

## NOTIFICATION OF COLLECTIVE BARGAINING – 'FARMERS OWN' DAIRY FARMERS IN NSW MID-COAST, SA BAROSSA MID-NORTH AND IN QLD SUNSHINE COAST, HINTERLAND AND NORTH MORETON

### NOTIFYING PARTY

#### 1. Provide details of the notifying party, including:

##### 1.1 Name, address (registered office), telephone number, and ACN

Name: Tim Bale trading as TM & JM Bale  
Address: 45 Jerusalem Road, Stewarts River, NSW 2443  
Telephone number: 0427 535 511  
ABN: 64 725 866 714

##### 1.2 Contact person's name, telephone number, and email address

Name: Tim Bale  
Address: 45 Jerusalem Road, Stewarts River, NSW 2443  
Telephone number: 0427 535 511  
Email address: [tbale.wingham@ljh.com.au](mailto:tbale.wingham@ljh.com.au)

##### 1.3 A description of business activities

Dairy farming, including the sale of raw milk for processing and manufacture into dairy products.

##### 1.4 Email address for service of documents in Australia.

Tim Bale: [tbale.wingham@ljh.com.au](mailto:tbale.wingham@ljh.com.au)

### DETAILS OF THE NOTIFIED CONDUCT

#### 2. Indicate whether the notified conduct is for:

##### 2.1 Exclusive dealing (s. 47)

No

##### 2.2 Resale price maintenance (s. 48)

No

##### 2.3 Collective bargaining (s. 93AB). If the notified conduct is for collective bargaining, does the notified conduct include a collective boycott.

The notified conduct is for collective bargaining only and does not include a collective boycott. The bargaining groups will be free to negotiate supply of raw milk with other processors and manufacturers in the industry.

#### 3. Provide details of the notified conduct including:

##### 3.1 A description of the notified conduct

This collective bargaining notification is being lodged to renew collective bargaining notification CBo0287 and to include additional farmers located in the Sunshine

Coast, Hinterland and North Moreton area of Queensland. In summary, the notification seeks the ACCC's approval for a number of farmers in NSW Mid-Coast, SA Barossa Mid-North and Qld Sunshine Coast, Hinterland and North Moreton (**Farmers Own Farmers**), who currently directly supply raw milk to Woolworths Ltd (the **Target**) for the purposes of the Target's 'Farmers Own' milk brand, to engage in collective bargaining with the Target under the same circumstances as previously allowed pursuant to CBoo287.

The Farmers Own Farmers propose to collectively negotiate the terms and conditions of raw milk supply agreements to be entered into between each of the contracting parties of the relevant collective bargaining group and the Target (**Supply Agreements**) and the existing contract with the Target concerning the obligations of the parties to work cooperatively to meet the requirements of the Target, including as to volume and quality of the milk (**Target Agreement**). Some terms of each of the supply agreements are expected to be largely identical across the three groups (**Common Terms**) while others are expected to be largely identical within a particular group (**Sole Terms**). Further, some of the terms of supply (e.g. quantity and price) within a collective bargaining group will differ depending on the size of the dairy herd and capacity for raw milk production. Prices between the three bargaining groups may also differ due to market conditions existing in that state or region.

It is proposed that each group will collectively negotiate with the Target as follows:

- (a) Common Terms of the Supply Agreements be jointly negotiated by:
  - (i) a representative of farmers located in NSW Mid-Coast (**NSW Representative**);
  - (ii) a representative of farmers located in SA Barossa Mid-North (**SA Representative**); and
  - (iii) a representative of farmers located in Qld Sunshine Coast, Hinterland and North Moreton (**Qld Representative**),

and the terms will be common to all three collective bargaining groups.

- (b) Sole Terms of the Supply Agreements and the Target Agreement will be negotiated only by:
  - (i) the NSW Representative and the Target and/or Milk2Market Pty Limited (**M2M**) (the Target's agent), if relevant, on behalf of member contracting parties located in NSW;
  - (ii) the SA Representative and the Target on behalf of member contracting parties in SA; or
  - (iii) the Qld Representative and the Target on behalf of member contracting parties in Qld,

and will apply only to the members of the group to which that representative belongs.

The types of terms and conditions expected to be negotiated in the collective bargaining arrangements include:

- the prices, and mechanisms for setting prices, at which various categories of raw milk will be supplied by contracting parties to the Target;
- the terms on which payment is to be made by the Target to each contracting party;
- the obligations on the contracting parties to supply various categories of raw milk to meet certain volume, specification and quality requirements;
- the consequences for each contracting party, and the contracting parties as a group, for failure by one or more of the contracting parties to meet volume and specification requirements;
- the appointment by the Target of an agent and the role and responsibilities of the agent;
- the obligations on the Target to arrange for collection and testing of raw milk supplied by the contracting parties and to provide reports of such testing to individual contracting parties and to one or more group representatives;
- the term of each Supply Agreement and the rights and obligations of each contracting party and the Target to extend and/or terminate an individual Supply Agreement; and
- in the Target Agreement, the matters necessary to ensure production of milk by the contracting parties to meet the Target's requirements.

There is no dispute resolution procedure proposed for disputes which may arise between contracting parties throughout the collective bargaining arrangements. No contracting party who is unhappy with the collective bargaining arrangements or the Supply Agreement negotiated pursuant to such arrangements will be required to enter into a Supply Agreement, or to give effect to such arrangements.

