

5. Immediate catalysts

In this Part of the report we explore how critical events in the dairy sector between 2010 and 2012 created the political conditions and momentum for regulatory action. We analyse how and why these events had salience amongst the general community and in turn how this, together with political pressures, catalysed industry and in turn government to act.

However, in order to understand how and why the dairy sector loomed large in these developments, it is necessary first to go back in time. The development and implementation of NCP as an element of wide ranging micro-economic reforms by the Hawke-Keating Labor Governments in the 1990s, particularly with regard to deregulation, had far ranging implications for Australian business and industry. The implications of deregulation for primary producers and for our purposes, for the dairy industry in particular, are an important backdrop in understanding the series of events that jump-started negotiations that culminated in the FGCC.

Up until the start of this century the Australian dairy industry consisted primarily of small, privately owned dairy farms dispersed across the country and represented by their own industry body, which set farmgate prices for the selling of milk to processing collectives. We first consider how deregulation, the decline of industry-specific bodies and advances in technology put an end to pricing support for liquid milk, leading to the rationalisation and consolidation of dairy farms and processors. We then consider the political implications of the resultant shift in power from the processors to the MSCs.

In 2008, at a time when concerns that prices were too high had led to the ACCC Grocery Inquiry, high international milk prices had disguised the full impact of deregulation on the dairy sector. We consider the political response once this mask was removed in 2010 by a rapidly declining international milk price and the Global Financial Crisis (GFC), with not one but two public inquiries into the dairy sector within two years (one in 2010 and another in 2011). Crucially, between the two, came the 'milk wars', with the MSCs competing aggressively for consumer share by selling milk for as little as one dollar a litre.

We examine the findings of the two inquiries and the government's response, how both were shaped by the growing public and political visibility of the challenges being faced by the dairy industry, and how the conduct of the MSCs came to be seen as relevant in these developments. At a political level it is important to take into consideration the change of government that brought with it a new Agriculture Minister with a passion for regional Australia in Barnaby Joyce. Joyce's advocacy and policy initiatives, in particular the Agricultural Competitiveness White Paper advocating 'a fairer go for farmers',¹¹¹ provides an effective lens through which to consider a central political tension in the Coalition government, and Australian politics more generally. The tension arises in the desire to minimise government interference and maximise competition in the interests of consumer welfare on

¹¹¹ Commonwealth of Australia 2015, *Agricultural Competitiveness White Paper: Stronger farmers stronger economy* (Agricultural Competitiveness White Paper, 2015), p. 1.

the one hand, while retaining the support of the rural and small business sector, so often the casualties of competition, on the other. This political dilemma loomed large in the intervening years, between the ACCC Grocery Inquiry and the government's decision to regulate by way of the FGCC.

In identifying this tension, however, it is important also to appreciate the socio-cultural dynamics at work, insofar as consumers or the general public are concerned. In examining these dynamics, we highlight how the distinctively Australian ethos of egalitarianism, a deep suspicion of big business and powerful institutions and the desire to support the underdog, generated public sympathy for Australian farmers. At the same time, our love of a bargain, the popularity of one dollar milk particularly and the success of the discounter Aldi, meant that these sentiments failed to be reflected in purchasing behaviour. In the context of the political heat generated by the milk wars, this contradiction serves to highlight the pressures that both the MSCs and government were experiencing by 2012, at the time negotiations over a code of conduct for supermarket-supplier relations kicked off.

I. A changing industry – the dairy sector consolidates

While both industry-specific and macro-economic factors were affecting grocery suppliers generally post-2008, the 'pain' was particularly acute amongst farmers, and dairy farmers especially. This was in part a fall out from the major structural upheaval that had taken place in the dairy industry over the previous decade.

As one industry representative observed of the period prior to the structural transformation, 'the whole issue of supermarkets wasn't really an issue back then because everything was totally and absolutely regulated, including those who supplied milk for fluid milk purposes.'¹¹² Until 2000, the price paid for manufacturing milk was determined by factors including world prices of manufactured dairy products; however, support was provided through the use of national export pools that ensured farmers received an average pool price for their product regardless of its quality, use and destination. State authorities set the farmgate price for fresh drinking milk to ensure the additional costs of year-round supply were covered. Steps towards market deregulation commenced in the mid 1980s and continued throughout the 1990s. The change was driven largely by the dairy industry itself as participants sought opportunities for growth, albeit with significant government support in line with its micro-economic reform agenda generally and NCP in particular.

In early 1999 the industry's peak policy body, the Australian Industry Dairy Corporation (AIDC) approached the federal Coalition government with a plan for a national approach to the 'orderly' deregulation of the drinking milk sector, and the end of manufacturing milk price support.¹¹³ While driven by industry there was a sense that such deregulation was 'inevitable'.¹¹⁴ The Coalition Government's much championed NCP focus on efficiency meant plans had been afoot for some time

¹¹² Transcript of interview, senior representative of dairy industry association, p. 10.

¹¹³ Dairy Australia, 'History of Australian dairy industry deregulation', <http://www.dairyaustralia.com.au/Industry-information/About-the-industry/Deregulation.aspx>

¹¹⁴ National Competition Council 2004, *NCC Occasional Series: Dairy - Now and Then: The Australian Dairy Industry Since Deregulation*, AusInfo, Canberra (NCC Dairy – Now and Then, 2004), p. 19.

to remove governmental domestic milk support.¹¹⁵ Further, the decision by major manufacturers to sell milk to retailers and/or processors at low prices would in effect make the farmgate pricing systems redundant.¹¹⁶

The impact of NCP is apparent in the way that deregulation was managed. A state-by-state review had identified the need to increase value and efficiency in both farmgate pricing and supply chain management. A forecast quantum loss of farm incomes was an accepted outcome of such reforms and as such the AIDC relied on these forecast losses to argue for an industry adjustment package.¹¹⁷ On 28 September 1999 the government announced it would implement the Dairy Structural Adjustment Program (DSAP), a program that would see the dramatic reduction of regulation in the sector.¹¹⁸

Following its deregulation in 1999 the industry went through a period of significant rationalisation, consolidation and adjustment. The numerous small, often family-operated, farms started to be replaced by larger commercial farming enterprises. For many, remaining in the industry was simply not sustainable:

*A lot of people have just gone out of dairying and sold their water rights as well [and then] you're not a dairy farmer any more, and buying it back is not a simple process. You can buy it on the market but it's a pretty expensive commodity compared to what they used to be.*¹¹⁹

