

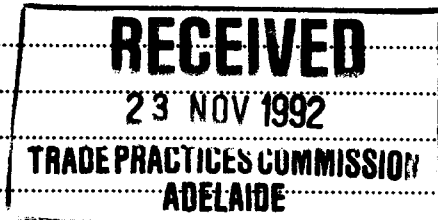
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92 / 7382
TO THE TRADE PRACTICES COMMISSION:

EXCLUSIVE DEALING: NOTIFICATION FORM G

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2), (3), (4) or (5) or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)



1. (a) Name of person giving notice DAIRY VALE CO-OPERATIVE LIMITED
(see Direction 2 on the back of this form)

(b) Short description of business carried on by that person MANUFACTURER OF DAIRY PRODUCTS

(c) Address in Australia for service of documents on that person 154 CAULFIELD AVENUE
CLARENCE GARDENS SA 5039

2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates DAIRY PRODUCTS; IN PARTICULAR WHITE AND FLAVOURED MILK

(b) Description of the conduct or proposed conduct SEE ATTACHED AGREEMENT

(see Direction 4 on the back of this form)

3. (a) Class or classes of persons to which the conduct relates A VENDOR
- AN INDEPENDENT DEALER ENGAGED IN THE SELLING OF RETAIL PRODUCTS

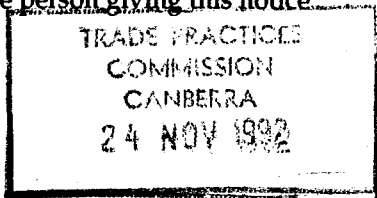
(b) Number of those persons —
(i) At present time 26
(ii) Estimated within the next year N/A

(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses IT IS DIFFICULT TO KNOW WHICH VENDORS WILL SIGN THE CONTRACT
AT THE TIME OF WRITING, HOWEVER WE ARE PREPARED TO FORWARD THE
INFORMATION ON RECEIPT OF SIGNATURES.

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice MR GRAHAM SMITH, C/- DAIRY VALE CO-OPERATIVE LIMITED
154 CAULFIELD AVENUE, CLARENCE GARDENS SA 5039

Dated 23rd NOVEMBER, 1992

Signed by/on behalf of the person giving this notice



Graham Smith
(Signature)
GRAHAM SMITH
(Full name)
MARKET DEVELOPMENT MANAGER
(Description)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. Where particulars of a condition or of a reason of the type referred to in subsection 47(2), (3), (4) or (5) or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be furnished with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to therein.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

Notification is not available in respect of conduct of a kind referred to in subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974*. With respect to such conduct, Form E (Exclusive Dealing: Application for Authorization) should be used.

EXCLUSIVE DEALING: NOTIFICATION

FORM G

TO THE TRADE PRACTICES COMMISSION:

Notice is hereby given, in accordance with subsection 93(1) of the Trade Practices Act 1974, of particulars of conduct or of proposed conduct of a kind referred to in subsection 47(2), (3), (4) or (5) or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c) of that Act in which the person giving notice engages or proposes to engage.

(PLEASE READ DIRECTIONS AND NOTICE ON BACK OF FORM)

1. (a) Name of person giving notice Dairy Vale Co-Operative Limited
.....
(see Direction 2 on the back of this form)
.....
(b) Short description of business carried on by that person
Manufacturer of Dairy Products
.....
.....
(c) Address in Australia for service of documents on that person
154 Caulfield Avenue
.....
CLARENCE GARDENS SA 5039
.....

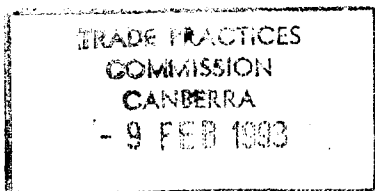
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates
Dairy Products; in particular white and flavoured milk
.....
.....
(b) Description of the conduct or proposed conduct
See attached agreement
.....
(see Direction 4 on the back of this form)

3. (a) Class or classes of persons to which the conduct relates A vendor
an independent dealer engaged in the selling of retail products
.....
(b) Number of those persons —
(i) At present time 6
.....
(ii) Estimated within the next year N/A
.....
(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses
1. MR & PL McKallum 6. JW & MC Le-Brun
.....
2. Mr R O Fox 5. KV & JD Crowle
.....
3. Mr G French 6. Mr I Collins
.....
Addresses are as per Dairy Vale

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice
Mr Graham Smith, C/- Dairy Vale Co-Operative Limited
.....
154 Caulfield Avenue, Clarence Gardens, SA, 5039
.....

Dated 4/2, 1993

Signed by/on behalf of the person giving this notice



(Signature)

(Full name)

(Description)

GRAHAM SMITH

MARKETING MANAGER



DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. Where the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
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5. In item 3(a), describe the nature of the business carried on by the persons referred to therein.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

Notification is not available in respect of conduct of a kind referred to in subsection 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practices Act 1974*. With respect to such conduct, Form E (Exclusive Dealing: Application for Authorization) should be used.