There is no dispute resolution procedure proposed between the contracting parties and the Target throughout the collective bargaining process.

It is proposed that each Supply Agreement will contain a dispute resolution procedure applying to disputes between a contracting party and the Target arising under the Supply Agreement. That procedure will require the parties to attempt to resolve the dispute by negotiation or mediation before legal proceedings can be commenced (unless interlocutory relief is sought).

### **3.2 Any relevant documents detailing the terms of the notified conduct**

Each of the contracting parties who are located in the NSW Mid-Coast and the SA Barossa Mid North have an existing contract with the Target for the supply of raw milk pursuant to collective bargaining notification CBoo287. Relevant terms of those contracts are attached at **Appendix 1**. Each of the contracting parties located in QLD Sunshine Coast, Hinterland and North Moreton have existing contracts with the Target for the supply of raw milk.

### **3.3 The rationale for the notified conduct**

The collective bargaining arrangements will result in transaction cost savings. From the Target perspective, the need to negotiate with a number of individual dairy

farmers is removed and allows a single point of contact for a large part of the negotiations. From the dairy farmers' perspective, negotiations are made easier and more efficient through the potential use of a representative. This saves both parties time and money through reduced negotiation. Further, in many cases individual dairy farmers are placed at a significant disadvantage in negotiations due to their limited bargaining power and limited ability to use information available to them due to lack of resources. The collective bargaining arrangement allow for greater input by dairy farmers into contracts and this is likely to result in more efficient contracts.

In the case of the NSW Mid-Coast farmers and the SA Barossa Mid-North farmers, a notification has been in place since February 2015 (collective bargaining notification CBoo287) and these two groups of farmers wish to renew the collective bargaining notification to obtain the benefits identified in section 10 below. The Qld Sunshine Coast, Hinterland and North Moreton farmers, would also like to obtain these benefits. Furthermore, if allowed to stand, the collective bargaining notification will allow the Farmers Own Farmers to achieving consistency among the farms in support of the distinctive brand values of the Farmers Own Brand, that is quality milk produced under sustainable conditions and good animal husbandry practices. It will also facilitate the sharing of best practice information between individual farmers and groups which are not in competition with each other.

#### **3.4 Any time period relevant to the notified conduct.**

All of the contracting parties currently have an agreement with the Target and it is proposed that such agreements will continue until their expiry or their renewal (subject to notification, or subsequent authorisation). Given the benefits, and the rolling nature of the contracts to support sustainable farming practices, the contracting parties propose that the collective bargaining notification, if allowed to stand, provides protection for at least a 5 year period or longer.

#### **4. Provide documents submitted to the notifying party's board or prepared by or for the notifying party's senior management for purposes of assessing or making a decision in relation to notified conduct and any minutes or record of the decision made.<sup>1</sup>**

The NSW Mid-Coast and SA Barossa Mid-North farmers have previously been authorised to collectively bargain with the Target under collective bargaining notification CBoo287 lodged by Tim Bale on 3 February 2015. This recently expired and the contracting parties are seeking to renew this collective bargaining notification due to the benefits provided by the notification (see section 10 below).

The Qld Sunshine Coast, Hinterland and North Moreton farmers are established Farmers Own suppliers who wish to participate in collective bargaining for the same reasons as the other two groups of Farmers Own suppliers.

Further, for the avoidance of doubt, the collective bargaining notifications CB326 and CB327 (lodged by Tim Bale on 14 March 2016 on behalf of the Manning Vale Dairy Farmers) are still current and this notification does not seek to revoke or amend either of these notifications.

#### **5. Provide the names and/or a description of the persons or classes of persons who may be directly impacted by the notified conduct (including**

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<sup>1</sup> Notifying parties should consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct the subject of the notification.

**targets in collective bargaining or boycott conduct) and detail how or why they might be impacted.**

The target in this collective bargaining notification is as follows:

Name: Woolworths Limited  
Address: 1 Woolworths Way, Bella Vista NSW 2153  
Contact: Trent Debnam  
Telephone: 0437 607 703  
Email: tdebnam@woolworths.com.au

The Target carries on the business of operating supermarkets in Australia and acquiring for sale and selling goods including drinking milk and manufactured dairy products.

The Target is likely to benefit from the notified conduct due to a likely:

- enhanced level of input by dairy farmers in the contractual negotiation process;
- reduced scope for misunderstandings as the parties will be better informed; and
- increased chance of successful and satisfactory negotiations.

## MARKET INFORMATION AND CONCENTRATION

**6. Describe the products and/or services supplied, and the geographic areas supplied, by the notifying parties. Identify all products and services in which two or more parties to the notified conduct overlap (compete with each other) or have a vertical relationship (eg supplier-customer).**

The markets in which raw milk are supplied or acquired is:

- (a) the market for the farmgate supply and acquisition of raw milk in the Mid-Coast of New South Wales;
- (b) the market for the farmgate supply and acquisition of raw milk in the Barossa Mid-North of South Australia; and
- (c) the market for the farmgate supply and acquisition of raw milk in the Sunshine Coast, Hinterland and North Moreton in Queensland.

The only other affected market is:

- (d) the national market for the wholesale and retail supply of drinking milk and manufactured dairy products.