As one industry observer noted, many struggled to adapt:

*I'm not convinced the sector has changed its thinking ... I don't think they understand that the ground they were playing on 15, 20 years ago has now shifted and the epicentre of that now is a lot of the regulatory issues that are dealt with by bodies by the ACCC.*¹²⁰

This may be due in part to nature of farming in Australia, in particular its geographical isolation. As pointed out by a senior ACCC representative:

*Australian farmers, almost without fail, are virtually the only ones who live in isolation on their farms. Virtually, all other substantial farm populations live in villages and travel to their farms.*¹²¹

This might also explain why Australian farmers, unlike those in so many other countries, do not have a, 'very strong co-operative culture'.¹²² One possible ramification of this, according to the same interviewee, is that:

¹¹⁵ Dairy Australia, 'History of Australian dairy industry deregulation' <http://www.dairyaustralia.com.au/Industry-information/About-the-industry/Deregulation.aspx>.

¹¹⁶ NCC Dairy – Now and Then, 2004, p. 19.

¹¹⁷ NCC Dairy – Now and Then, 2004, p. 19.

¹¹⁸ Dairy Australia, 'History of Australian dairy industry deregulation' <http://www.dairyaustralia.com.au/Industry-information/About-the-industry/Deregulation.aspx>.

¹¹⁹ Transcript of interview, senior representative of a dairy industry association, p. 8.

¹²⁰ Transcript of interview, senior representative of the ACCC, p. 3.

¹²¹ Transcript of interview, senior representative of the ACCC, p. 5.

¹²² Transcript of interview, senior representative of the ACCC, p. 4.

*Australia farmers are very self-sufficient, very independent in terms of their approach to getting things done. And I suspect that bleeds into, you know, their reluctance to agreeing to work collectively.*¹²³

Accepting this, once floor prices and the single desk were gone, the decline in the relevance of sector-specific industry bodies may have been exacerbated by technological advances happening at around the same time:

*Look again at the history from perhaps 1990 to now, you move from zero access to the Internet and very limited telecommunications to instantaneous and universal telecommunications, albeit not brilliant in the bush, but most people can get access to the Internet and mobile phones. So, again, the role of those organisations used to be as the information conveyors to and from the policy makers. Well, you can be on the tractor in the middle of a paddock in Dubbo and get Barnaby Joyce on the phone straight away. So, the, you know, that crucial role they had as the conveyors of information and [access to] the representative has broken down.*¹²⁴

The decline of the small family farm brought with it an associated increase in herd sizes and milk yields per cow as farmers sought to benefit from the efficiencies of larger operating systems.¹²⁵ In addition, over the same period, there was increasing concentration at the processor level of the industry. In 1999 there were five major milk manufacturers. However, just under a decade later, this had reduced such that, in the drinking milk market, there were only two big players - National Foods (with 81% share) and Parmalat (with 12% share).¹²⁶ Moreover, prior to deregulation, many of the processors were cooperatives owned by farmers which would largely price at a level that aimed merely to cover the processing costs.

Reflecting back, a senior representative of a dairy industry association has noted: 'up until the mid-90s the margins of all the players were regulated, 'and then slowly but surely they got rid of the retail margin, got rid of processor margin, and the only margin that was left for the last few years of regulation was the ... farm gate price.'¹²⁷ By July 2010, in line with the DSAP, all states had repealed any legislation governing the sourcing and pricing of drinking milk and all the state milk authorities that had administered these controls had been wound up.¹²⁸ Only Murray Goulburn remained a cooperative; most of the other processors were foreign-owned companies,¹²⁹ the shareholder interests in which were not necessarily aligned with the interests of farmers.

¹²³ Transcript of interview, senior representative of the ACCC, p. 6.

¹²⁴ Transcript of interview, senior representative of the ACCC, p. 6.

¹²⁵ The Australian Bureau of Statistics Australia Social Trends 2003 'Living arrangements: Farming Families' <http://www.abs.gov.au/AUSSTATS/abs@.nsf/7d12b0f6763c78caca257061001cc588/cdcd7dca1f3ddb21ca2570eb00835393!OpenDocument>.

¹²⁶ Senate Economics References Committee Report, *Milking it for all it's worth — competition and pricing in the Australian dairy industry*, May 2010 (SERC, *Milking it for all its worth*, 2010), p. 16.

¹²⁷ Transcript of interview, senior representative of a dairy industry association, p. 25.

¹²⁸ Dairy Australia, 'History of Australian dairy industry deregulation' <http://www.dairyaustralia.com.au/Industry-information/About-the-industry/Deregulation.aspx>.

¹²⁹ SERC, *Milking it for all its worth*, 2010, p. 32.

Concentration at the retail level of the grocery sector was a significant driver of the concentration amongst processors. The MSCs generally prefer a single supplier and hence there is enormous pressure on the processors to secure a MSC contract (or otherwise be locked out of half the drinking market).¹³⁰ This promoted consolidation within the processing market as only large processors could credibly bid for the contracts and without a MSC contract could not realise economies of scale. As one industry representative observed:

*I think it's about 55% of milk is sold to supermarkets now so that's a big market, when supermarket contracts change hands, it has a big impact on the processor who supplies them, Lion, Parmalat, Murray Goulburn. They've got a 10 year contract now and it has an enormous impact on them and you're seeing companies like Lion and others try and get into the export market a bit more, I think, because of that reliance on the domestic market here.*¹³¹

The growth in generic milk sales also meant that the processors dominating the fresh milk market were increasingly competing with their own branded products as they also supplied the MSCs with their generic milk.¹³² Combined with the pressure placed on processors by the high level of retail concentration, this competition was said to be producing conduct that some argued amounted to misuse of market power, including price discrimination (smaller retailers being charged higher wholesale milk prices than the larger retailers),¹³³ and waterbedding (processors cross-subsidising losses on milk with higher prices on other dairy products).¹³⁴ With respect to the latter, when asked why the MSCs press for lower prices on liquid milk but not cheese and other dairy products, a senior representative of a dairy industry association explained:

*...they're doing a deal. Part of the dollar milk is access to better shelf space and larger shelf space for your branded cheese....some processors have lost their contract for sale of their particular branded cheese in a supermarket because of the dollar milk thing.*¹³⁵

II. Dairy sector concerns become political concerns

In the late 1990s it had been a 'serious concern' that, under deregulation, the control provided by regulation would 'shift to processors and large retailers who would then be able to dictate terms to the industry and marketplace.'¹³⁶ In 2010, pointing to the concentration at processing and retail levels of the market and the competitive dynamics between the two, a Senate Economic References Committee conceded that this appeared to be exactly what had happened.¹³⁷ As an industry representative noted:

¹³⁰ SERC, *Milking it for all its worth*, 2010, p. 53.

