

THE RICE MARKETING BOARD FOR THE STATE OF NEW SOUTH WALES



STATEMENT OF PRINCIPLES

Anti-Competitive Behaviour

February 2021

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Statement of Principles - Anti-Competitive Behaviour

Background

Vesting is a policy mechanism of the New South Wales government based on the proposition that providing a single statutory authority, the Rice Marketing Board for the State of New South Wales (the Board), with the legal right to control the marketing of rice produced in NSW, will yield net benefits to the NSW rice industry and general community. Vesting enables the NSW rice industry to more effectively trade in global markets that are subject to various interventions and distortions. It is prescribed in the *Rice Marketing Act 1983 [NSW]* s.56.

The Board supports a competitive domestic rice market in NSW which benefits NSW consumers. The Board has a number of authorised buyers of NSW rice which encourages competition in the domestic market. Rice can also be imported into NSW in any quantity. The ability of any market participant to import rice into NSW and the deregulation of the domestic rice market through a range of authorised buyers ensures NSW consumers benefit from a competitive domestic market. Participants in the domestic market are also subject to laws regulating commerce and a range of consumer protections in law, including provisions that prevent mis-use of market power.

Purpose

This Statement provides the framework for how the Board manages reports of anti-competitive behaviour in the NSW rice industry.

Statement of Principles

The Board is committed to fostering an open, competitive and fair market for rice within New South Wales. Any reports of anti-competitive behaviour that are supported by appropriate evidence will be referred to the Australian Competition and Consumer Commission (ACCC) for appropriate investigation and action.

Anti-Competitive Behaviour by the Sole and Exclusive Export Licence holder

The Board recognises that granting the Sole and Exclusive Export Licence (SEEL), which restricts the export of NSW grown rice to one entity (an export monopoly), may be considered by some to be an example of anti-competitive behaviour.

The *Rice Marketing Act 1983 [NSW]* allows for a sole and exclusive export licence because of the many recognised benefits this arrangement provides to NSW rice producers.

To ensure the SEEL holder does not abuse its power, the SEEL Agreement includes the following obligations:

- An obligation to accept all NSW grown rice of merchantable quality offered to it by NSW rice producers (buyer of last resort);
- An obligation to operate an equitable crop marketing and payment scheme at a uniform price to all producers, although a higher price may be paid to a producer who agrees to produce rice of a particular variety and in a particular quantity as a means of encouraging the optimum level of production of those rice varieties. A lower price may be paid if the payment is made in cash on delivery of the rice;
- An obligation to ensure that rice receipt and storage services are made available to Authorised Buyers at a commercial rate; and
- An obligation to appoint elected Board Members who consent to act and satisfy the requirements as directors on the SEEL holder's Board.

Anti-Competitive Behaviour by an Authorised Buyer Licence holder

By signing the Authorised Buyer Licence Agreement, an Authorised Buyer undertakes to "comply with all applicable federal and state legislation and regulations relating to the operation of its business."

The Board may suspend or revoke the Appointment if the Authorised Buyer is in breach of any term of the Appointment, including without limitation, the undertakings, representations and warranties.

Definitions

Anti-competitive behaviour: business practices that limit or prevent competition.

Anti-competitive behaviour includes:

Anti-competitive contracts: Section 45 of the *Competition and Consumer Act* prohibits contracts, arrangements, understandings or concerted practices that have the purpose, effect or likely effect of substantially lessening competition in a market, even if that conduct does not meet the stricter definitions of other anti-competitive conduct such as cartels.

Cartels: Businesses that make agreements with their competitors to fix prices, rig bids, share markets or restrict outputs are breaking laws and stealing from consumers and businesses by inflating prices, reducing choices and damaging the economy.

Collective bargaining and boycotts: It is against the law for businesses to fix prices, restrict outputs or allocate customers, suppliers or territories. But the ACCC can grant businesses an exemption providing protection from legal action under the Competition and Consumer Act when such conduct results in benefits to the public.

Exclusive dealing: Broadly speaking, exclusive dealing occurs when one person trading with another imposes some restrictions on the other's freedom to choose

with whom, in what, or where they deal. Exclusive dealing is against the law only when it substantially lessens competition.

Imposing minimum resale prices: A supplier may recommend that resellers charge an appropriate price for particular goods or services but may not stop resellers charging or advertising below that price.

Misuse of market power: A business with a substantial degree of power in a market is not allowed to engage in conduct that has the purpose, effect or likely effect of substantially lessening competition in a market. This behaviour is referred to as 'misuse of market power'. It is not illegal to have, or to seek to obtain market power by offering the best products and services.

Refusal to supply products or services: In most cases, businesses have the right to decide who they do business with. There are a few circumstances, where a suppliers' refusal to supply is breaking the law.

Unconscionable conduct: Unconscionable conduct is generally understood to mean conduct which is so harsh that it goes against good conscience. Under the Australian Consumer Law, businesses must not engage in unconscionable conduct, when dealing with other businesses or their customers.

Further information or raising a concern

For further information about the Board's Statement of Principles on Anti-Competitive Behaviour, or to raise a concern about anti-competitive behaviour, please contact:

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