

# ACCC Dairy Inquiry Interim Report Feedback

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SUBMISSION FROM

PORT CURTIS MILK SUPPLIERS CO-OPERATIVE ASSOCIATION LIMITED

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# ACCC Inquiry into the Australian dairy industry

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## Summary

At the time of writing our original submission to the ACCC, Port Curtis Milk Suppliers Co-operative Association Limited (PC) had 29 members supplying milk in Central Queensland, from Eungella in the north, to Gin Gin in the south, under contract to Parmalat Limited. We now have 20 members remaining.

PC finds the report well written based on sound research. We as a group have been lobbying for years that farmers have been at the behest of processors and fully endorse the two main concerns arising in the report:

***'The ACCC has identified two main concerns arising from these key findings. First, softened competition between milk processors results in lower farm gate prices than would be the case in a more competitive market. Second, bargaining power imbalances deter productivity-enhancing investments by farmers if they are unable to capture a sufficient share of the returns to make the investment worthwhile.'***

*'Farmers' lack of bargaining power means that they are unlikely to benefit from an increase in the retail or wholesale prices of private label milk or other dairy products. Any increases in margins flowing from an increase in the retail price will simply be captured by the major supermarkets, or at best shared between the supermarkets and processors.'*

## Farming Together Program to conduct a feasibility study to market and vest milk for QLD and northern NSW.

In QLD/ Northern NSW we see there is critical need to form a single co-operative to enable fundamental change in the dairy industry that will see support for dairy farmers.

Dairy farmers will no longer be 'price takers', and the co-operative will be in a position to sell milk to multiple entities at a nominated price.

Since our original submission we have received federal government funding under the Farming Together Program to conduct a feasibility study for a single co-operative to market and vest milk for QLD and northern NSW.

We have received a copy of the draft report and would like to bring the following points to your attention:

### \*<sup>1</sup>Regulatory challenges

*There have been previous attempts to develop dairy cooperatives with similar features as that explored in this study. In 2006, Dairy WA proposed a state-wide cooperative without processing capacities and engaging with all processors, and applied to the ACCC for specific authorisation to proceed with the arrangements.*

### Dairy WA application for Authorisation

In 2006, the ACCC denied authorisation to Dairy WA to establish a milk negotiating agency which would collectively bargain on behalf of Western Australian dairy farmers. This was denied on the grounds that the agency had the potential to result in significant public detriments and could damage competition and industry participants, including the farmers themselves.

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<sup>1</sup> Draft Co-operative Feasibility Study – RMCG Consulting

The Dairy WA application sought a voluntary state-wide collective bargaining group (a milk negotiating agency), open to all WA dairy farmers, to negotiate and enter into individual contracts for the supply, and in some cases delivery of milk to processors or retailers.

There were some proposed restrictions on exit from the cooperative, in that members were required to obtain the approval from the cooperative before exiting.

The application proposed to restrict non-members from supplying particular dairy processing companies. The original application sought authorisation for collective boycott provisions, which were subsequently removed from the application.<sup>2</sup>

Eight processors were named as entities they sought to engage with, along with three retailers.

The application noted the expectation of improved economies of scale and encouragement of improved efficiencies that the arrangements would produce, particularly in the transport and provision of milk to the nearest processing plant. The entity would not own the milk; it would negotiate, sell and (where agreed) deliver the milk.

The drivers for the application by Dairy WA included:

- An unsustainable milk price received by WA dairy farmers, and the expectation that the collective bargaining arrangements will increase the price to dairy farmers
- A reduction in raw milk volumes produced in the state
- Costs of production exceeding average farm gate price
- Escalating farm debt
- Failure of the collective bargaining process under previous arrangements.

Dairy WA identified several economic benefits of the initiative:

- Improved bargaining power of dairy farmers
- Significant transaction cost savings due to a more efficient transport service arranged by the cooperative
- Re-balancing monopsony profits from processors which have retained profit margins over time, and dairy farmers, who have received continued declines in profit margins
- Increasing the long term stability of the WA dairy sector, which could face higher prices in the long term if the local market continues to decline and interstate imports are required
- Potential to supply eastern Australian states with milk
- Reduced debt levels will allow dairy farmers to invest on-farm and increase efficiency of production over time
- Reduced industry exits which could prevent isolated loss of dairy supply capacity in different regions.

The proposal stated no expectation that retail prices would rise, but instead that processors and retailers would simply pass on profits to dairy farmers.

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<sup>2</sup> "Collective boycotts may involve members of a collective bargaining group agreeing not to acquire goods or services from, or jointly agreeing not to supply goods or services to, a business with whom they are negotiating, unless that business accepts the terms and conditions of acquisition or sale offered by the group. Such collective agreements are at risk of breaching section 45 of the TPA."