¹³¹ Transcript of interview, senior representative of a dairy industry association, p. 17.

¹³² By 2010 about half of the drinking milk sold in Australia was generic (private label) milk (see Dairy Australia, *Australian Dairy Industry in Focus* 2009, p. 43.)

¹³³ SERC, *Milking it for all its worth*, 2010, at p. 56.

¹³⁴ SERC, *Milking it for all its worth*, 2010, at p. 32.

¹³⁵ Senior representative of a dairy industry association, p. 27.

¹³⁶ *Deregulation of the Australian Dairy Industry*, October 1999, p. 170, cited in SERC, *Milking it for all its worth*, 2010, p. 14.

¹³⁷ SERC, *Milking it for all its worth*, 2010, p. 17.

*... all of a sudden a supermarket decide[s] that this brand does a better job of sale than this one does, there's no transparency in any of that, but they're the sorts of problems that exist, which have not to do with competition as much as the power that you have.*¹³⁸

The effects of the structural transformation had been masked in the boom years - in 2007-08 Australia's dairy farmers were receiving record farmgate prices for their milk and confidence was high.¹³⁹ In 2008, Dairy Australia reported that the Australian dairy industry was 'enjoying the best world market conditions in decades.'¹⁴⁰ International dairy commodity prices rose to record levels through 2007, due to consistent strong demand and tight supplies, as well as the effects of exchange rates and cuts in export subsidies. This led to higher farmgate milk prices for dairy farmers – prices increasing by more than 50% in southern regions during 2007-08.¹⁴¹ Higher farmgate prices continued into the 2008-09 season until, following the GFC, milk processors reduced the price paid to farmers sharply. The reduction in price per litre paid to farmers was initiated by Murray Goulburn which announced a 'step-down' in response to the weakening international commodity market.¹⁴² Following Murray Goulburn's announcement, the remaining major milk processors also announced reductions in the price they would pay.¹⁴³ As reported in the Senate Committee's report, the boom times ended 'more or less overnight'.¹⁴⁴

The farmgate price plummet led the Senate in September 2009 to refer the matter to the Economic References committee for inquiry, with terms of reference particularly focussed on the impact of consolidation on the dairy supply chain since deregulation of the industry a decade previously and the effectiveness of the *Trade Practices Act 1974* (TPA), as the CCA was then called.¹⁴⁵ The referral reflected the degree of political pressure that the dairy farmers were starting to exert. As the Committee observed:

*The inquiry commenced at a time when dairy farmers were appealing to government that the larger players within the processing and retail sectors were taking advantage of their market power to "milk them for all they were worth" in what was a volatile period in the global marketplace.*¹⁴⁶

The Committee found that farm gate prices were being determined by the amount of competition – or lack thereof – between processors in different regions, rather than the international commodity market.¹⁴⁷ Consequently, in contrast to the findings of the ACCC Grocery Inquiry, while retail prices

¹³⁸ Transcript of interview, senior representative of a dairy industry association, p. 29.

¹³⁹ SERC, *Milking it for all its worth*, 2010, p. 10.

¹⁴⁰ SERC, *Milking it for all its worth*, 2010, p. 10.

¹⁴¹ SERC, *Milking it for all its worth*, 2010, p. 10.

¹⁴² SERC, *Milking it for all its worth*, 2010, p. 11.

¹⁴³ SERC, *Milking it for all its worth*, 2010, p. 11.

¹⁴⁴ SERC, *Milking it for all its worth*, 2010, recommendation 5, p.1.

¹⁴⁵ SERC, *Milking it for all its worth*, 2010, p. 7.

¹⁴⁶ SERC, *Milking it for all its worth*, 2010, recommendation 5, p.1.

¹⁴⁷ SERC, *Milking it for all its worth*, 2010, recommendation 5, pp. 1-2.

for milk had increased, farm gate prices had reduced, in some cases to below the cost of production.¹⁴⁸ As one industry observer has said:

*So the bigger picture is that Australia is a high cost country, quite high wages, quite high cost of living. So any notion that agriculture in Australia can remain competitive purely on a cost basis is quite a dangerous one.*¹⁴⁹

In response, the Committee made a series of recommendations aimed at addressing both structural and conduct concerns at both the processing and retail levels of the grocery sector. The ACCC should conduct a further study of the implications of the growing shares of the generic milk market held by the MSCs, it recommended.¹⁵⁰ There should be a moratorium on further mergers and acquisitions in the milk processing industry and the Productivity Commission (PC) should consider whether there should be separate agencies for the approval of mergers and subsequent assessment of excessive levels of concentration.¹⁵¹ There should be more transparency and consistency in milk pricing for farmers.¹⁵² The ACCC should gather more information on and monitor closely pricing practices in the dairy supply chain with a view to ascertaining whether or not there were misuses of market power and the government should consider reinstating a prohibition on price discrimination.¹⁵³ The government should also look into how new processors owned by farmer cooperatives might be established¹⁵⁴ and in the meantime it should consider measures to facilitate more and more effective collective bargaining by farmers in negotiations with processors.¹⁵⁵ More broadly, there should be multi-government and stakeholder engagement in considering long term trends in the industry and their implications for its sustainability as well as Australia's food security.¹⁵⁶

The Government provided its response to this, and to a subsequent 2011 inquiry into pricing issues in the sector,¹⁵⁷ separately but concurrently. Given that the subsequent inquiry focussed squarely on the impact of supermarket pricing decisions on the dairy industry, the recommendations with regard to dairy pricing from both inquiries were addressed in the Government's response to the 2011 report (see below).

Concerns around the effectiveness of the provisions that allow for farmers to engage in collective bargaining were raised in both inquiries. However the Government did not accept that there was a need to review these provisions, reasoning that they were 'generally operating effectively for dairy farmers'¹⁵⁸ and that they were in the best interests of Australian businesses, consumers and the

¹⁴⁸ SERC, *Milking it for all its worth*, 2010, p. 7.

¹⁴⁹ Transcript of interview, senior representative of the ACCC, p. 9.