The applicant notes that such a market definition is consistent with the Commission's views expressed in paragraphs 4.10 to 4.18 of its Determination dated 4 August 2011 in respect of the Application for revocation of A90966 and substitution with A91263 lodged by Australian Dairy Farmers Ltd (**ADF Authorisation**), save that it is not restricted to supply to, and acquisition by "dairy processors" (as that term is used in the ADF Authorisation), or to regions within New South Wales.

Although each of the participants is located in either the mid coast region of New South Wales, the Barossa Valley and Mid-North regions of South Australia, or the Sunshine Coast, Hinterland and North Moreton regions of Queensland, the Applicant does not consider that the market is geographically limited to those regions as dairies in the regions can, and do supply raw milk to processors which are located outside their respective region, and the prices received for milk in the region do not differ markedly from prices obtained in the broader New South Wales region (in the case of participants located in the mid coast region of New South Wales), in the broader South Australian region (in the case of participants located in the Barossa Valley and Mid North regions of South Australia) or in the broader Queensland region (in the case of participants located in the Sunshine Coast, Hinterland and North Moreton regions of Queensland. For example, Norco, a dairy processor which is located in the far north coast of New South Wales, purchases milk from the mid coast region of New South Wales, and Murray Goulburn, a Victorian-based processor, purchases milk from South Australia and New South Wales.

The contracting parties to the notification all overlap to a degree, depending on their location, in relation to the supply of farmgate raw milk.

The national market for the wholesale and retail supply of drinking milk and manufactured dairy products is an affected market because:

- the Target is both a wholesale purchaser and a retailer of drinking milk and manufactured dairy products; and
- as the Commission has noted in paragraphs 4.19 and 4.20 of the ADF Authorisation, collective bargaining by dairy farmers may also impact downstream supply of drinking milk and manufactured dairy products.

**7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.**

Dairy farmers produce raw milk which is required by law to be processed by a dairy company before it can be sold as drinking milk or other dairy products to a consumer (either end point or intermediary). Dairy farmers must also have their milk collected from their farm no greater than every two days by a dairy processor or manufacturing facility to be processed. Similarly, a third party may acquire the raw milk for the purpose of having it processed by a third party processor and will have arrangements in place with transport companies for the collection and transportation of raw milk to a processor. The milk is then sold as drinking milk or transformed into other dairy products that can be sold at retail.

There are no legislative controls over the prices paid for raw milk. Contracts are often negotiated annually or, where a cooperative or collective bargaining group is involved, may be of longer duration. Contracts can set a fixed price or range of prices that the farmers will receive for their raw milk (subject to quality and butter fat and protein levels). Some contracts provide for farmgate prices to be increased during the term of the agreement in line with movements in market prices.

**8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.**

The Farmers Own Farmers overlap in the supply of raw milk in the markets identified at **question 6** above.

Although individual market shares are not readily available the volume of raw milk expected to be supplied by the contracting parties annually is small relative to the total volume of raw milk supplied as follows:

- (a) The market for the farmgate supply and acquisition of raw milk in New South Wales

There is approximately 1 billion litres of raw milk produced annually in New South Wales. In the mid coast region of New South Wales, in which each of the NSW farmers are located, there are approximately 110 dairy farms supplying approximately 120 million litres of raw milk annually. Of these 120 million litres of raw milk, the contracting parties supply approximately 15 million litres to the Target in NSW.

- (b) The market for the farmgate supply and acquisition of raw milk in South Australia

There was approximately 488 million litres of raw milk produced in FY17 in South Australia. In the Barossa Valley and Mid North areas of South Australia, in which each of the SA farmers are located, there are approximately 22 dairy farms supplying approximately 23 million litres of raw milk annually. Of these 23 million litres of raw milk, the contracting parties supply approximately 6.5 million litres to the Target.

- (c) The market for the farmgate supply and acquisition of raw milk in Queensland

There was approximately 418 million litres of raw milk produced in FY17 in Queensland. In the Sunshine Coast, Hinterland and North Moreton regions of Queensland, in which each of the Qld farmers are located, there are approximately 90 dairy farms supplying approximately 100 million litres of raw milk annually. Of these 100 million litres of raw milk, the contracting parties supply approximately 5 million litres to the Target.

- (d) The national market for the wholesale and retail supply of drinking milk and manufactured dairy products

There are approximately 7,500 dairy farms in Australia with raw milk production for 2018/2019 expected to be more than 9 billion litres. The volume of raw milk expected to be supplied by the contracting parties annually is extremely small relative to total national production.

**9. Describe the competitive constraints on the parties to the proposed conduct, including any likely change to those constraints should authorisation be granted. You should address:**

**9.1 Existing or potential competitors**

There are a number of existing dairy farmers in the respective markets identified in **section 6** above who are not members of the collective bargaining notification:

- (a) In the market for the farmgate supply of raw milk in New South Wales – the NSW farmers represent only six of the 110 dairy farms in the mid coast region of New South Wales;

- (b) In the market for the farmgate supply of raw milk in SA – the SA farmers represent only seven of the 22 dairy farms in the Barossa Valley and Mid North areas of South Australia; and
- (c) In the market for the farmgate supply of raw milk in Queensland – the Qld farmers represent only four of approximately 90 dairy farms in the Sunshine Coast, Hinterland and North Moreton regions of Queensland.

Accordingly, there are a significant number of alternative dairy farms in each region that compete to supply raw milk to processors or third parties such as the Target.

