

Ingham's comments on the Waikato-Bay of Plenty Chicken Growers Association
Submission to the Commerce Commission

General Comments

1. Ingham's does not object to authorisation of the following aspects of the proposed arrangements set out in paragraph 1.10 of the Applicant's proposal:
 - (a) Collectively bargain with Ingham's in relation to:
 - (i) Adjustment and review of growing fees and other terms and conditions of chicken growing contracts;
 - (ii) Adjustment of growing fees and other matters as referred to in chicken growing agreements;
 - (iii) Resolution of disputes in connection with collectively negotiated terms;
 - (b) Entry into and giving effect to collectively negotiated agreements.

2. Ingham's does not agree there is significant public benefit in authorising the relevant arrangements. Specifically:
 - (a) Ingham's does not believe that the level of transaction costs saved will be as high as estimated by the Applicant, and that any increase in transaction costs between transacting individually and collectively is not material;
 - (b) Ingham's does not believe it will incur materially higher transaction costs as a result of individually bargaining versus collectively bargaining.

3. Authorisation has not been sought for the growers to impose restrictions on each others' ability to negotiate and enter into individual agreements with Ingham's. In this respect, in order to minimize the extent of detriments arising from the proposed price fixing conduct, the Commission should adopt the "least restrictive alternative" approach to the nature of the conduct to be authorized. In particular:
 - (a) Growers should not be restricted in any way from engaging in individual negotiations with Ingham's, if they choose to do so. Where a Grower has opted to take part in collective negotiations, the Grower must be entitled at any time to also hold individual discussions with Ingham's, regardless of whether the collective negotiations are ongoing or not. There must be no conditions or restrictions on a Grower's ability to individually discuss or negotiate their Growing contract with Ingham's. For example, they should not need to notify the Association if they choose to enter individual discussions with Ingham's (there does not appear to be any legitimate justification for such a requirement other than to limit individual negotiations from taking place) and they should not be required to formally "opt out" of collective negotiations in order to individually discuss or negotiate their contract with Ingham's.
 - (b) Any authorisation should not permit Growers to engage in a collective boycott.

4. The Association has engaged Covec Limited to provide a report to support its application. Ingham's does not agree with many matters asserted in the report. Key issues are:
 - (a) Ingham's strongly disagrees with the Covec analysis of Retail Market Effects. It concludes that Ingham's and retailers would be unlikely to pass on any cost savings. _____

There is vigorous competition in the retail market for chicken products, which are one of the top selling fresh categories in retail supermarkets and drive significant foot traffic. Furthermore, there is vigorous competition between quick service restaurant chains which sell chicken products and vigorous competition between Ingham's and New Zealand's other major chicken meat suppliers. In all three sectors costs savings are passed on to consumers.

- (b) Ingham's strongly disagrees with the Covec Report discussion on Welfare Effects and wealth transfers in the Ingham's context. The theoretical wealth transfers referred to would only arise if Ingham's were in a position to earn economic rents. But Ingham's operates in a highly competitive market in New Zealand and there is no evidence that any economic rents are being earned now or will be in the future. There can be no economic wealth transfers from New Zealand to overseas in that situation. The theoretical analysis simply has no application in fact. Furthermore, in Ingham's view, as referred to above, due to the vigorous competition in different sectors cost savings are quickly passed on to consumers (again demonstrating there is no monopoly and no monopoly rent)
- (c) The suggestion that there are similarities between negotiating with Ingham's and the fresh milk market in New Zealand is incorrect and lacks credibility. The complex and highly regulated market and pricing for fresh milk at farm gate level and the complex interaction between Fonterra and other operators in the wholesale market bears no comparison to the pricing of chicken meat in New Zealand.

Specific Comments

1. Specifically, Ingham's disagrees with:

- (a) Para 1.5 – Ingham's is not a monopsonist purchaser of all of the current growers' services. [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) Para 4.10 – this is factually incorrect. [REDACTED]

2. It appears that transport costs, and methods of transport consistent with animal welfare standards [REDACTED] are issues [REDACTED]

3. Covec Report

The focus of the economic review by Covec is an assumption of a reduction in payments to Growers resulting from proposed changes to the payment model.

Ingham's comments as follows:

Transaction costs

- (a) Ingham's does not believe that there are significant extra costs involved in bargaining individually verses bargaining collectively. The Covec reports estimates an extra [REDACTED] per annum if contracts are individually negotiated. [REDACTED]

The Payment Model

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (iii) [REDACTED]

- (d) The historical approach used to negotiate fee changes involved grower representatives [REDACTED]

[REDACTED]

Grower Differentiation

- 4. There is a significant amount of differentiation across the small grower group.
- 5. Differentiating factors include:

[REDACTED]

- 6. There has been significant growth in free range chicken demand over the past 5 years, as a consequence of changing consumer preferences.

[REDACTED]

[REDACTED]

Specific Comments on the Economic Analysis

- 9. Ingham's disagrees with the economic analysis provided by Covec.

Transaction Costs Analysis

- 10. Ingham's disagrees with a number of assumptions, including:
 - (a) The time a collective negotiation takes. Covec is overly optimistic in the time estimated for a collective bargaining process. The different characteristics of the farmer base (as per the differentiators outlined above) requires any collective negotiation process to work through each of the differentiating factors and for the negotiators and Ingham's to agree the extent to which each factor will be reflected in the collective agreement.
 - (b) The analysis assumes no individual review of any collective agreement. However, in fact, while the form of a collective contract may be the same for all growers, the contracts are entered into between each individual grower and Ingham's, and Ingham's would expect a significant majority of individuals to obtain professional advice on their specific individual contract in light of their individual circumstances.

(c) The assumption that 'negotiations occur annually, though contract prices may change less frequently' [REDACTED]

11. [REDACTED]

Contract Price Changes Analysis

12. As noted above the view that there could be wealth transfers to foreign owners is simply wrong in Ingham's view.

[REDACTED]

14. The analysis does not consider the moral hazard associated with a collective bargaining process in these circumstances. The analysis highlights that the Growers' Association picks the people among its ranks best suited to the financial negotiation task. There is no consideration in that selection process of the fact that all of the grower farms are not the same. The Association representatives may therefore trade-off value from some members to benefit other members as part of the collective negotiation process.

Retail Market Effects

15. In discussing the retail market effect, much is made of reports of a chicken glut and the assumed impact that this had on lowering prices. This narrow focus ignores other significant economic factors that have a material impact on the retail market price for chicken. [REDACTED]