¹⁵⁰ SERC, *Milking it for all its worth*, 2010, recommendation 8, p. 4.

¹⁵¹ SERC, *Milking it for all its worth*, 2010, recommendation 6, p. 4.

¹⁵² SERC, *Milking it for all its worth*, 2010, recommendation 6, p. 2.

¹⁵³ SERC, *Milking it for all its worth*, 2010, recommendation 4, p. 3.

¹⁵⁴ SERC, *Milking it for all its worth*, 2010, recommendation 11, p. 3.

¹⁵⁵ SERC, *Milking it for all its worth*, 2010, recommendation 2, p. 2.

¹⁵⁶ SERC, *Milking it for all its worth*, 2010, recommendation 14, p. 5.

¹⁵⁷ Senate Economics References Committee, Final Report, *The impacts of supermarket pricing decisions on the dairy industry*, 2011 (SERC, *Impacts of supermarket pricing on the dairy industry*, 2011).

¹⁵⁸ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 4.

broader economy. However, the Government did support the increased provision of information so as to facilitate more and more effective collective bargaining arrangements.¹⁵⁹

With regard to calls for further study into the implications of the growing generic milk market, the Government cited the development of the National Food Plan (NFP), stating that this would provide a 'strategic and integrated approach' to the issue as it pertained to food security and the future sustainability of the dairy industry.¹⁶⁰ In doing so the Government also addressed the call for separate multi-governmental and stakeholder engagement in response to concerns around these issues, stating that these too would be addressed through the NFP. With regard to possible misuses of market power the Government noted that the ACCC had already indicated it would actively monitor generic products, including generic milk, citing ACCC Chairman, Rod Sims' statement that, when it came to private label products:¹⁶¹

*This vertical integration in the supply chain needs close scrutiny to ensure the supermarkets do not misuse their market power under Section 46.*¹⁶²

In response to calls for the PC to consider the appropriateness of separating the functions of the ACCC when it came to merger approvals and market concentration, the Government determined that, 'the ACCC, as the expert, independent competition regulator, is the agency best placed to consider all aspects of the competitive effects particular of mergers and acquisitions.'¹⁶³ The Government also made clear that it did not consider the establishment of new processors and their corporate structure fell within the scope of Government intervention and that these were matters best left to industry members.¹⁶⁴

III. One dollar milk hits the shelves, heralding yet another government inquiry

Then, barely before policymakers and politicians had had a chance to draw breath, on Australia Day (26 January) 2011 Coles kicked off what has come to be known as 'the milk wars', reducing the price of its private label plain white milk from \$2.41 for a two-litre container to \$1 per litre.¹⁶⁵ Woolworths, Aldi and others quickly followed suit. This generated a further angry backlash from farmers. Dairy producers and their representatives again beat a path to the doors of Canberra. The government's response was to commission yet another Senate committee inquiry, in February 2011.¹⁶⁶

¹⁵⁹ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 5.

¹⁶⁰ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 5.

¹⁶¹ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 5.

¹⁶² Rod Sims, Some perspectives on competition and regulation Melbourne Press Club (10 October 2011), referred to in Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 5.

¹⁶³ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 6.

¹⁶⁴ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 6.

¹⁶⁵ Jared Lynch and Eli Greenblat, 'Farmers warn on milk war threat', *The Age*, 8 March 2011; 'Woolworths admits milk war will hurt farmers', *ABC News*, 8 March 2011; 'Farmers froth over \$2 milk', *SMH*, 26 January 2011.

¹⁶⁶ In the meantime, the third interim report of the former Senate Select Committee on Agricultural and Related Industries' inquiry into food production, tabled in November 2009, had also focussed on the dairy industry.

This inquiry was focussed squarely on the supermarket price cuts and their impact on the dairy industry supply chain but again inevitably there was reflection on the imbalances in bargaining power between farmers and processors. The Committee traversed much of the same ground as had been covered in the 2010 inquiry little over a year before and many of its findings and recommendations were not dissimilar. The combination of concentration at both processor and retail levels of the sector, and the competitive tensions introduced by the growth in generic milk, were major contributors to the difficulties besetting dairy farmers.¹⁶⁷ However, for those regions reliant on exports to a considerable extent, international prices were also a factor and phenomena such as drought and flooding should not be overlooked.¹⁶⁸

Taking this all into account, the Committee restated that it would assist farmers if there was more clarity and transparency in processor pricing structures,¹⁶⁹ as well as greater scope for collective bargaining.¹⁷⁰ There should be an independent review of the competition rules, not confined to but particularly focussing on the effectiveness of the misuse of market prohibition in s 46¹⁷¹ and, looking beyond concerns about competition, there should be a study of the sustainability of the dairy industry.¹⁷² Moreover, the voluntary PGCC should be reviewed and consideration should be given to its replacement with a mandatory prescribed code under the CCA as a means to address issues in supermarket-supplier relationships.¹⁷³ What's more, consultation should be undertaken with respect to the possibility of creating a new statutory office to manage and respond to such issues.¹⁷⁴

In its response to the second milk inquiry the Government, while acknowledging that pricing structures were a commercial matter for industry, encouraged 'all participants in the dairy industry to be transparent in their transactions along the supply chain.'¹⁷⁵ Processors were encouraged to provide more stable pricing to farmers to allow farmers to set a fixed price, albeit at the risk of less profits for farmers.¹⁷⁶ Development of a clear, consistent formula for milk pricing with unambiguous conditions was encouraged.¹⁷⁷

As previously noted, the Government did not believe there was a need to review existing collective bargaining provisions.¹⁷⁸ The Government was also not convinced of the need for independent review of the competition provisions. Drawing attention to Rod Sims' stated intention for the ACCC to take action 'even where the law is not completely clear', the view was that the watchdog should be given the opportunity to first further test the existing laws in the courts.¹⁷⁹ There was no direct response to calls for changes or the replacement of the PGCC. Instead the Government again highlighted the

¹⁶⁷ See Chapter 5 in particular, 'Impact of the retail price cuts at the farm gate', in SERC, *Impacts of supermarket pricing on the dairy industry*, 2011.

¹⁶⁸ SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 16.

¹⁶⁹ SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, recommendation 1, p. xv.

¹⁷⁰ SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, recommendation 6, p. xviii.

¹⁷¹ SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, recommendation 5, p. xvi.

¹⁷² SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, recommendation 3, p. xv.

¹⁷³ SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, recommendation 7, p. xix.

