



# Statement of Reasons

In respect of a notification lodged by  
farmers supplying the Farmers Own brand  
in respect of  
collective bargaining with Woolworths Ltd and/or its  
agent Milk2Market Pty Limited

Date: 5 July 2018

Notification number: CB10000453

Commissioners: Sims  
Court  
Keogh  
Featherston

## Summary

The ACCC has decided not to object to the notification lodged to enable 17 dairy farmers which supply the Farmers Own milk brand to collectively bargain with Woolworths Ltd and/or its agent Milk2Market Pty Limited.

The farmers are located in NSW, Victoria, Queensland and South Australia and represent between 1% and 3% of the raw milk supplied in each region to Woolworths. The ACCC has approved various forms of this collective bargaining arrangement since 2013 and the main change to the current group is the addition of new Queensland farmer participants.

The ACCC has decided to allow the notification to remain in force from 1 June 2018 until 17 May 2028, unless it is withdrawn or revoked.

The ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from the notified conduct will not outweigh the likely detriment to the public from the conduct.

## The notification

1. On 18 May 2018, Tim Bale trading as TM & JM Bale lodged a collective bargaining notification<sup>1</sup> to enable himself and 16 other dairy farmers (the **Participants**) which supply the Farmers Own brand to collectively bargain with Woolworths Ltd and/or its agent Milk2Market Pty Limited (collectively **Woolworths**) over the terms and conditions of raw milk supply agreements (the **Notified Conduct**).
2. Each of the 17 farmer Participants propose to enter into a separate supply contract with Woolworths. The farmers are located in three regions: the NSW Mid [North]-Coast, SA Barossa Mid-North and the Qld Sunshine Coast, Hinterland and North Moreton. Each region will nominate a representative to conduct the negotiations with Woolworths. The Participants advise that some terms of each of the supply agreements are expected to be largely identical across the three groups while others are expected to be largely identical within a group but not across groups. Further, some of the terms of supply (e.g. quantity and price) within a group will differ depending on the size of the dairy herd and capacity for raw milk production.
3. The Participants request that the notification continue for five years or longer.<sup>2</sup>

## Consultation

4. The ACCC invited submissions from a wide range of interested parties including Woolworths. The ACCC did not receive any submissions in relation to the notification.

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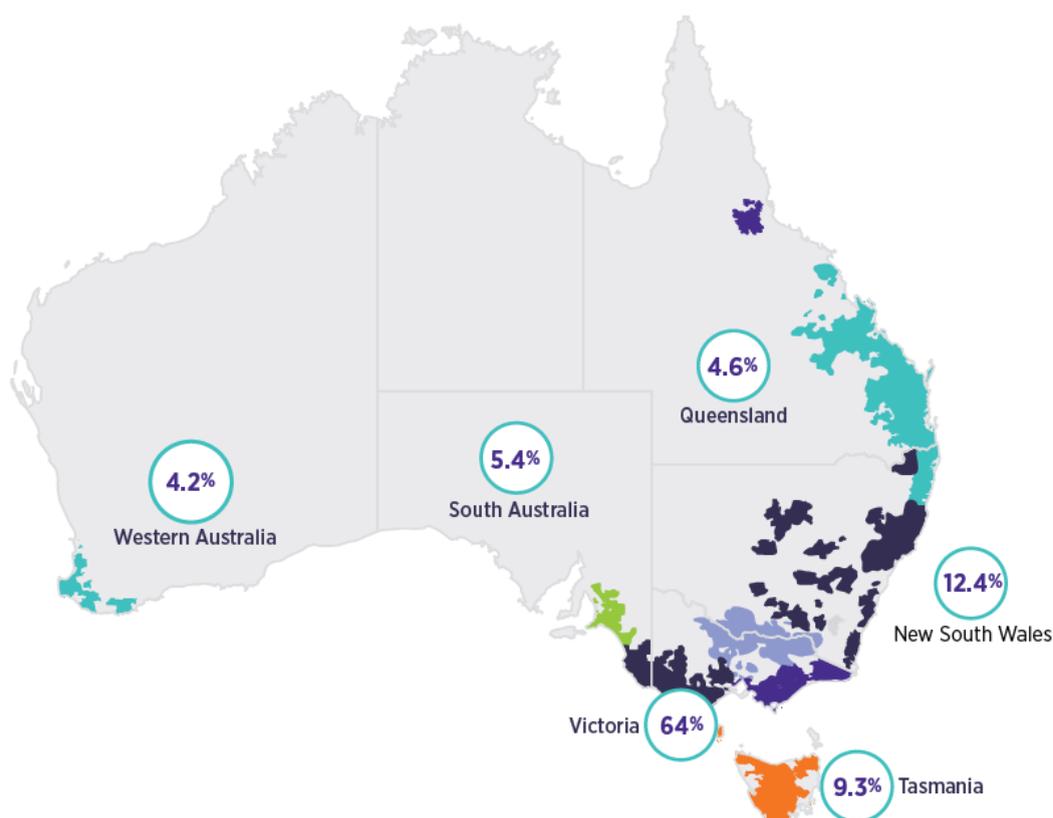
<sup>1</sup> Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