With respect to the market for the acquisition of raw milk in the regions identified in **section 6** above, competitors or potential competitors include the processors and other parties listed in section 9.3 below that are capable of arranging for a third party to process raw milk for retail sale.

## **9.2 The likelihood of entry by new competitors**

Not applicable. However we note that in the ACCC's Dairy Inquiry Interim Report released in November 2017, it stated that between 1999-2000 and 2016-17, farm numbers have fallen 62 per cent in NSW, 73 per cent in Queensland, 64 percent in SA and 65 per cent in WA.<sup>2</sup> This suggests that the likelihood of entry by new competitors is low in an environment of consolidation.

## **9.3 Any countervailing power of customers and/or suppliers**

Dairy farmers often have little choice of processors as in many areas there is often only one processing or manufacturing facility. This can leave little or no choice as to whom dairy farmers can market their milk. This places individual dairy businesses at a significant disadvantage with little to no bargaining power and making them price takers. Farmers are required to take what the local processor is prepared to offer in terms of price, volume, quality, access to the dairy farm, seasonality of supply and other factors.

Retailers, such as the Target, often employ industry specialists who have access to quality information about the state of the dairy market and best practice and other production related matters. Accordingly the Target's representative or agent has substantial knowledge of the dairy industry.

The following responses provide a list of the processors and third parties (such as retailers like the Target) that acquire raw milk from the farmgate.

- (a) The market for the farmgate supply and acquisition of raw milk in New South Wales

Currently, raw milk supplied in New South Wales, is acquired by:

- Parmalat
- Lion (formerly National Foods)
- Dairy Farmers
- Norco;
- Hastings Co-operative
- Riverina Fresh Milk

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<sup>2</sup> ACCC Dairy Inquiry Interim Report (November 2017), <https://www.accc.gov.au/about-us/information-for/agriculture/dairy-inquiry/interim-report>



- Fonterra
- Country Valley
- A2Milk Australia
- Murray Goulburn

Currently, raw milk supplied in the mid coast region of New South Wales, is acquired by:

- the Target
- Parmalat
- Lion (formerly National Foods)
- Dairy Farmers
- Hastings Dairy Co-Operative
- Norco
- Murray Goulburn
- Some on-farm and small-scale processors producing a limited or specific product range (e.g. cheeses and yoghurts)

Other potential acquirers of raw milk include any party which is capable of processing that milk for retail sale or arranging for a third party to process such milk. This includes retailers such as Coles, Aldi and other supermarket chains, any processor which is capable of pasteurising liquids, including fruit juice manufacturers, other small dairy processors (including some dairies with their own processing facilities) such as:

- Country Valley Dairy in Wollondilly in New South Wales; and
- Hastings Dairy Co-Operative in Wauchope and Binnorie Dairy in Pokolbin in the mid coast region of New South Wales.

- (b) The market for the farmgate supply and acquisition of raw milk in South Australia

Currently, raw milk supplied in South Australia, is acquired by:

- the Target
- Lion (formerly National Foods)
- Dairy Farmers
- Fonterra
- Warnambool Cheese & Butter
- Murray Goulburn
- Beston Global Food Company
- Parmalat

Currently, raw milk supplied in the Barossa Valley and Mid North region of South Australia, is acquired by the following:

- Beston Global Food Company
- Lion (formerly National Foods)
- Murray Goulburn
- Some on-farm and small-scale processors producing a limited or specific product range (e.g. cheeses and yoghurts).

Other potential acquirers of raw milk include any party which is capable of processing that milk for retail sale or arranging for a third party to process

such milk. This includes retailers such as Coles, Aldi (which lodged plans to build its first South Australian store in May 2014), Costco (which has opened a store in Adelaide), independent supermarkets such as IGA Foodland and other supermarket chains, any processor which is capable of pasteurising liquids, including fruit juice manufacturers, other small dairy processors (including some dairies with their own processing facilities) such as:

- Nippy's in South Australia; and
- Independent Supermarkets (e.g. IGA Foodland) and Golden North Ice Cream in the Barossa Valley and Mid North region of South Australia.

(c) The market for the farmgate supply and acquisition of raw milk in Queensland

Currently, raw milk supplied in Queensland, is acquired by:

- Parmalat
- Lion
- Murray Goulburn

Currently, raw milk supplied in the Sunshine Coast, Hinterland and North Moreton regions of Queensland, is also acquired by the following:

- Maleny Dairies
- Scenic Rim Dairies

Other potential acquirers of raw milk include any party which is capable of processing that milk for retail sale or arranging for a third party to process such milk. This includes retailers such as Coles, Aldi, Costco and other supermarket chains, any processor which is capable of pasteurising liquids, including fruit juice manufacturers, other small dairy processors (including some dairies with their own processing facilities) such as Maleny Dairy and Scenic Rim Dairy in the Sunshine Coast, Hinterland and North Moreton regions of Queensland.

(d) The national market for the wholesale and retail supply of drinking milk and manufactured dairy products

The national market for the wholesale and retail supply of drinking milk and manufactured dairy products is characterised by a significant number of large, well-resourced suppliers with significant commercial and negotiating expertise. This includes the Target, other supermarket chains such as Coles, Aldi and IGA, as well as dairy processors including Lion (formerly National Foods), Parmalat, Norco, Dairy Farmers, Fonterra, Murray Goulburn, Warrnambool Cheese & Butter Factory, Bega Group and Beston Global Food Company.

