Commissioner, Mr Mick Keogh. In correspondence to the committee, Mr Keogh indicated that:

...I spoke with RMAC prior to the release of the ACCC's final report to discuss RMAC's oversight role. Then, throughout April, May and July of 2017 the ACCC contacted RMAC attempting to arrange a meeting to discuss Recommendation 15 of the final report and the ACCC's view of the role RMAC would play.<sup>62</sup>

2.68 The committee appreciates the clarification provided by the ACCC with regard to identifying RMAC as the appropriate body to act upon and realise its recommendations. As the ACCC has noted, RMAC is the body responsible to represent the interests of the whole of the industry and should be in charge of advancing industry reform.

2.69 However, separate to the ACCC's market study process, the committee has held long-standing concerns regarding RMAC and its role. These concerns are further considered in Chapter 5.

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59 Correspondence from Mr Don Mackay, Independent Chair, Red Meat Advisory Council, dated 14 August 2017, p. 1.

60 Correspondence from Mr Don Mackay, Independent Chair, Red Meat Advisory Council, dated 14 August 2017, p. 1.

61 Mr Don Mackay, Independent Chair, Red Meat Advisory Council, *Committee Hansard*, 16 August 2017, p. 3.

62 Correspondence from Mr Mick Keogh, Agriculture Commissioner, Australian Competition and Consumer Commission, dated 28 August 2017, p. 2.

## The ACCC's investigatory powers

2.70 As noted by the committee in its interim report, a number of submitters to the inquiry have stressed the need for industry and regulatory reform. Stakeholders argued that if, into the future, the red meat sector is going to be able to prevent collusive practices and curtail the misuse of market power – change will be critical. Various stakeholders also suggested ways to improve fairness and transparency and increase legislative protections against anti-competitive behaviour.

2.71 The Sheepmeat Council of Australia (SCA), for example, advocated additional measures to address the power imbalance between processors and producers and suggested that greater emphasis be placed on creating competitive markets and increasing price transparency. The SCA also recommended:

...an increased role for the ACCC in regulating the red meat processing industry, including oversight of mergers and improved investigatory powers regarding incidents of uncompetitive market behaviour.<sup>63</sup>

2.72 While the SCA has suggested that the ACCC should be given an increased regulatory and oversight role, some sections of the industry questioned whether the ACCC's current investigative powers are actually adequate.

2.73 As an independent statutory authority, the ACCC enforces the *Competition and Consumer Act 2010*. The ACCC has the power to investigate potential breaches of competition and consumer law – including cartel conduct, anti-competitive arrangements, misuse of market power, false or misleading representations and unconscionable conduct.<sup>64</sup> The ACCC's investigative powers include:

- (1) the power to obtain documents, information and evidence and to enter premises and seize documents under Section 155 and Part XIX respectively of the *Competition and Consumer Act 2010*; and
- (2) the power to issue substantiation notices, requiring persons who have made representations or claims in trade or commerce regarding the supply of goods or services, or the sale or grant of interests in land, or the offer of employment, to provide information or documents to substantiate the claims (found in Section 219 of the Australian Consumer Law (ACL)).<sup>65</sup>

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63 Sheepmeat Council of Australia, *Submission 59*, cited in Senate Rural and Regional Affairs and Transport References Committee, *Effect of market consolidation on the red meat processing sector: Interim Report*, May 2016.

64 These powers are found in the body of the *Competition and Consumer Act 2010* and in Chapter 5 of the Australian Consumer Law.

