



## **Competition and Consumer (Price Inquiry— Perishable Agricultural Goods) Direction 2020**

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I, Josh Frydenberg, Treasurer, give the following direction to the Australian Competition and Consumer Commission.

Dated 28 August 2020

Josh Frydenberg  
Treasurer

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## Part 1—Preliminary

### 1 Name

This instrument is the *Competition and Consumer (Price Inquiry—Perishable Agricultural Goods) Direction 2020*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	Immediately after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

### 4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Competition and Consumer Act 2010* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

***Australian law*** means a law of the Commonwealth, a State, or a Territory (whether written or unwritten).

***exempt supply*** has the meaning given by subsection 95A(1) of the Act.

***goods*** has the meaning given by subsection 95A(1) of the Act.

***inquiry*** has the meaning given by subsection 95A(1) of the Act.

***perishable agricultural goods*** means goods and services described in subsection 5(2).

***services*** has the meaning given by subsection 95A(1) of the Act.

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*State or Territory authority* has the meaning given by subsection 95A(1) of the Act.

*supply* has the meaning given by subsection 95A(1) of the Act.

*the Act* means the *Competition and Consumer Act 2010*.

## **Part 2—Price inquiry into supply of perishable agricultural goods**

### **5 Commission to hold an inquiry**

- (1) Under subsection 95H(1) of the Act, the Commission is required to hold an inquiry into the markets for the supply of perishable agricultural goods. The inquiry is *not* to extend to any of the following:
  - (a) the supply of a good or service by a State or Territory authority;
  - (b) the supply of a good or service that is an exempt supply;
  - (c) reviewing the operation of any Australian law (other than the Act or an instrument made under the Act);
  - (d) reviewing the operation or scope of the *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017*;
  - (e) reviewing the operation of any program funded by the Commonwealth, or any policy of the Commonwealth (other than policies relating to competition and consumer protection);
  - (f) reviewing the Commonwealth policy that there is to be no regulation of prices in the markets for the supply of perishable agricultural goods.
- (2) For the purposes of subsection 95J(1) of the Act, the inquiry is to be held in relation to goods and services of the following descriptions:
  - (a) animal meat products containing, in whole or in part, meat from any one of the following:
    - (i) pig;
    - (ii) bovine;
    - (iii) sheep;
    - (iv) chicken;
    - (v) fish;
    - (vi) shellfish;
  - (b) plants, fungi, or their products or parts (including seeds, spores, bulbs and similar things);
  - (c) dairy products; and
  - (d) eggs of a domestic hen.
- (3) Under subsection 95J(2) of the Act, the inquiry is not to be held in relation to the supply of goods and services by a particular person or persons.

### **6 Directions on matters to be taken into consideration in the inquiry**

Under subsection 95J(6) of the Act, the Commission is directed to take into consideration all of the following matters in holding the inquiry:

- (a) the relative power held by different suppliers in the markets for the supply of perishable agricultural goods, with particular regard to:

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- (i) the concentration of power in the markets amongst and between suppliers of perishable agricultural goods at each level of the domestic supply chain; and
- (ii) the bargaining power of the suppliers in the markets, whether an imbalance in power exists between suppliers at different levels of the domestic supply chain, and whether that imbalance leads to a harmful outcome for participants in the markets (including through the behaviour of suppliers or through the pricing and other terms and conditions suppliers offer to other suppliers); and
- (iii) the nature of the relationships between the various suppliers in the markets; and
- (iv) the allocation of risk between the suppliers in the markets; and
- (v) the operation of the Act, or an instrument made under the Act, on the matters covered by subparagraphs (i), (ii), (iii) and (iv); and
- (b) the practices and behaviours of suppliers in the markets for the supply of perishable agricultural goods and the effect those practices and behaviours may have on consumers and the broader economy; and
- (c) the effectiveness of the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019*, with particular regard to:
  - (i) whether the regulations adequately address issues arising from different levels of power in the markets between suppliers (throughout the supply chain) of goods and services described in paragraph 5(2)(c); and
  - (ii) whether the regulations adequately address issues arising in each of the markets covered by the regulations; and
  - (iii) costs of producing dairy milk in each relevant geographical region in Australia, the productivity of producing milk in each of those regions, and the extent to which those matters are properly taken into account by other suppliers in the markets; and
  - (iv) level of supply of dairy milk and whether current supply levels adversely affect the bargaining power of suppliers; and
  - (v) the interaction of the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* and other regulations made for the purposes of subsection 51AE(1) of the Act on suppliers and the supply of dairy products; and
- (d) the Commonwealth policy mentioned in paragraph 5(1)(f).

### 7 Directions as to holding of the inquiry

Under subsection 95J(6) of the Act, the Commission is directed to do all of the following in holding the inquiry:

- (a) assess whether there are any imbalances in power of the various suppliers in the markets for the supply of perishable agricultural goods and whether any identified imbalance leads to a harmful outcome for participants in the markets;
- (b) recommend options to enhance competition in the markets for the supply of perishable agricultural goods, including:



- (i) in relation to dairy products—options to amend the *Competition and Consumer (Industry Codes—Dairy) Regulations 2019* to improve competition by addressing any harmful behaviour of suppliers possessing a greater degree of power in the markets anywhere in the supply chain; and
- (ii) in relation to other goods and services the subject of this inquiry—options to better leverage existing regulatory arrangements to improve competition by addressing any harmful behaviour of suppliers possessing a greater degree of power in the markets anywhere in the supply chain;
- (c) for each recommended option, the potential impact of the option on suppliers (at each level of the markets), consumers, the broader economy, and ability of Australian suppliers to compete in global markets for the supply of perishable agricultural goods.

## **8 Inquiry is to be held partly in private**

Under subsection 95R(1) of the Act, the Commission is directed to hold the inquiry in private to the extent necessary to receive and consider written submissions provided to the Commission in confidence.

## **9 Period for completing the inquiry**

For the purposes of subsection 95K(1) of the Act, the inquiry is to be completed, and a report on the matter of inquiry given to the Treasurer, by no later than 30 November 2020.