#### **9.4 Any other relevant factors**

Not applicable.

#### **PUBLIC BENEFIT**

**10. Describe the benefits to the public that are likely to result from the notified conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.**

There are a number of public benefits which will, or are likely to result from the notified conduct. Those benefits, and the facts and information which support their existence, are:

- the continued support for an alternative significant acquirer of raw milk in NSW, SA and Qld, which will enhance competition for the supply and acquisition of raw milk not only between the Target and dairy processors but also between dairy processors;
- a sustained opportunity for smaller dairy processors to compete for the processing of the raw milk which is purchased by the Target;
- the possibility that other retailers may wish to acquire raw milk in the market or other geographic markets, including for specific purposes or producing specific dairy products, which will, in turn, open up new marketing opportunities for dairy farmers, and for retailers;
- a reduction in the reliance of dairy farmers on dairy processors in their local area, which has been recognised as causing a potential imbalance in bargaining power<sup>3</sup>;
- the provision of an enhanced level of input by dairy farmers in contractual negotiations and the potential to negotiate more favourable outcomes than would be the case if they were to negotiate individually;
- a reduction in transaction costs for participants from that which would be incurred if they were to each negotiate with the Target individually;
- access to quality information about the state of the dairy market and best practice and other production related matters, through access to the Target's agent which is a dairy industry specialist;
- better informed parties which leads to better outcomes with significantly less scope for misunderstandings and greatly increases the chance of successful and satisfactory negotiations;
- the continued support of an additional drinking milk product of premium quality for consumers; and
- the opportunity for dairy farmers, retailers and consumers to support local rural communities, through the marketing and sale of drinking milk and dairy products produced using raw milk which is identified as being sourced from the local community.

These public benefits outweigh any public detriment which may arise from the notified conduct.

## **PUBLIC DETRIMENT INCLUDING ANY COMPETITION EFFECTS**

- 11. Describe any detriments to the public that are likely to result from the notified conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.**

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<sup>3</sup> See paragraph 4.30 of the ADF authorisation

The notified conduct will have little or no material impact on the farmgate prices of raw milk in the market or the prices of drinking milk and manufactured dairy products in the affected market for the following reasons:

- the volume of raw milk expected to be supplied by the participants annually is small relative to the total volume of raw milk supplied from the three regions (see **section 8** above for figures);
- the withdrawal of the supply of raw milk produced from the participants from their current dairy processors will not detrimentally impact such processors, as such processors will have access to, or the ability to access supply of any deficit in raw milk to meet their respective needs from:
  - in the case of the mid coast region of New South Wales the remaining 50 members of the MidCoast Collective Bargaining Group, which currently produce approximately 40 million litres per annum, or from dairies outside the immediate Mid-Coast Council Local Government area;
  - in the case of the Barossa Valley and Mid North regions of South Australia from dairy farmers in the Central Adelaide Hills, Fleurieu Peninsula, South East, Murray Rover and Lower Lakes regions; and
  - in the case of the Sunshine Coast, Hinterland and North Moreton areas of Queensland from the Gympie, Kingaroy and Beaudesert regions.
- dairy farmers in NSW, SA and Qld currently produce more raw milk than is required by dairy processors for drinking milk purposes. The addition of another branded drinking milk product using raw milk purchased from:
  - NSW and SA Farmers Own Farmers has not impacted and will not impact demand for raw milk generally and any such demand could easily be met by production from other dairies in these regions; and
  - Qld Farmers Own Farmers will not impact demand for raw milk generally and any such demand could easily be met by production from other dairies in the region;
- there are many other factors which impact on the farmgate prices for raw milk in the market, including the presence of incentives or penalty payments related to milk quality, productivity and out of season supplies, volume incentives, “blended” prices to take account of returns from drinking and manufacturing milk, and world market prices (as recognised by the Commission in paragraphs 4.16 and 4.17 of the ADF Authorisation). None of these factors will be affected by the notified conduct;
- the drinking milk and manufactured dairy products expected to be produced from the raw milk supplied by the contracting parties will similarly be small relative to the quantities of drinking milk and manufactured dairy products sold nationally;
- the prices charged to, and paid by retailers to processors, and charged by retailers to end consumers for drinking milk and manufactured dairy products do not relate directly to the farmgate prices for raw milk, as has been recognised in Chapter 3 of the Report of the Senate Economics References

Committee, “Milking it for all it’s worth – competition and pricing in the Australian dairy industry” of May 2010 (Senate Economics Committee Report);

- the prices charged to end consumers for drinking milk vary depending on the “format” in which such milk is sold (i.e. generic or private label milk is generally sold at cheaper prices than branded milk and higher prices are charged for milk with various additives or differing fat components, or milk which is sourced from organically farmed dairies, etc.). These prices are unlikely to be affected by the retail sale of drinking milk produced from the raw milk supplied by the participants

The contracting parties consider that there will be no other public detriments resulting, or likely to result from the notified conduct.

Collective bargaining with dairy processors has operated without public detriment in the dairy industry since 2002 and was re-authorised by the Commission for a period until 30 August 2021. The participants consider that the level of public detriments of the notified conduct is substantially similar to those considered and accepted by the Commission in paragraphs 4.47 to 4.83 of the ADF Authorisation.