65 Website: <http://lexisweb.lexisnexis.com.au/Practical-Guidance-Topic.aspx?tid=2317>, accessed 15 May 2017.

2.74 Under current legislation, the ACCC also has powers to:

- issue Public Warning Notices where it has reason to believe that a person has breached the ACL and one or more persons has suffered loss or detriment as a result of the breach and it is in the public interest to issue the notice;
- issue an Infringement Notice where it has reason to believe that a person has breached the ACL;
- accept court enforceable undertakings where it believes that there has been a breach of the ACL and the party in question agrees to give the undertaking; and
- commence proceedings to enforce breaches of the ACL, on its own behalf and as a representative for a class of persons affected by the offending conduct. It can also seek compensation orders on behalf of injured persons and non-party consumers.<sup>66</sup>

2.75 It is also worth noting that in both its interim and final report, the ACCC pointed to the existence of an "established immunity policy for both corporations and individuals who have been involved in a cartel but then report their involvement to the ACCC".<sup>67</sup> The ACCC's policy document as it relates to immunity states that:

Cartels usually involve secrecy and deception. Collusion is difficult to detect – there may be little documentary evidence and parties often go to great lengths to keep their involvement secret. In these circumstances, discovery and proof of cartels can be more difficult than discovery and proof of other forms of corporate misconduct. An immunity and cooperation policy in relation to cartels encourages insiders to provide information and enables the ACCC to penetrate the cloak of secrecy. When the extent of the immunity to be provided, or the process for recognising cooperation with law enforcement authorities is certain, persons are more likely to take advantage of such a policy and disclose illegal and harmful conduct.

Just as importantly, an immunity and cooperation policy that provides incentives to businesses and individuals to disclose illegal behaviour is also a powerful disincentive to the formation of cartels, as potential participants will perceive a greater risk of ACCC detection and court proceedings. An immunity and cooperation policy does not offer a reward to 'good corporate citizens'. It is a detection tool designed to deliver benefits to all Australians

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66 Website: <http://lexisweb.lexisnexis.com.au/Practical-Guidance-Topic.aspx?tid=2317>, accessed 15 May 2017.

67 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 93.

by identifying, stopping and taking action against harmful and illegal behaviour.<sup>68</sup>

2.76 As previously noted, the ACCC's decision to undertake its Cattle and beef market study was, in part, due to concerns raised by cattle producers regarding an alleged misuse of market power by processors.<sup>69</sup>

2.77 In April 2016, the ACCC's Issues Paper invited submissions to its market study into cattle and beef markets. The issues paper signalled that to protect the interests of those providing evidence to its inquiry, both confidential and anonymous submissions would be accepted and that the ACCC, would, to the extent that it was reasonably possible, seek to protect the confidentiality of that information. The ACCC's invitation to submit also stressed that the Commission would take into account the possible 'commercial sensitivities' around industry stakeholders submitting evidence.<sup>70</sup>

2.78 The ACCC noted – in both its interim and final report – that as a self-initiated inquiry, its assessment of the issues was based on information provided by industry participants on a voluntary basis. Using the evidence provided, the ACCC conducted a detailed examination of industry margins in relation to pre- versus post-sale weighing at saleyards and processor operating costs. The ACCC requested additional data from industry participants, including saleyards, processors, supermarkets and agents to support its analysis. In response to its request, the ACCC received "positive engagement from the industry in general and a number of companies provided useful information and data".<sup>71</sup>

2.79 The information and evidence provided to the ACCC enabled the Commission to determine that there are practices and issues in the industry that risk harming both competition and efficiency. The ACCC was able to conclude that conflicts of interest regularly arise in saleyard transactions – particularly when agents represent both a cattle seller and a cattle buyer in the same transaction. The market study also drew attention to possible anti-competitive conduct which the ACCC indicated it would examine separately (and in more detail) to determine whether any laws had been breached.

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68 Australian Competition and Consumer Commission, *ACCC immunity and cooperation policy for cartel conduct*, September 2014, p. 1.

69 It was alleged that in Victoria in 2015, nine meat processors boycotted the first sale at new saleyards built at Barnawartha because they disagreed with a decision to pre-weigh cattle prior to sale. It was claimed that saleyard managers ultimately made the decision to switch to post-weighing cattle to encourage the processors to return.

