

The Productivity Commission has condemned government plans for an [“effects test”](#) that would make it easier to stop large businesses exploiting their market power against small businesses and farmers.

It has also criticised the Coalition’s toughening of foreign investment rules for the agriculture sector and said they should be liberalised again.

The Commission’s forthright stand on both issues – in its [draft report on the regulation of agriculture](#) – puts it strongly at odds with the Nationals in particular. The minor Coalition party was critical in winning a new “effects test”, after long being concerned at the behaviour of Coles and Woolworths with suppliers. It also wanted tighter provisions for scrutiny of overseas investment in agricultural land.

After earlier putting the issue on the back burner, the government announced before the election that it would bring in an effects test. This would change the competition law so it only had to be shown that the effect, rather than the purpose, of a corporation’s decision would be to substantially lessen competition.

But the Productivity Commission says: “The existing competition regulation and oversight is adequate for managing concerns about abuse of market power by supermarkets and traders engaging with farm businesses.

“The current focus on the potential for the misuse of market power by wholesale merchants and supermarkets engaging with farmers is not well supported by evidence.”

It says introducing an effects test is unlikely to shield farm businesses from intense competition in retail food markets, adding that “shielding farm businesses from competition would also not be in the interests of consumers”.

In 2015 the government lowered the screening thresholds - at which bids go to the Foreign Investment Review Board - for agribusinesses (to A\$55 million) and agricultural land (to A\$15 million based on cumulative land holdings) for investors from most countries.

Presiding commissioner Paul Lindwall, in comments on the report, said the tightening “lacks a sound policy justification”.

The Commission points to the greater cost and complexity involved. “There is a risk that this will ultimately deter foreign investment in the sector without offsetting public benefits, particularly as other measures (such as the agricultural land register) are in place to increase transparency and public confidence about foreign investment in Australian agriculture,” the report says.

The Commission says it is also unclear that national interest considerations are different for foreign investors in agriculture compared with other sectors that have a higher screening threshold of A\$252 million. It points especially to acquisitions in sensitive areas, such as telecommunications, transport and military-related industries.

It recommends the screening threshold for agricultural land and agribusinesses be increased to A\$252 million. This was the threshold for agriculture before 2015 and applies to business acquisitions and developed commercial land for investors from most countries.

Farm businesses face a vast array of regulations, the report says.

Some lack a sound justification and should be removed. These include restrictions on the use of land held under pastoral leases, and state bans on cultivating modified crops.

Others need reform, including native vegetation and biodiversity conservation regulations and those relating to animal welfare. In the latter area the Commission recommends a new independent body.

“The process for setting standards for farm animal welfare would be improved by applying scientific principles and evidence through the creation of a national, independent body responsible for building the evidence base on community expectations, as well as for developing national farm animal welfare standards,” the report says.

Commissioner Lindwall said: “Farmers are straining under a heavy burden of regulation. They face complex regulations at every stage of the supply chain — from land acquisition to marketing. These are imposed by multiple agencies across three levels of government.”

Michelle Grattan does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond the academic appointment above.

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