¹⁷⁴ SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, recommendation 7, p. xix.

¹⁷⁵ Government response to *Impacts of supermarket pricing on the dairy industry*, 2011, p. 1.

¹⁷⁶ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 1.

¹⁷⁷ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 2.

¹⁷⁸ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 5.

¹⁷⁹ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. 4.

work currently underway to develop the NFP, noting that through the Food Processing Industry Strategy Group and the Senate's Select Committee on Australia's Food Processing Sector, further input for consideration by the Government on these issues may arise.¹⁸⁰

IV. The political dilemma – deny farmers or consumers?

Two Senate inquiries reporting in the space of just two years: there was no doubt that pressure on the then Labor government to respond to the grievances of the dairy industry was mounting. The dilemma that politicians faced in fashioning a coherent response that would quell the controversy was acute.

It was this dilemma, among others, that Tony Abbott's Coalition Party inherited when it defeated Labor on 18 September 2013. The change of government brought with it an ally for farmers in Deputy Prime Minister and National Party member Barnaby Joyce. One of six children from a farming family, with a long held passion for the rural sector, Joyce was promptly appointed Agriculture Minister, having already held related shadow portfolios in Regional Development, Infrastructure and Water (2010), and Regional Development, Local Government and Water (2010–13).

Less than two months after the election Joyce announced the terms of reference for a White Paper to examine agricultural competitiveness and the establishment of a taskforce to consult with stakeholders in order to develop the government's plan to 'grow agriculture'.¹⁸¹ This White Paper would be very much a product of the National Party, and of Joyce's fervour for life on the family farm, as evidenced by this statement he is reported to have made just after the release of the final report in 2015:

*I hear from some quarters, the day of the family farm is over, possibly walking out the door with the family business and the family house. Like journalism without grammar, the land without the family farm is meaningless, soulless, it goes to the core fabric of our nation.*¹⁸²

An Issues Paper released in early 2014 attracted more than 600 submissions, drawing comments and suggestions on a range of topics including food security, improving farmgate returns, enhancing competitiveness, and the reduction of regulatory burdens.¹⁸³

The first priority of the subsequent White Paper, promoted by the Government as a '\$4 billion investment in our farmers', was 'a fairer go for farm businesses' and included a substantial funding boost to the ACCC so that it could engage more with the agricultural sector, including through a new Commissioner dedicated to agriculture. The objective was said to be to support 'a more farm-savvy and proactive ACCC [that] will encourage fair-trading and strengthen competition in agricultural supply chains.'¹⁸⁴

¹⁸⁰ Government response to SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, pp. 6-7.

¹⁸¹ 'Joyce announces agriculture white paper', *SBS news*, 9 December 2013.

¹⁸² Gabrielle Chan, 'Dams, droughts, deposits: a guide to Barnaby Joyce's agricultural white paper', *The Guardian*, 7 July 2015.

¹⁸³ Media release, 'Big response on the future of agriculture', The Hon. Barnaby Joyce MP, Deputy Prime Minister, Minister for Agriculture and Water Resources, 1 May 2014.

¹⁸⁴ Agricultural Competitiveness White Paper, 2015, White paper at a glance, <http://agwhitepaper.agriculture.gov.au/white-paper/white-paper-at-a-glance>

While the Government was anxious to support the rural sector generally, the political sensitivities around farmgate milk prices in particular may explain why the White Paper was released at a dairy farm near Warnambool.¹⁸⁵ At the same time, it was difficult if not impossible to ignore the fact that, in the short term at least, the direct beneficiaries of the milk price wars were consumers. According to one industry lobbyist, in a conversation with the then Shadow Minister for Small Business (now opposition leader), Bill Shorten, he was bluntly told: 'I really have no interest in depriving my constituents of \$1 milk... anything that is going to increase prices, any initiative, I'm not for that at all..'.¹⁸⁶ Indeed the irony in the referral to a parliamentary inquiry of the case of prices being too low, just 3 years after an ACCC inquiry into the case of prices being too high, was not lost on the 2011 Senate committee:

The circumstances which gave rise to this inquiry appear unusual in many respects. In recent years, public debate about the competitiveness of the supermarket sector has been focused on concerns about food price inflation and grocery prices being too high. In conducting this inquiry, the committee has been troubled that the benefits gained by consumers have not received sufficient attention in the debate about milk prices. In general, price discounting is likely to be pro-competitive and of benefit to consumers. Provided it does not constitute predatory pricing, a retail price cut should not be discouraged. The January 2011 price cuts in a staple product is undoubtedly good news for consumers in the short-term. Attempting to predict with any certainty any longer-term impact on overall consumer welfare is difficult, if not impossible.¹⁸⁷

On the other hand, there was clearly growing consumer consciousness of and sympathy for farmers, and politicians were anxious not to ignore that tide of sentiment entirely. Looking back, former AFGC CEO Dawson is of the view that, in political terms the climax reached in the MSC debate around 2012 can be explained as follows:

...the most significant thing that ...lit the fuse or created particular focus on it were things like the \$1 milk, \$1 bread which consumers love but are outraged by at the same time...it was the perception that farmers are being duded, there was a very strong vein of sympathy for farmers across the Australian community and that was the perception that farmers were being duded, 60 – over 60% of milk sales, \$1 private brand label, so it doesn't stop them buying it but there was - in terms of what drives a sense of outrage or a focus. And I think there was then a bit of a snowball of stories about - - - suppliers, truck drivers, all sorts of things that - - - there were factory closures - - and as happens with the media often when a certain perception takes hold then things are seen through the prism of this is further evidence of x and I think those things go in cycles really. And so I think by 2012 there'd been a raft of those

¹⁸⁵ Brett Worthington, 'Agricultural Competitiveness White Paper launched', *ABC news* 4 July 2015.

¹⁸⁶ Transcript of interview, CEO of MGA, pp. 46-7.

¹⁸⁷ SERC, *Impacts of supermarket pricing on the dairy industry*, 2011, p. xiii.