70 Australian Competition and Consumer Commission, *Cattle and beef markets – a market study by the ACCC: Issues Paper*, 7 April 2016, p. 4.

71 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 5.

2.80 At the same time, however, the ACCC reported that it did not receive sufficient detailed data – that showed prices paid for cattle, wholesale beef prices or margins for the retailing of beef – and that this information "would be necessary to identify how profits are distributed throughout the industry, and to identify the existence or exercise of market power".<sup>72</sup> While these topics are addressed to some extent in the body of its report, the ACCC acknowledged that it was unable to make any definitive findings or recommendations in relation to these issues.

2.81 The ACCC also noted that it had received insufficient detailed, objective, research information about the relative impacts of pre- versus post-sale weighing procedures at saleyards. As a result, the ACCC reported that despite the Barnawartha dispute being the catalyst for its inquiry, it would not be able to rule on the pre-weigh versus post-weigh debate.

2.82 Following the release of its interim report (in October 2016) the ACCC received feedback from a number of industry participants.<sup>73</sup> The Australian Beef Association (ABA) for example, raised specific concerns about the ACCC's use of "ten-year-old data in the interim report on the percentage of the retail beef dollar producers receive".<sup>74</sup> In raising its concerns, the ABA noted that the interim report referred to information supplied by Coles in 2007 regarding the breakdown of retail prices. The information provided showed the supermarket receiving a three percent margin and farmers receiving more than half the retail dollar. The ABA suggested that this was both incorrect and misleading "with industry service provider figures indicating the average for the ten years to 2015 was 32 percent for farmers".<sup>75</sup>

2.83 The ABA suggested that the major supermarkets' choice not to provide evidence to the market study – because they were under no legal obligation to do so – had resulted in the ACCC using outdated information in its report. The ABA argued that there was a danger that legislative decisions (regarding competition in the cattle industry) could also be based on incorrect data – to the detriment of producers. The ABA called for the ACCC to be given more power to collect relevant and up-to-date information.

2.84 In his response to the ABA's call for the ACCC to be granted compulsory data gathering powers, the ACCC's Agriculture Commissioner, Mr Mick Keogh, confirmed that the 2007 data was the only information available to the ACCC at the retail level. Mr Keogh also acknowledged that this was contentious, but explained that the information had been used as "an example of the sort of calculation that might be

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72 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 5.

73 Farm Online, *Give the watchdog more powers, beef producers say*, 17 January 2017, [p. 3].

74 Farm Online, *Give the watchdog more powers, beef producers say*, 17 January 2017, [p. 2].

75 Farm Online, *Give the watchdog more powers, beef producers say*, 17 January 2017, [p. 2].

required and how broad the information needed to be, if mandatory price reporting was to be implemented".<sup>76</sup>

2.85 Mr Keogh also explained that there are two different types of ACCC inquiries.<sup>77</sup> In conducting internally-initiated inquiries (such as the Cattle and beef market study) the ACCC does not have the power to compel market participants to provide information and documents.<sup>78</sup> If, however, the inquiry is government-initiated and the ACCC is instructed to undertake an inquiry by a relevant Minister, the ACCC does have compulsory information and document gathering powers (as detailed in Section 95ZK of the *Competition and Consumer Act 2010*).<sup>79</sup>

2.86 It is worth noting that while the ACCC's market study was prepared on the basis of evidence and information voluntarily provided by interested parties, the study has been the catalyst for further ACCC investigations. The ACCC has gone on to conduct investigations into several allegations of bid rigging at cattle auctions under anti-cartel laws and at least two investigations of illegal, anti-competitive behaviour. Under the terms of the concurrent investigations the market study has prompted, the ACCC is able to exercise its powers under section 155 powers to compel witnesses to provide evidence and produce documents.<sup>80</sup>

2.87 Following the release of its final report, ACCC Agriculture Commissioner, Mr Mick Keogh, once again conceded that the market study had not been provided with sufficient useful data to support detailed responses to some issues. Mr Keogh also acknowledged, however, that in terms of the ACCC's ability to effect change:

