



Submission to:

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Options to strengthen the misuse of market power law
Discussion Paper

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Background:

The Western Australian Farmers Federation (Inc.) (WAFarmers) welcomes the opportunity to comment on the options to strengthen the misuse of market power laws.

As background, WAFarmers is the state's largest and most influential rural advocacy and service organisation. WAFarmers represents around 3,000 Western Australian farmers from primary industries, with the majority being grain growers. As the largest WA rural advocacy group, our members are responsible for approximately 35 per cent of the overall grain production in WA.

Introduction:

WAFarmers welcomes any reforms to market power legislation that will ensure that primary producers, industries, and other market participants are not unfairly targeted as an opportunity to maximise shareholder returns. The discussion paper shows promise with the intention to strengthen provisions regarding market power.

Farmers rely on a competitive market to ensure they can maximise their return for their produce, while also needing a low cost, efficient, and reliable value chain to ensure their commodities are internationally competitive. Farmers pay market rates for inputs into their operating system, and take the highest price the market is offering. They have limited control over the prices they pay and are paid, and therefore they need competition to ensure they are not extorted. WAFarmers supports an agricultural industry that is low cost, efficient, reliable, and doesn't impose unreasonable conditions on those that supply the entire system, the farmers.

The proposed changes to section 46 of the *Competition and Consumer Act 2010*, have the potential to allow greater transparency and enforceability to apply to corporations that seek to hinder fair markets.

Concern with strengthening the misuse of market power law:

As stated previously, WAFarmers is supportive of a system that monitors the conduct of businesses with extensive market power, and their interaction with consumers and their competitors. However, this system should make allowances for businesses that act in the best interest of their customers, through efficiency gains, cost reductions, or changes to business structures that allow the customer to directly benefit.

Cooperative businesses are owned by the members, who also are the primary users, and therefore beneficiaries of the cooperative. In Western Australia, Co-operative Bulk Handling (CBH Group) are the largest grain handling and storage provider. CBH are focused on providing grain producers in WA with up country storage facilities and a reliable, low cost and efficient value chain through to export markets.

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As the primary grain storage and handler in WA, CBH do have considerable market share. However as a cooperative, CBH must minimise cost imposition on growers and therefore the members, and to do so they must gain efficiencies, and implement business decisions that could be considered anti-competitive under the proposed changes to section 46.

Cooperative and corporate organisations have fundamental differences, and therefore allowances should be considered that capture these differences. Cooperatives are owned by those that use the service. In the case in WA, CBH is owned by farmers, for the benefit of farmers. Unlike corporate businesses, which are operated to maximise shareholder profits.

CBH must provide cost efficient services to farmers, while maximising the level of service offered. Any CBH profit is invested into the network, or provided back to farmers through rebates and price reductions. Other corporates that operate within the WA value chain are obliged to maximise profits for shareholders, which could be to the disadvantage of farmers and the WA grain industry.

WAFarmers is concerned that CBH Group, as the co-operative for WA grain producers, could be accused of misusing their market power. Any efficiencies gained through economies of scale, developing better business practices, and by generally decreasing costs imposed to growers throughout the value chain, could be described as misusing market power if they had a deleterious effect on competition.

Organisations with market power, regardless of cooperative or corporate business structures, have the capacity to misuse their position to manipulate competition in the market. However, cooperatives generally aim to decrease costs for the users of the service, whereas corporates generally aim to increase revenue, and therefore increase costs for the users of the service.

The potential for the business practices of cooperatives and corporates to be compared equally is a concern to WAFarmers, as there are fundamental differences in their purposes for operational decisions. Cooperatives and corporates are governed by different business principles, legislations and regulations, and other practices, and therefore considerations should be made.

Options to strengthen the misuse of market power law:

WAFarmers would like to see allowances made for cooperative organisations, similar to those offered previously in the Bulk Port Access Code, to ensure that co-operatives aren't penalised for providing their members with cost saving measures. A precedent for monitoring market power has been set previously, as both cooperatives and corporate enterprises must function within the market. However cooperatives must comply with obligations to gain efficiencies for their members, while corporates must comply with maximising profits for shareholders.

The role of section 46 is to ensure that the consumer, and in WAFarmers interest, primary producers aren't manipulated to maximise shareholder returns.

Implementation of efficiency driving strategies must have independent classifications under the misuse of market power definitions. Any business that gains efficiencies is complying with standard business practices, and therefore should have allowances in the misuse of market power provisions.

Conclusion:

WAFarmers supports market power measures that curb the capacity for organisations to manipulate the market and other competitive forces to improve their own business position. However allowances should be made for organisations that work to benefit the users of the product or service, as well as organisations that implement cost reductions through efficiency gains to benefit the user.



Mr Dale Park
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