*stories and it transmits very quickly through to the legal pressure for action because governments are expected- - to fix things.*¹⁸⁸

Searching for explanations for the ‘outrage’ or ‘focus’ to which Dawson referred, one MSC representative reflected on the ‘influence of the rural lobby’, and a sense that farmers ‘punch above their weight in publicity terms’. She went on to say:

...in Australia we're very proud of our history in farming and I think in the small businesses that have grown up. ... [S]ome businesses have obviously succeeded more than others over time and we do have, although I say this quite colloquially, the tall poppy syndrome, I do think there is something about us Australians that ... we don't like that lack of equilibrium where some really succeed and have worked perhaps from the same starting point but for whatever reason are meeting the demands of consumers at the expense of others. [T]here are real roots in our culture, our farming culture, our working on the land that we don't want to lose as Australians, and if our regulation can help that – that's not dissimilar I think to what you see in France where in Paris there is a periphery, the line around where you could have large supermarkets and they needed to be outside so you could keep that small business, butcher, baker, candlestick maker they're things that people feel emotionally strongly about. And I think with the digitalisation of our world, the demand for instant, everything being instant it's hard to reconcile those things in balance and that, I think, is the tough challenge for regulators to be thinking economically, to be thinking about promoting competition, to be thinking about efficiencies but to be balancing it against what's really important to the people in terms of the sentiment that they feel, how they want their country to function. These are tough areas....

*... [In] Australia we do prioritise fairness but economically we've also promoted free market economics and competition. And the tension there, I think that's where I was coming from with cake and eating it too, is we want all that competition brings – fierce competition, ruthless competition – but when we see that there are losers we want them protected as well. [T]his is where I see the real tensions that good regulation has to tackle and it's so tough.*¹⁸⁹

V. The conundrum – but what do consumers truly want?

In many respects this community sentiment is most readily interpreted or understood through a socio-cultural lens. The public reaction to a narrative which depicted the plight of Aussie farmers as the consequence of the ruthless actions of powerful corporates and their white collar executives (no matter how incomplete, simplistic or distorted that story-line may have been) reflected an ingrained Australian attachment to egalitarianism, associated sympathy for the underdog, and suspicion of the tall poppy. To quote one interviewee:

¹⁸⁸ Transcript of interview, Gary Dawson, pp. 30-2. See also comments by a senior business columnist that: ‘politicians are very much driven by the media... they can see the sort of support it's [concerns about milk prices and impact on dairy farmers] getting in the media and it's really not hard to support it when you're seeing the human faces of people in a lot of pain’ (Transcript of interview, senior business journalist, p. 9).

¹⁸⁹ Transcript of interview, MSC representative, pp. 9-11, 14.

*There's a bit of that – yes, I want my groceries cheap, but not to the extent that you're absolutely smashing these people that are providing it. And if I see examples where you are doing that, I'm not going to be very happy. So that social licence seems to have quite a strong, yes, egalitarianism associated with it.*¹⁹⁰

He went on to say that the idea of MSCs having a 'social licence to operate' explains in part 'the inordinate amount of promotion that, for example, Coles and Woolworths put around: "we're with farmers" ... they obviously see quite a strong resonance with that identification of helping farmers and farmers being their mates, that help them put the food on the table.'¹⁹¹ There is a similar dynamic in the UK where farming concerns, and dairy milk prices particularly, have been the focus of much of the public debate concerning supermarkets (see further below).

And there was further evidence of the power of farmer sympathies in shifting organisational behaviour, albeit not always in ways that are positive. In early 2013 at the height of the milk wars, in an apparent attempt to garner consumer support, Coles published a video and cartoon entitled Our Coles Brand Milk Story on social media. The promotion suggested that the price farmers were getting for milk increased from 86 cents per two litre bottle of Coles-brand milk in 2010-11 to around 90 cents in 2011-12. This turned out to be an estimate. Final industry figures showed the 2011-12 farmgate milk price had in fact decreased to 84 cents in that time. In an investigation into the promotion the ACCC found that Coles was aware, or should have been aware, of its error. The promotion also made unsubstantiated claims about the profits that farmers were making on Coles-brand milk, and that the Coles' price cut had increased the consumption of drinking milk and therefore Australian dairy production.¹⁹²

Rather than enhancing Coles' reputation, the retailer found itself giving an enforceable undertaking to the ACCC that, for a period of three years, it would not make misleading or deceptive representations with regard to the impact of reductions in the retail price for Coles brand milk on the farmgate milk price, Coles' or processor margins on Coles brand milk, and/ or Australian milk production generally; that it would review its Australian Consumer Law (ACL) compliance program as it related to advertising and promotional strategies with regard to Coles brand milk; and that it would undertake training of relevant employees to ensure such conduct did not arise again.¹⁹³ As one journalist observed, 'Coles spruiked a rosy picture of the dairy industry at the height of the \$1 milk wars last year using data it could not substantiate'.¹⁹⁴

Woolworths responded to public sympathy for farmers by introducing a milk brand, Farmer's Own, sold at a higher price point and derived from direct long term contracts with dairy farmers. Independent retailers responded too. In December 2016 family-owned grocer Harris Farm announced

¹⁹⁰ Transcript of interview, senior representative of the ACCC, p. 17.

¹⁹¹ Transcript of interview, senior representative of the ACCC, p. 15.

¹⁹² ACCC Media Release, Coles gives undertaking to ACCC in relation to representations in YouTube video and cartoon, 7 April 2014.

¹⁹³ ACCC Media Release, Coles gives undertaking to ACCC in relation to representations in YouTube video and cartoon, 7 April 2014.

¹⁹⁴ Esther Han, 'Milk Wars: Coles admits to errors in ad campaign', *SMH*, 7 April 2014.

it was removing \$1 a litre milk from the shelves of its 24 NSW stores, in what it claimed was a bid to support the local dairy industry. Harris Farm instead was introducing the Farmer Friendly Milk range, selling at \$2.29 for two litres, which the company said reflects the true cost of production and would see Harris Farm return 95% of the sale price back to the cooperative and from there to the farmers that own it. Harris Farm co-CEO Tristan Harris is reported to have said:

*We understand that people want good value on products they use lots of every day, However, we believe most people don't agree that it should be cheap at all cost, including the costs of lives and livelihoods of Aussie farmers.*¹⁹⁵

As mentioned above, the social and political influence of dairy farmer woes, and supermarket sensitivity to such issues, is not distinctive to Australia. In the UK, retailers are reported to be paying farmers higher prices for their milk as a way of:

*..trying to get the consumers off their back, because there's been so much interest in milk prices for so many years...trying to get better prices for farmers for milk is the retailers trying to say "we want to be responsible" ... [and to make the point that] it wasn't actually them that was setting the price... [it was] the processors.*¹⁹⁶