Further, the Commission acknowledged in its reasoning allowing the collective bargaining notification CBoo287 to stand that the potential for anticompetitive detriment is limited:

- due to the size of the collective bargaining groups; and
- because the collective bargaining arrangements are voluntary for both the Target and the bargaining groups.

The participants also note that no public detriments have arisen from the conduct which is the subject of collective bargaining notification CBoo287, which conduct is the same as that which is the subject of this notification (albeit extended to include a number of Farmers Own suppliers in Qld).

This is not a case where the notified conduct will result in an increased price to consumers (for the reasons referred to in above) or which will result in less choice or lower quality of products for consumers. To the contrary, the notified conduct will increase consumer choice for premium quality drinking milk.

Further, any reduction in economic efficiencies which might arise from the notified conduct will be limited because:

- the Target requires some certainty as to the volume and quantity of milk it can purchase before it would be prepared, and able to enter into the necessary agreement with a processor to produce the proposed drinking milk and to invest the necessary expenditure in promoting and selling such milk. Absent the notified conduct (and that as permitted by collective bargaining notification CBoo287), should the Target wish to proceed, it is likely that an individual participant would be offered a standard form contract by the Target, with limited ability to negotiate the same;
- there is a natural restriction on the coverage and composition of the bargaining group, which arises from the ADF Authorisation amongst other matters. The identification of the processed milk with the particular

geographic locations from which the raw milk is to be sourced means that only certain dairies in those locations, which have a shared community interest, can fulfil the necessary requirements;

- although it is proposed that the NSW Farmers Own Farmers will continue to be represented by Mr Tim Bale in negotiations with the Target and Mr Bale also has a role as representative of the Mid-Coast Collective Bargaining Group in negotiations with dairy processors under the ADF Authorisation, there is no risk of coordinated conduct between because the respective targets occupy different roles and have different requirements in respect of the acquisition of raw milk. There has been and will be no cross-disclosure between the NSW Farmers Own Farmers and other members of the Mid-Coast Collective Bargaining Group of the terms negotiated with their respective targets.
- Steps will be taken by Andrew Koch and the Board of Barossa Mid North Co-operative Dairymen Limited to ensure that there will be no disclosure to those few remaining members of the Barossa Mid North Co-operative Dairymen Limited Collective Bargaining Group who are not participants in this Notification of the terms negotiated with the Target, and that there will be no disclosure to participating members of the terms negotiated on behalf of the non-participating members with their respective processors. Neither Andrew Koch nor the Board of Barossa Mid North Co-operative Dairymen Limited has any role in negotiating the terms of supply of each of the non-participating members with their respective processors.
- participation in the collective bargaining arrangement is voluntary for participants and the Target; and
- there is no secondary boycott activity involved in the notified conduct.

## **CONTACT DETAILS OF RELEVANT MARKET PARTICIPANTS**

- 12. Identify and/or provide contact details (phone number and email address) for likely interested parties, such as actual or potential competitors, customers and suppliers, trade or industry associations and regulators.**

The details of the processors listed in section 9.3 above have been provided in **Appendix 2**.

## **ANY OTHER INFORMATION**

- 13. Provide any other information you consider relevant to the ACCC's assessment of the notified conduct.**

Not applicable.

## **ADDITIONAL INFORMATION FOR COLLECTIVE BARGAINING (WITH OR WITHOUT A COLLECTIVE BOYCOTT) CONDUCT ONLY**

- 14. Confirm that the notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.**

The notifying party is not a trade union, an officer of a trade union or acting at the direction of a trade union.

**15. Provide details (name, phone number, email address) of the persons who are current members of the group (contracting parties) on whose behalf the notification is lodged. If relevant, identify the classes of persons who may become contracting parties in the future and on whose behalf the notification is lodged.**

- (a) Current NSW Farmers Own Farmers in the Mid-Coast region of NSW:
- (i) Tim Bale and Julie Bale, trading as TM & JM Bale of 45 Jerusalem Road, Stewarts River, NSW 2443, 0427 535 511, [tbale.wingham@ljh.com.au](mailto:tbale.wingham@ljh.com.au)
  - (ii) Julian Biega, trading as Belarada Trust and J Biega of 55 Anthonys Lane, Coopernook, NSW 2426, 0413 183 837, [belarada26@hotmail.com](mailto:belarada26@hotmail.com)
  - (iii) Col Cowan trading as Cowan Dairy Co Pty Ltd of 1248 Hannam Vale Road Hannam Vale, NSW 2443, 0427 567 655, [col.cowan@bigpond.com](mailto:col.cowan@bigpond.com)
  - (iv) Adrian Drury and Stella Drury trading as AC & SM Drury of 876 Upper Lansdowne Road, Upper Lansdowne, NSW 2430, 0428 569 245, [adrian@druryfarm.com.au](mailto:adrian@druryfarm.com.au)
  - (v) Paul Greenhalgh of 400 Bungay Road, Wingham NSW 2429 and Victa investments Pty Ltd ACN 058 669 926 as trustee of the Greenhalgh Family Trust, Ph 0418 762 925, [bungay@bigpond.com](mailto:bungay@bigpond.com)
  - (vi) Geoff Nicholson and Megan Nicholson trading as GJ and ME Nicholson of 44 Newbys Lane, Lansdowne, NSW 2430, 0448 826 037, [gmnicho@bigpond.com.au](mailto:gmnicho@bigpond.com.au)
- (b) Current SA Farmers Own Farmers in the Barossa Mid-North region of SA:
- (i) Murray and Ben Klemm trading as Gum Hill Pastoral Trust of 80 Gruenberg Road Moculta SA 5355, (08) 8563 9012, [gumhill@live.com](mailto:gumhill@live.com).
  - (ii) Andrew and Angela Koch trading as Glenunga Proprietors of Lindsay Park Road Moculta SA 5355, (08) 8563 9025, [aakoch@bigpond.com](mailto:aakoch@bigpond.com).
  - (iii) Nick Masterman trading as AC & NK Masterman of 62 River Road Auburn SA 5451, (08) 8849 2006, [maneela@bigpond.com](mailto:maneela@bigpond.com).
  - (iv) Don Molineux trading as HR Molineux & Co of 467 Molineux Road Tarlee SA 5411, (08) 8528 5239.
  - (v) Jamie Nietschke trading as Nietschke Moppa Estate Pty Ltd of 403 Marble Quarry Road Moppa SA 5355, (08) 8565 6214, [nietschke.farm@bigpond.com](mailto:nietschke.farm@bigpond.com).
  - (vi) Bruce and Karen Slape trading as Treven Vale Proprietors of 198 Mitchells Road Riverton SA 5412, (08) 8847 2650, [bkslape@bigpond.com](mailto:bkslape@bigpond.com).