Even if we were inclined to make a mandatory recommendation, the ACCC probably doesn't have the power to enforce it, and there are certain situations at the saleyards where one situation or the other doesn't suit.<sup>81</sup>

2.88 It is also worth noting that, on 5 September 2016, the Government began consultations on an exposure draft of the Competition and Consumer Amendment (Competition Policy Review) Bill (the Bill). The purpose of the Bill is to implement, in part, reforms identified by the Competition Policy Review (Harper Review). One of the reforms included in the Bill is the amendment of the *Competition and Consumer*

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76 Farm Online, *Give the watchdog more powers, beef producers say*, 17 January 2017, [p. 3].

77 Farm Online, *Give the watchdog more powers, beef producers say*, 17 January 2017, [p. 3].

78 Farm Online, *Give the watchdog more powers, beef producers say*, 17 January 2017, [p. 3].

79 Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 16.

80 Australian Financial Review, *ACCC chases cowboy cartels*, 1 November 2016, p. 28.

81 ABC Rural, *ACCC calls for more transparency and better reporting on beef markets*, 7 March 2017.



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*Act 2010*, to introduce prohibitions against 'concerted practices' that substantially lessen competition.<sup>82</sup>

2.89 The Bill, which was introduced into the House of Representatives on 30 March 2017, would, if enacted prohibit corporations from engaging in a 'concerted practice' that has the purpose, effect or likely effect of substantially lessening competition. Under the proposed legislation, the ACCC would also be granted additional powers, under certain circumstances, to obtain information and documents.<sup>83</sup>

### **Committee comment**

2.90 The committee has, during its many inquiries, heard evidence from industry stakeholders about what they describe as the 'culture of collusion' that exists in cattle saleyards. Stakeholders – particularly producers – have consistently raised concerns about a number of saleyard practices – including uncompetitive behaviour – on the part of commission buyers. The committee has been clear in its opposition to any form of collusive practice and in its support for mechanisms which increase transparency in pricing and fairness in grading systems.

2.91 The committee was encouraged by the ACCC's decision to carry out a market study of Australia's cattle and beef industry, particularly given the study came about, in part, on the basis of issues raised during the committee's inquiry. The committee was pleased to see that the terms of reference for the study included an examination of issues such as competition, efficiency, transparency and trading across the beef industry supply chain.

2.92 The committee had the opportunity to review the reports released by the ACCC, including their findings and recommendations and acknowledges the subtle differences (primarily in relation to the terminology used and the presentation and format of the recommendations) between the ACCC's interim and final reports. It is noted, for example, that ACCC's concerns about "conduct affecting the competitiveness of saleyard auctions",<sup>84</sup> no longer includes reference to "collusion among buyers".<sup>85</sup> Apart from some 'softening' of the language used, however, the reports do not vary substantially in their content or conclusions.

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82 Website: <https://consultation.accc.gov.au/legal-economic/draft-framework-for-concerted-practices-guidelines/>, accessed 1 June 2017 and Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 92.

83 Website: <https://consultation.accc.gov.au/legal-economic/draft-framework-for-concerted-practices-guidelines/>, accessed 1 June 2017 and Australian Competition and Consumer Commission, *Cattle and beef market study – Final Report*, 7 March 2017, p. 92.

84 Australian Competition and Consumer Commission, *Cattle and beef market study – Final report*, 7 March 2017, p. 3.

85 Australian Competition and Consumer Commission, *Cattle and beef market study – Interim Report*, October 2016, p. 3.

2.93 The committee appreciates the investigation undertaken by the ACCC and supports the study's findings and recommendations. The committee notes the difficulties experienced by the ACCC in its attempt to identify solutions to some of the problems that exist across the cattle and beef industry. In taking evidence from a number of industry stakeholders following the release of the ACCC's final report, the committee is acutely aware of the resistance being shown by a number of industry players, the lack of will to engage with the problems that exist and the lack of commitment to drive much needed reform. Whilst industry stakeholders have indicated their support for the ACCC's study, the committee has serious concerns about the commitment these stakeholders have to implementing the ACCC's recommendations and working toward reform, particularly in relation to market and price transparency.