THIS AGREEMENT is made on

38

BETWEEN Dairy Vale Co-operative Limited of 154 Caulfield Avenue, Clarence Gardens, South Australia.

("The Principal")

AND

("The Vendor")

RECITALS

- A. The Principal is a manufacturer and supplier of dairy products.
- B. The Vendor is an independent dealer engaged in the selling, promoting and merchandising of retail products.
- C. The Principal and The Vendor have agreed that The Vendor be appointed as a vendor of its Products on the terms and conditions set out in this Agreement.

IT IS AGREED

1. Interpretation

1.1 Definitions

"the Products" means those Dairy Vale products set out in Schedule 1, provided however that the Vendor acknowledges that the Principal reserves the right at any time to add any item to, withdraw any item from and to modify or change any of the Products.

"the Territory" means the territory and area described in Schedule 2.

"trading terms" means such trading terms as are from time to time prescribed by the Principal in relation to trading with the Vendor.

"credit application" means such credit application as is from time to time required by the Principal to be completed by an applicant for credit from the Principal.

Construction

In this document unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other genders;
- (c) references to persons include corporations and bodies politic;
- (d) reference to the Vendor includes the legal personal representatives; successors and permitted assigns of the Vendor;

- (e) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) reference to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- (g) an obligation on two or more parties shall bind them jointly and severally;
- (h) reference to any thing (including, without limitation, any amount) is a reference to a group of things or person is a reference to any one or more of them;
- (i) reference to this document includes its schedules and annexures.

2. AGREEMENT

In consideration of and subject to the terms and conditions set out in this agreement the Principal appoints the Vendor and the Vendor accepts such appointment as an exclusive reseller of the Products in the Territory provided however that the Principal shall have the right to sell its Products except white and flavoured milk direct to retailers of the Products in the Territory, except where there is a subsisting breach of this Agreement by the Vendor.

3. THE VENDOR'S OBLIGATIONS

3.1 To sell the Products

The Vendor undertakes to exert its very best efforts to maximise the quantity of sales of the Products in the Territory by all appropriate means including (but not limited to) personal visits to purchasers or prospective purchasers, distribution of publicity matter prepared by the Principal, prompt attention to all customer complaints and such other means as the Principal may from time to time require. Should the Principal form the opinion that the Vendor is not exercising its very best efforts, or using appropriate means as Contemplated by this Clause, the Principal may by notice in writing to the Vendor require the Vendor to undertake such action, in such manner and within such time as the Principal nominates in the said notice.

3.2 Exclusive to the Vendor

The Vendor may not appoint additional persons or companies to act as distributors of the Products in the Territory without the prior written consent of the Principal, but excluding people employed directly by the Vendor for the running of their business.

3.3 Limited to the Territory

The Vendor will not advertise promote or sell the Products outside the Territory nor shall it sell any of the Products to any person firm or company within the Territory knowing or having reason to believe that they would be resold outside the Territory.

3.4 Expenditure

36

Vendor will fully and accurately account for all expenditure on promotions, advertising and the like, in respect of which the Principal has agreed to provide financial or other assistance. It is acknowledged that the Principal is not under any obligation to provide any financial or other assistance in relation to the Products.

3.5 Reports

The Vendor will furnish in writing to the Principal such reports as may be requested by the Principal including simple reports as to sales, market share, volume analysis and competitor activity in the market place.

3.6 Personnel and Facilities

The Vendor shall employ adequately trained personnel and maintain adequate facilities reasonably necessary to enable the Vendor to perform its obligations and to satisfactorily promote the sale and use of the Products.

3.7 Compliance with Laws

The Vendor will comply with all laws rules and regulations applicable to the Territory relating to the importation labelling sales and use of the Products.

3.8 Indemnity

The Vendor shall indemnify and save harmless the Principal against any direct and consequential loss damage expense or claim whatsoever arising by reason for any legal liability of the Principal for damages or expenses sustained or resulting from or in any way related to the breach by the Vendor of any of the terms and conditions of this agreement or the negligence of the Vendor its agents or employees.

3.9 Credit Application

If the Vendor shall require credit from the Principal, the Vendor shall execute to the Principals' satisfaction, the Principal's Credit Application before the commencement of trade with any customer. The Principal is not under any obligation to provide credit to the Vendor.

3.10 Damaged Products

The Vendor shall furnish to the Principal, at the request of the Principal, a written report covering any damaged product which is damaged in transit, store or for any other reason, and make recommendations for the recovery of same to the Principal.

3.11 Product Labelling

The Vendor will not alter or disguise any of the labelling of the Products, and shall not alter, remove or tamper with any of the contents therein.