- (vii) Gary and Roslyn Zweck trading as Donava Farm Trust of 294 Pine Hill Road Blyth SA 5462, Ph (08) 8844 5119, [zweck@donava.com.au](mailto:zweck@donava.com.au).
- (c) Current QLD Farmers Own Farmers in the in the Sunshine Coast, Hinterland and North Moreton regions of Qld:
- (i) Kym Harrison trading as Oakwood Machinery & Livestock Pty Ltd of 'Oakwood' 826 Mount Kilcoy Road Kilcoy QLD 4515, Ph (07) 5498 1381, [n.kharrison@bigpond.com](mailto:n.kharrison@bigpond.com).
- (ii) Lucas Kennedy trading as Amalu Pty Ltd of 41 Beausang Lane, Conondale QLD 4552, Ph (07) 5494 4575, [amalu5@bigpond.com](mailto:amalu5@bigpond.com)
- (iii) Kacey Walker and George Walker trading as KGW Farming Pty Ltd atf KGW Farming Trust of 2857 Maleny Kenilworth Road, Cambroon QLD 4552, Ph (07) 5472 4094, [kaceywalker@skymesh.com.au](mailto:kaceywalker@skymesh.com.au)
- (iv) Garry Crick trading as Ruyi Pastoral Pty Ltd of 452 Commissioners Flat Road, Woodford QLD 4519, Ph 0418 712 700, [garry.crick@cricks.com.au](mailto:garry.crick@cricks.com.au)
- 16. Confirm each contracting party reasonably expects to make one or more contracts with the targets for the supply or acquisition of the relevant goods or services and the value of each contract will not exceed A\$3 million (or any other amount prescribed by regulation) in any 12 month period. Provide details of the basis for that expectation.**

Each of the contracting parties reasonably expects that contractual payments between it and the Targets for the supply of raw milk will not exceed \$5 million (being the sum provided for in the regulations for contracts involving primary production) in any financial year.

The contractual payments expected between each participant and the Target in relation to the supply of raw milk will be dependent on the volume and quality of raw milk supplied. These estimates set out below are based on existing and historical raw milk supply agreements between each of the contracting parties, the Target and/or other various dairy processors. In the case of the NSW and SA Farmers Own Farmers, both groups have been authorised to collectively bargain with the Target under a collective bargaining authorisation (CBoo287). In the case of the Qld Farmers Own Farmers, each of the members currently supplies the Target independently.

In relation to each of the contracting parties who are Farmers Own Farmers:

- in the NSW Mid-Coast region - it is expected that annual contractual payments of between \$500,000 and \$3.5 million per annum will be made;
- the SA Barossa Mid-North region - it is expected that annual contractual payments of between \$180,000 and \$3.5 million per annum will be made; and
- the Qld Sunshine Coast, Hinterland and North Moreton region - it is expected that annual contractual payments of between \$200,000 and \$2 million per annum will be made.

- 17. If the contracting parties propose to engage in a collective boycott with respect to the targets, provide details of:**



**17.1 The event/s that would trigger a collective boycott**

Not applicable.

**17.2 The process that would be followed**

Not applicable.

**17.3 Any proposed notice period to be given to the target/s prior to commencing a collective boycott**

Not applicable.

**17.4 Any proposed dispute resolution procedure between the contracting parties and the targets**


Not applicable.

## DECLARATION BY NOTIFYING PARTY

Authorised persons of the notifying party must complete the following declaration.

*The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.*

*The undersigned are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).*



.....  
Signature of authorised person

*CHAIRMAN*

.....  
Office held

.....  
Tim Bale

Date:

*17/5/18*

Note: If the Notifying Party is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Notifying Party, this fact must be stated.