The ACCC reviewed the application, and considered the expected benefits and costs of the proposal, before denying the application for authorisation. The conditions of this decision give some insights for the potential Queensland state-wide cooperative. In rejecting the application, the ACCC concluded:

- There was a lack of clarity on pricing methodology, the model for distribution of payments to dairy farmers, and any associated levies or fees payable by dairy farmers or processors (a single price model or pooling may have a detrimental effect on the market)
- The proposal to introduce industry wide agreements could significantly depress competition between dairy farmers on matters such as price
- The proposed arrangements would unduly restrict the ability of dairy farmers to deal with processors and limit their input into their milk supply contracts with the processors
- The proposed milk negotiating agency would have a significant detrimental impact on Western Australian dairy processors and in particular the current milk balancing arrangements in the State
- The ability to enter into contractual arrangements with dairy farmers may confer upon it monopoly selling powers
- Limits to differentiation between milk (if treated as a broadly homogenous product)
- Requirement for obtaining consent from the entity before leaving the collective bargaining group is likely to result in anti-competitive detriment
- Even where low effective competition exists between processors, a state-wide cooperative may restrict or limit competition between collective bargaining groups by standardising arrangements between processors.

The ACCC found that the stated benefits of the cooperative were unlikely to eventuate, and that the arrangements were likely to produce significant detriments.

### **Implications of the Dairy WA application for the Queensland state-wide cooperative**

The contexts of the Dairy WA application in 2006 and the current Queensland context in 2017 have some important differences:

- Critically, the potential for movement of milk from neighbouring states into Queensland appears significantly higher than for WA, limiting the monopoly potential of a cooperative
- While some areas of the Queensland sector have more than one processor operating (particularly South East Queensland), Central and Northern Queensland markets tend to be supplied by only one processor.

However, it is fair to say that the arrangements proposed in the application, their drivers and stated benefits, have some resemblance to the cooperative being explored in this analysis. Therefore, the findings by the ACCC have some lessons for this cooperative:

- It appears unlikely that the cooperative being explored in this analysis would be compliant with the ADF Authorisation, due to its scale and scope
- Any application for separate authorisation to ACCC should be accompanied by a clear business plan, pricing models, and any associated levies or fees payable by dairy farmers or processors
- A single price model or pooling may be unfavourably received by the ACCC
- Boycott provisions and attempts to restrict non-members from supplying a processor appear unadvisable
- Free entry into and exit from the cooperative appear likely to be favourably received.

The Port Curtis Board urges the ACCC Dairy Inquiry review their regulatory requirements for collective bargaining and boycotts so that a single bargaining group has the capacity to negotiate with more than one processor.

## Mandatory Code of Conduct

*'The ACCC considers the issues identified and examined in this inquiry are serious enough to warrant being addressed by a mandatory code of conduct to apply to processors. It may be appropriate to exempt certain processors from application of a mandatory code based on market share, revenues or another threshold to ensure that regulatory compliance costs are distributed appropriately relative to businesses' capacity to manage these.'*

We agree that a mandatory code of conduct for this industry is essential, given the extent of poor past practices. Port Curtis would welcome the opportunity to contribute to its design.

Included in the Mandatory Code should be a legal provision that prohibits sale of dairy products below the cost of production, with an independent body to assess both on-farm and processing costs on an annual basis. While this sort of market intervention may go against the grain of free market economics, the dairy market has become so distorted and anti-competitive that intervention like this may be necessary to ensure survival.

## Further Comments

1. **Truth in Labelling** – With the advent of fake milk such as Almond, Oats Soybean etc consumers are not informed regarding the differences including high sugar levels etc. This devalues real cows milk as a natural product with the only post milking processing being pasteurisation and filtering.
2. **\$1 milk** despite what the report says has reduced the 'value' of milk in consumer's minds due to the predatory pricing by the supermarkets in order to gain market share. The end result is all three major chains offer \$1 milk hence neutral competitive advantage for anyone and ultimately dairy farmers have been the scape goat and now need to revalue milk in the consumers mind as a healthy beverage for all ages with real nutritional value. Milk consumption per capita has not changed despite reduced prices however some would argue lower prices have helped to maintain consumption levels despite increased competition from 'fake' milk products.

ACCC should support another campaign for consumers to boycott \$1 milk but this time combine it with a mechanism that ensures the benefits are passed on to farmers, such as compulsory labelling of farmgate return guarantees (as proposed by the QDO, and has been implemented overseas).

3. **There is a need for improved transparency of the way that milk collected off-farm** is handled, and how this impacts on the price that farmers received. For example there is increasing mistrust about how cell count analysis is carried out, as this can result in reductions in payment to farmers. Farmers commonly do their own testing before milk leaves the farm and this does not necessarily agree with the results announced by processors. We have proven occurrences of milk being collected too early by the tankers when the milk has not cooled enough, with the supplier penalised.