2.94 The response to the ACCC's recommendations has only served to confirm that there is a lack of agreement across the industry about the exact nature of long-standing problems and even less agreement about the solutions, and who is responsible for leading reform.

2.95 In conducting the market study, the ACCC received evidence in relation to bid-rigging among buyers (in particular saleyards) and heard specific allegations of anti-competitive agreements between livestock agency businesses. The committee notes that the ACCC has undertaken to assess a number of allegations of anti-competitive conduct raised during the course of its market study. The committee also notes that the ACCC has undertaken to monitor the industry, and investigate reported instances of collective behaviour by cattle buyers; including cattle purchasing boycotts designed to alter industry practices, and other potentially anti-competitive practices in cattle acquisition markets.

2.96 The committee appreciates the work undertaken by the ACCC in conducting its investigations. However, the ACCC's report, and evidence provided to the current inquiry has only served to increase the committee's concerns about anti-competitive behaviour and collusive practices in the cattle and beef sector. The committee notes, however, that the Consumer Amendment (Competition Policy Review) Bill was introduced into the House of Representatives in March this year [2017]. The ACCC considers it likely that the introduction of this proposed new legislation would have an influence on conduct across the industry. To this end, the ACCC has indicated that it would give close consideration to allegations of anti-competitive behaviour and concerted practice within the industry if, and when, the proposed legislation is enacted.

2.97 In addition to identifying specific examples of anti-competitive conduct – which it committed to investigating further – the ACCC's study also highlighted a number of issues of concern to industry stakeholders, including shortcomings in price reporting and a lack of confidence in the carcase grading system. The committee shares the concerns of stakeholders in relation to these issues.

2.98 It is also noted that the concerns previously expressed by the committee regarding the events that took place at Barnawartha, and the potential for misuse of market power – through buyer collusion and concerted practices – remain. The committee is firmly of the view that the disconnection between the industry, and the structures that underpin it, is a continuing problem. As a consequence, the description of the industry as one "beset by market failures and plagued with a lack of integrity, transparency and accountability" continues to be relevant.<sup>86</sup>

2.99 The committee has long advocated the need for change. Evidence provided to this committee has ensured that it will continue to advocate for change, and for systems to be put in place to ensure that events such as the 'Barnawartha boycott' do not happen again. The committee has long been clear in its view that the industry should work together to develop a set of guidelines around commercial transactions – particularly in saleyards. Unfortunately, the committee has become increasingly frustrated at the apparent lack of will on the part of industry stakeholders to work cooperatively to develop appropriate systems and guidelines.

2.100 The committee therefore recommends that the industry take steps to develop an industry Standards of Practice which covers all commercial transactions in relation to livestock. The Standards of Practice should take the form of an overarching set of guidelines for industry participants. The Standards should be underpinned by best practice principles aimed at preventing collusion and anti-competitive behaviour across the supply chain.

2.101 The committee is of the view that the industry's Standards of Practice should apply to all parties engaged in commercial transactions. The committee is also of the view that the Standards of Practice should contain specific guidelines to ensure that parties act in good faith, and under the law.

2.102 The Standards of Practice should also deal with issues such as equity between vendors and buyers, consistency across pricing mechanisms, the use of commission buyers, nationally consistent industry training and registration, reporting systems and dispute resolution practices.