## APPENDIX 1

### TERMS OF CURRENT CONTRACTS WITH THE TARGET

NSW and SA Farmers Own Farmers have current contracts with the Target which include terms dealing with the following matters:

- the prices, and mechanisms for setting prices, at which various categories of raw milk will be supplied by the contracting parties to the Target;
- the terms on which payment is to be made by the Target to each contracting party;
- the obligations on the contracting parties to supply various categories of raw milk to meet certain volume, specification and quality requirements;
- the consequences for each contracting party, and the contracting parties as a group, for failure by one or more of the contracting parties to meet volume and specification requirements;
- the appointment by the Target of an agent and the role and responsibilities of the agent;
- the obligations on the Target to arrange for collection and testing of raw milk supplied by the contracting parties and to provide reports of such testing to individual contracting parties and to and to one or more group representatives;
- the term of each Supply Agreement and the rights and obligations of each contracting party and the Target to extend and/or terminate an individual Supply Agreement; and
- in the Target Agreement, the matters necessary to ensure production of milk by the contracting parties to meet the Target's requirements.

## APPENDIX 2

### LIST OF CUSTOMERS IN RESPONSE TO QUESTION 12

#### NSW FARMERS OWN FARMERS

No.	Customer	Address	Contact name	Email	Phone
1.	Woolworths	1 Woolworths Way, Bella Vista NSW 2153	Trent Debnam	tdebnam@woolworths.com	(02) 8885 0000
2.	Parmalat	Level 2, 35 Boundary Street, South Brisbane QLD 4101			1800 676 961
3.	Lion (formerly National Foods)	Lion Pty Limited Level 7, 68 York Street Sydney, NSW 2000, Australia			(02)
4.	Dairy Farmers	737 Bourke Street, Docklands, Vic 3008		info@dfmc.org.au	1800 627 624
5.	Norco	Windmill Grove 107 Wilson Street South Lismore NSW 2480		reception@norco.com.au	(02) 6627 8000
6.	Hastings Co-operative	Level 1, 9-13 High Street, Wauchope, 2446, NSW		admin@hastingscoop.com.au	(02) 6588 8999
7.	Riverina Fresh Milk	20 Hammond Ave, Wagga Wagga NSW 2650			1800 993 081

# Bird & Bird

No.	Customer	Address	Contact name	Email	Phone
8.	Fonterra	68-72 Waterloo Rd, Macquarie Park NSW 2113			(02) 8899 3222
9.	Country Valley Dairy	195 Fairleys Rd, Picton NSW 2571	John Fairley	enquiries@countryvalley.com.au	(02) 4677 2223
10.	A2Milk Australia	PO Box 1564 North Sydney NSW 2059 Australia			(02) 9697 7000
11.	Murray Goulburn	PO Box 4307 Melbourne Victoria 3001 Australia		info@devondale.com.au	
12.	Hastings Dairy Co- Operative	Level 1, 9-13 High Street, Wauchope, 2446, NSW		admin@hastingscoop.com.au	(02) 6588 8999
13.	Binnorie Dairy	Corner of Lodge Rd. and Lovedale Rd. Lovedale, 2325, NSW, Australia		simon@binnorie.com.au	(02) 4998 6660

## SA BAROSSA MID NORTH FARMERS OWN FARMERS

No.	Customer	Address	Contact name	Email	Phone
1.	Woolworths	1 Woolworths Way, Bella Vista NSW 2153	Trent Debnam	tdebnam@woolworths.com	(02) 8885 0000
2.	Lion (formerly National Foods)	Lion Pty Limited Level 7, 68 York Street Sydney, NSW 2000, Australia			(02)
3.	Dairy Farmers	737 Bourke Street, Docklands, Vic 3008		info@dfmc.org.au	1800 627 624
4.	Fonterra	68-72 Waterloo Rd, Macquarie Park NSW 2113			(02) 8899 3222
5.	Warnambool Cheese & Butter	5331 Great Ocean Rd, Allansford VIC 3277			(03) 5565 3100
6.	Murray Goulburn	PO Box 4307 Melbourne Victoria 3001		info@devondale.com.au	
7.	Beston Global Food Company	Level 9, 420 King William Street, Adelaide, South Australia 5000		admin@bestonglobalfoods.com.au	(08) 8470 6500
8.	Parmalat	Level 2, 35 Boundary Street, South Brisbane 4101 Australia			1800 676 961
9.	Nippy's	30 McIlwraith St, Wetherill Park NSW			(02) 9756 0922

No.	Customer	Address	Contact name	Email	Phone
		2164			
10.	Golden North Ice Cream	2 Bradford Way, Cavan, South Australia 5094		admin@goldennorth.com.au	(08) 8292 3500

## QLD FARMERS OWN FARMERS

No.	Customer	Address	Contact name	Email	Phone
1.	Woolworths	1 Woolworths Way, Bella Vista NSW 2153	Trent Debnam	tdebnam@woolworths.com	(02) 8885 0000
2.	Parmalat	Level 2, 35 Boundary Street, South Brisbane QLD 4101			1800 676 961
3.	Murray Goulburn	PO Box 4307 Melbourne Victoria 3001		info@devondale.com.au	
4.	Lion (formerly National Foods)	Lion Pty Limited Level 7, 68 York Street Sydney, NSW 2000, Australia			(02)
5.	Maleny Dairies	70 Mccarthy Road, Maleny Qld 4552		cows@malenydairies.com	(07) 5494 2392
6.	Scenic Rim Dairies	9023 Mount Lindesay Highway, Tamrookum, Queensland, 4285		office@4realmilk.com.au	0448 887 844