<sup>2</sup> The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

## ACCC's Assessment

5. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010 (CCA)*.
6. In doing so, the ACCC has taken into account:
  - The likely future with and without the Notified Conduct. In particular, the ACCC considers that, absent the Notified Conduct, the Participants would likely continue to individually negotiate with Woolworths to supply raw milk. The only exception relates to the NSW North-coast farmers, who are separately covered by collective bargaining notifications CB326 and CB327. This would allow them to engage in collective bargaining until those notifications expire in March 2019, but absent the current notification, it would not allow them to collectively negotiate common terms in conjunction with the farmers in SA and Qld.
  - The relevant areas of competition likely to be affected by the Notified Conduct. The ACCC considers that the primary areas of competition are the supply of raw milk in the regions of Central NSW (black on the map), Northern NSW/Southern Qld (aqua on the map), and South Australia (excluding the southeast region) (green on the map). The map below illustrates the relevant regions.

### Map of Australian dairy production



Source: ACCC Dairy Inquiry Final Report 30 April 2018 p 2.

## **Public Benefit**

7. The ACCC considers that the Notified Conduct is likely to result in public benefits from improved efficiency since:
  - The Participants will have the opportunity for greater input into raw milk supply contracts relative to a situation where there are individual negotiations.
  - Sharing transaction costs (such as negotiation and contracting costs) will improve the Participants' ability to obtain professional advice in relation to their contracts.
  - The Participants as a whole have a greater capacity to guarantee supply volumes, resulting in greater certainty for Woolworths and for the farmers. This enables Woolworths (and the farmers) to invest in the promotion and selling of Farmers Own branded milk.
  - The Participants will have greater capacity to bargain for the inclusion of dispute resolution processes into contracts between the individual farmers and Woolworths.

## **Public Detriment**

8. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment from a reduction in competition between the farmers for the supply of raw milk because:
  - The amount of raw milk supplied by the Participants to Woolworths represents a very small share of raw milk supplied in each relevant region (approximately 2% in Central NSW, 3% in SA [excluding the southeast region] and 1% in Northern NSW/Southern Qld).
  - Participation in the Notified Conduct is voluntary for the Participants and for Woolworths.

## **Period for which the Notification will be in force**

9. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
10. The Participants request the notification continue for a five year period or longer given the benefits and the fact that the contracts entered into as part of the previous collective bargaining have extended for longer than the standard three year notification period.
11. In this case, the ACCC considers that it is appropriate for the notification to remain in force until 17 May 2028 for the following reasons:
  - The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
  - Given the nature of the conduct and the relevant market, there is little risk that allowing the notification to remain in place for 10 years will lead to significant public detriment arising from the Notified Conduct in later years.
  - In any event, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the likely benefit to the public from

the notified conduct will not outweigh the likely detriment to the public from the conduct.

- Authorisation for this period will result in some legal and administrative cost savings for the farmers by avoiding the need to repeatedly lodge notifications for the same conduct upon the expiry of each three year period. In particular, the ACCC notes that the standard three year notification period is shorter than the contract periods that have resulted from the collective bargaining under previous notifications by the Participants.

## **Decision**

12. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
13. Accordingly, the ACCC does not object to the notification at this time. As with any notification, in accordance with s 93AC, the ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.
14. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 11, in accordance with s 93AD(5), the ACCC is satisfied that:
  - a three year notification period is not appropriate in all the circumstances, and
  - another period is appropriate in all the circumstances, ending on 17 May 2028.<sup>3</sup>
15. Accordingly, the protection provided by notification CB10000453 which commenced on 1 June 2018 will continue until 17 May 2028, unless the notification is withdrawn or revoked.
16. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

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<sup>3</sup> As required by s 93AC(5)(b), this period will end no later than 10 years after the day that the notification was lodged.