As in Australia, there is a range of factors generating challenges for British dairy farmers and an associated degree of 'political noise' – in the case of price particularly, there are said to be problems of oversupply and competition from overseas including the subsidy regime in Europe, exacerbated by a high pound, and increasing concentration amongst processors. Yet, there is still a sense that at least part of the problem is that it is 'the retailers beating up the farmers'.¹⁹⁷ Farming concerns were a consistent thread in the inquiries conducted by competition authorities into the supermarket sector from 2000 onwards - those inquiries were framed in competition terms but 'that was obviously against a backdrop of concern about sustainability of the farming community'¹⁹⁸ - and today still, there is active consideration of whether it is necessary to regulate relationships between grocery retailers and indirect suppliers (namely, farmers).¹⁹⁹ One UK interviewee, a compliance manager at Waitrose, explained the challenges for supermarkets arising out of concerns for farmer livelihoods in the following terms:

*It is a tension between the end user, the retailers and the farmers. The farmers would love the highest prices; the consumer wants the lowest prices. And the supermarkets are in the middle doing a very clear balancing act between competing with each other, be as competitive as possible, serving the consumer, [while] answering to political pressure at the same time.*²⁰⁰

¹⁹⁵ Retail World Editor, 'Harris Farm Markets removes \$1 milk', *Retail World*, 20 January 2017.

¹⁹⁶ Transcript of interview, Christine Tacon, p. 6.

¹⁹⁷ Transcript of interview, John Noble, British Brands Group, p.11; Transcript of interview, former senior representative of the UK OFT, p. 7; Transcript of interview, experienced legal advisor to suppliers in the UK, 3.

¹⁹⁸ Transcript of interview, experienced legal advisor to suppliers in the UK, p. 3.

¹⁹⁹ See reference to the results of the 2016-17 review of the GCA and to the ongoing (at the time of writing) review of whether its remit should be extended to indirect suppliers in Part 7 of this report.

²⁰⁰ Transcript of interview, compliance manager at a major UK retailer, 6.

VI. Socio-cultural undertones and contradictions

Coles' apparent attempt to manage public opinion on the issue of cheap milk not only raised the ire of the ACCC but may have been counterproductive given elements of public antipathy towards powerful institutions generally in Australian society, pointed to by several commentators in their account as to why the MSCs attract such derision and hostility amongst parts of the Australian community. A highly experienced former MSC lobbyist, for example, explained the phenomenon as follows: government needs to be seen to be protecting 'the small guy' or 'the battler' because of 'community sentiment' which:

*...is negative towards anything that's big. It doesn't matter whether it's Telstra, whether it's the banks, whether it's big retail, energy companies, whether it's the supermarkets. The same dynamic is at play, big is bad in Australian politics, and small is good.*²⁰¹

Post-2008 and the GFC, he went on to explain, this sentiment was amplified. In the public's eyes, big businesses and their leaders were 'just seen to be for profit and individual aggrandisement'.²⁰² This offended the 'Australian ethos of a "fair go"' and while they were no 'less cynical' about politicians, the public still looked to government to 'fix the problems'.²⁰³ A representative from another MSC echoed this view:

...obviously the Australian concern around the prosperity of small suppliers has been an absolute key theme that ... we're always aware of. We need to work with small suppliers for our business to work. We need to work with large suppliers and the relationships that we have with those individual suppliers are often very individual. But I think the narrative, the discourse around making sure small suppliers aren't being hurt somehow at the expense of the prosperity of larger business has definitely been something that everybody's latched onto and wanted to hear more about.

...

*... there's something about the political culture of Australia as well that really wants – it's the fair go. It's wanting everybody to be able to compete on a level playing field, which underpins competition policy in itself.*²⁰⁴

A survey of 1000 adult Australians applying age, gender and regional quotas conducted by the Master Grocers Association (MGA) in 2015 lends weight to these sentiments. The survey carried a margin of error of +/-3.1%.²⁰⁵ 75% of respondents believed that the strengthening competition laws (by adding an effects test) would lead to greater choice and better quality goods and services and lower prices, and that it would help small business suppliers in their dealings with big corporations. Furthermore

²⁰¹ Transcript of interview, Robert Hadler, p. 4.

²⁰² Transcript of interview, Robert Hadler, p. 7.

²⁰³ Transcript of interview, Robert Hadler, p. 8.

²⁰⁴ Transcript of interview, MSC representative, pp. 7-8.

²⁰⁵ MGA national survey of attitudes to supermarket concentration 2015, pp. 3-4.

80% believed healthy competition makes for a generally fairer society.²⁰⁶ With regard to the MSCs, 72% of those surveyed said that the grocery market was too dominated by Coles and Woolworths and that this led to 'unhealthy competition'. 90% believed it important that local independent supermarkets survive.²⁰⁷ While the survey questions were worded in such a way as to arguably colour responses, the views expressed by interviewees for this research suggest that, in broad-brush terms, the survey findings captured the feelings of many Australians.

Independent observers echoed the view that there is an almost instinctive scepticism harboured by Australians in relation to the MSCs by virtue of the perception that these companies wield enormous control over many aspects of economic and social life:

... looking at it from a consumer point of view I think there is a huge lack of trust and I think that's a big problem. ... it's about the power that these two supermarkets hold and they control what we do or don't eat or can or don't have access to.. (Senior representative, Choice)²⁰⁸

There's almost no national pride in the fact that these are two highly successful businesses that are employing a whole lot of people, that is not an argument that the supermarkets are going to win ... the fact that they are Australian companies does not give them any credit whatsoever, none.... So people would say, "it's so awful, the supermarkets, they just – they don't support Australian made and they don't support Australian farmers and they're un-Australian and therefore I'm going to go and shop at Aldi...".. if you gave them a questionnaire saying, is Aldi an Australian company, a German company ... it doesn't really matter, emotionally they felt that these two supermarkets had control of the environment for so long, that there needed to be a third player... We feel like we're tied to the two big supermarkets to some extent, maybe we can shave off some of their competition by not buying private label in there, by sometimes going to Aldi, by sometimes growing our own herbs, by sometimes directly getting a fruit box or whatever, doing those kinds of things, maybe we can do that.²⁰⁹ (Social researcher, Rebecca Huntley)

I think there is a genuine reader interest in how the supermarkets are dealing with suppliers, particularly in Australia which has such a high concentration of a supermarket ownership...I think there is probably a natural scepticism about how these big businesses are operating behind closed doors to get the prices that they get.²¹⁰ (Experienced retail journalist)

Public 'outrage' in response to what was seen as MSC responsibility for the struggles of farmers also reflected a somewhat nostalgic albeit no less strong attachment to 'the bush', a throwback to our agricultural roots and lingering national identity-imagery as a sunburnt country riding on a sheep's

²⁰⁶ MGA national survey of attitudes to supermarket concentration 2015, p. 4.