## **Recommendation 2**

**2.103 The committee recommends that the Australian Livestock and Property Agents Association (ALPA) lead the development of industry Standards of Practice that cover all commercial transactions in relation to livestock – including online, paddock and saleyard transactions. The Standards of Practice should include guidelines which encourage all parties to conduct transactions in good faith, do not mislead other parties, and ensure that all such transactions are negotiated under the law.**

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86 Mr Derek Schoen, NSW Farmers' Association, *Committee Hansard*, 2 September 2015, cited in Senate Rural and Regional Affairs and Transport References Committee, *Effect of market consolidation on the red meat processing sector: Interim Report*, May 2016, p. 80.

2.104 The committee advises that it has been working toward the development of a framework for a mandatory industry code of conduct. The committee notes that it will pursue its enforcement should the industry not commit to the development of industry Standards of Practice. The industry must demonstrate its commitment by providing evidence to the Minister for Agriculture and Water Resources within three months of the tabling of this report. Once provided to the Minister, this evidence should also be made public.

2.105 The committee acknowledges the ACCC's finding that, on one level, data in relation to saleyard purchases, online auctions, cattle prices and OTH sales is available (and in some cases, published, on a regular basis). The ACCC also found, however, that there is still a level of inconsistency which often makes the available data difficult to interpret or use comparatively. The ACCC's findings are consistent with the concerns raised by industry stakeholders, who told the committee that the inconsistency of data reduces its usefulness to the industry.

2.106 The committee notes that the Cattle and beef market study was a self-referred inquiry and, as such, the ACCC did not have the power during its inquiry to compel information and documents from market participants. The committee also notes that, given its current legislative powers, the ACCC stopped short of making its recommendations for change mandatory.

2.107 Increasing the ACCC's investigatory powers and enabling it to obtain accurate, up-to-date data would assist the ACCC to undertake more detailed analyses, reach more definitive conclusions, and make more accurate recommendations.

2.108 Concerns have been raised about RMAC's ability to implement the ACCC's recommendations. A number of stakeholders argued that RMAC currently lacks the legal or organisational authority required to effectively deliver the level of reform that is so desperately needed.

2.109 The committee also has some reservations about whether RMAC is the appropriate body to oversee the implementation of these important reforms. However, the committee is of the view that no one organisation should be responsible for implementing the reforms that are so desperately needed across the cattle and beef industry.

2.110 The committee acknowledges that the ACCC expressed a similar view when releasing its market study. The Commission indicated that its study had highlighted a number of areas of concern across the cattle and beef supply chain. Further, it argued that while some of its recommendations were intended to improve the work of specific organisations, the implementation of some of its more general recommendations would require industry leadership and stakeholder cooperation.

2.111 The committee has been involved in inquiries into the cattle and beef sector for many years, and has observed the culture within stakeholder groups becoming increasingly more insular. The committee acknowledges that, on one level, it is natural for the leadership of industry representative bodies and peak industry councils

to see the specific needs of their own organisations as their primary focus. However, the committee is concerned that for some representative bodies and peak industry councils, this narrow view of the industry is being worn as a badge of honour. The committee has also observed, that without real consultation with members, and those at the grass roots level of the industry, the views and agendas of those in leadership roles become more entrenched. Increasingly, industry groups and representative bodies are reluctant to look beyond the narrow scope of what they see as their immediate responsibilities. Unfortunately, this limited way of operating discourages industry groups from looking beyond their own interests, and makes it difficult for them to focus on anything other than what will benefit their own small part of the industry.

2.112 The level of trust between industry stakeholders, (particularly between producers and processors, and producers and their representative bodies) is currently at an all-time low. The committee is of the view that the need for reform has become critical. The future sustainability of Australia's cattle and beef industry is now dependent on a complete cultural change, which will include finding ways to rebuild trust, and an acknowledgement on the part of industry leadership that it is not possible for individual sections of the supply chain to operate in isolation.

2.113 It remains the committee's view that all stakeholder groups need to work together to find solutions to the problems the industry is currently facing, and work cooperatively to implement reforms that will lead to increased trust between industry stakeholders, increased competitiveness, price transparency and consistency in grading.