²⁰⁷ MGA national survey of attitudes to supermarket concentration 2015, p. 4.

²⁰⁸ Transcript of interview, senior representative of Choice, pp.19, 46.

²⁰⁹ Transcript of interview, Rebecca Huntley, pp. 10, 12.

²¹⁰ Transcript of interview, experienced retail journalist, p. 2.

back.²¹¹ Again, several stakeholders saw these cultural nuances as important in fully understanding the public and hence political heat that surrounded the MSCs over this period:

*... it's [referring to and explaining public support for farmers] empathy, there's a splash of nostalgia to it ... I think it frames our life and our story of who we think we are.*²¹² (Bruce Billson)

*... there is that feeling there that people want to see farmers survive and it is part of the Australia's culture and we're an agricultural nation.*²¹³ (CEO of a state farmers' organisation)

*... a lot of Australians still think they're bound to the earth and maybe cultural society in a way that actually they're not anymore. ... I think it's an incredibly emotive topic, which ignores also a lot of economic reality about productivity, under investment and so on.*²¹⁴ (MSC representative)

At the same time, public cynicism or hostility towards big businesses such as the MSCs appears to involve a disconnect between 'the company', as in the headquarters and the C-suite executives housed in them, and the local store and the people behind the check-out counter or stacking the shelves. When asked about whether consumers respond to bad press about a large retailer – for example, in connection with an ACCC proceeding – we were told by a MSC representative that in their 'customer feedback ... that doesn't tend to come through.'²¹⁵ As another ruefully remarked that in:

*...some of the commentary around customers and how they perceive Woolworths and how they perceive Coles ... there's a real dichotomy there. Customers are happy to shop with [MSCs], and their children may work with us ... yet they're quite happy to see something on TV and say, "Oh, bloody supermarkets again." They don't feel like there's any conflict between the two things.*²¹⁶

Moreover, there is widespread agreement that the anti-MSC sentiments just described do not generally translate into anti-MSC shopping choices. One IGA owner put it bluntly: 'with all respect to our customers ... what the consumers will say and how the consumers behave are poles apart.'²¹⁷ Similarly, a senior policy analyst with a dairy industry association, reflecting on a more recent outbreak of savage milk price cuts in 2016, pointed out:

²¹¹ See Jane Dixon and Bronwyn Isaacs, 'There's certainly a lot of hurting out there: navigating the trolley of progress down the supermarket', *Agric Hum Values* 30 (2013), pp. 238-297.

²¹² Transcript of interview, Billson, p. 20.

²¹³ Transcript of interview, CEO of a state farmers' organisation, p. 26.

²¹⁴ Transcript of interview, MSC representative, p. 8.

²¹⁵ Transcript of interview, MSC representative, p. 30.

²¹⁶ Transcript of interview, MSC representative, p. 24.

²¹⁷ Transcript of interview, CEO of an independent supermarket, p.11.

*...we went through the same in 2011 when they dropped the price to a dollar a litre – very large amount of publicity, good consumer support for a while, they go back to their old buying habits.*²¹⁸

And from a MSC representative:

*People want to do the right thing but in the end if I'm on a tight budget I'm not going to pay 50% more for this product ... That's why I think it's our role to try and make it affordable.*²¹⁹

This observation was borne out by the experience in introducing higher priced milk, branded as product sourced directly from and benefitting farmers. A MSC representative also reported to us that while there has been some switching away from the lower priced alternatives in response to recent publicity of the difficulties facing dairy farmers, 'there's still a big segment of the market that didn't move.'²²⁰

A dilemma facing retailers is that the simplified portrayal of farmer woes in the media does not reflect the complexity of the supply chain in relation to own brand milk. As stated by a MSC representative:

*...in the end we as a retailer don't have power over the milk price... [T]he milk price is effectively set given where the export milk price is at, and our contracts are with the processors that effectively then pay the farmers, so we don't really even have transparency over that process. It's something that ... we have tried to provide choice to our customers around but we try and do the best we can on that issue. It's a difficult one for us because it's difficult to explain to a customer that we don't actually pay the farmer direct, we pay the processor...*²²¹

The MSCs grapple with a tension between being competitive on the one hand (particularly on price), while at the same time attempting to persuade consumers that they are socially responsible on the other:

*...if we don't respond competitively we will just lose our budget customer base, but if customers, as they did do, say actually we're prepared to pay a bit more and the ... branded products sell well, if that's what the market is demanding, that's what we can provide. But in such a competitive market, not responding to somebody who is competitive on price is a killer. And it is an example of an area where there is a disconnect between what some customers are vocal about and then what a large percentage of customers are actually doing. Because people are still buying \$2 per 2 litre milk in droves, but we've got [premium milk] as well, but people want the nutritious staple at a low price and if we [will be at] a higher price which is an issue.*²²²

²¹⁸ Transcript of interview, senior representative of a dairy industry association, p. 23.

²¹⁹ Transcript of interview, MSC representative, p. 22.

²²⁰ Transcript of interview, MSC representative, p. 24.

²²¹ Transcript of interview, MSC representative, p. 24.

²²² Transcript of interview, MSC representative, p. 27.

Similar observations have been made of consumer fickleness in the UK:

... consumers can be somewhat schizophrenic about this, because while they say they want local butchers and smaller corner shops, they often walk past them and go into supermarkets to do their shopping. So people have this idealised image of what they want on the High Street, but it's not where they shop. So I think that one problem is that ... people have a romantic idea of what they want the High Street to be like. But actually, the shopping habits are that they drive to a shopping centre on a Saturday and shop there and do everything there, because they want the convenience and price associated with that, but then complain when a smaller shop on the High Street closes down.²²³

Of course, therein lay the political dilemma back in 2011 (and arguably still today) – consumers want low prices but at least some (and possibly a considerable proportion) don't want supermarkets that have the buyer power to deliver them or at least do not want to see such power exercised in a way that is perceived as unfair to small suppliers, and farmers particularly.

²²³ Transcript of interview, former senior representative of the UK OFT, p. 5.