3.12 Complaints

The Vendor shall forthwith advise the Principal the details of any complaint, and the identity of the complainant in relation to any of its Products or its services supplied by the Vendor pursuant to this Agreement.

3.13 Payment for Products

The Vendor shall make due and punctual payment for the products to the Principal in accordance with the trading terms.

The Principal shall not be under any obligation to supply if any payment is due but unpaid.

3.14 Competitive Products

The Vendor will not (unless the Principal otherwise agrees in writing) during the continuance of this Agreement be concerned with directly or indirectly in the sale or distribution of any products of a type which are sold or distributed in competition with the Principal's products and in the event that the Vendor is a company will ensure that no director or shareholder of the Vendor shall be concerned with directly or indirectly in any such sale or distribution.

4. FREIGHT and INSURANCES

The Products shall be the entire responsibility of the Vendor on collection from the relevant depot as agreed in writing between the Principal and Vendor for delivery.

5. ORDERS

5.1 Fulfilment of Orders

The Principal shall not be liable in any way or deemed in default by reason of any loss of trade or profit or other damages whatsoever occurring to the Vendor in the event of the delivery of any Products ordered being frustrated or delayed in all or any part of any reason.

6. OTHER OBLIGATIONS OF THE PRINCIPAL

6.1 Supply

The Principal will supply the Vendor with the Products at the recommended wholesale price (known as "its Vendor price") of the Products as nominated from time to time by the Principal.

6.2 Contact and Literature

The Principal will at its discretion make regular visits to and contact with the Vendor and will supply to the Vendor basic literature covering the Products.

7. TERM OF AGREEMENT AND TERMINATION

7.1 This Agreement shall continue for a period of 18 months from the date of execution hereof and thereafter may be terminated by 60 days notice in writing by either the Principal or the Vendor to the other;

7.2 At any time during the initial or any extended term of this Agreement either the Principal or the Vendor shall have the right to terminate this Agreement on giving written notice to the other party in the event of any of the following events occurring:-

34

- (a) if the other party fails to perform or fulfil or is in breach of any terms or conditions of this agreement and fails to remedy such breach within 7 days of notice of such breach given by the other party.
- (b) if the other party is wound up
- (c) if the other party has a Receiver and/or Manager appointed
- (d) if the other party is declared insolvent.

8. RETURN OF DATA

On termination of this Agreement the Vendor will immediately return to the Principal all of the Principal's confidential proprietary information and any other data and information which it shall have received during the term of this Agreement.

9. DISTRIBUTION

9.1 Distribution other than by the Vendor

The Principal shall not be liable in any way or deemed in default by reason of any of the Products being distributed or sold in the Territory other than by the Principal or the Vendor except when the Principal has in breach of this Agreement appointed another Vendor in relation to the Territory.

10. CONFIDENTIAL INFORMATION

10.1 Restriction of use of Confidential Information

The Vendor agrees that it will not use or disclose any confidential information which may be provided to it by the Principal for any purpose other than in aiding in the sale and use of the Products in the Territory and after the termination or expiration of this Agreement all confidential information shall continue to be maintained in confidence and secrecy of the Vendor until and to the extent that such information has become within the public knowledge and domain through no fault of the Vendor.

11. TRADEMARKS

The Vendor agrees that during the life of this Agreement and after its termination or the expiration of this Agreement it will not incorporate under or otherwise make use of the name of the Principal or make use of any trademark or other intellectual property owned or used by the Principal in respect to the Products.

12. EXCLUSION OF AGENCY

The Vendor is not the representative or agent of the Principal for any purpose and is not authorised or empowered to act as agent for the Principal for any purpose and shall not on behalf of the Principal enter into any contract undertaking or agreement of any sort to make any promise warranty or representation with respect to the Products. The Principal shall not be bound by the acts or conduct of the Vendor. The Vendor will not be entitled to pledge the credit of the Principal under any circumstances.

13. NOTICES

13.1 General

Any notice, demand or other communication required to be given by either party to the other;

- (a) shall be given in writing and in the English language; and
- (b) may be given by an employee of the sender, or by the solicitors of the sender.

13.2 Method of Service

In addition to any means authorised by law any notice demand or communication may be given by;

- (a) being personally served on a person
- (b) being left at the party's current address for service
- (c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail or
- (d) by facsimile to the party's current number for service.

13.3 Address for Service

- (a) The addresses and number for service are initially:

The Principal: Dairy Vale Co-operative Limited

Address: 154 Caulfield Avenue
Clarence Gardens, SA 5039

Telephone: (08) 297 2211

Facsimile: (08) 371 1148

The Vendor:

Address:

Telephone:

Facsimile:

- (b) A party may from time to time change its address or numbers for service by notice to the other party.

13.4 Service by Post

A notice demand or communication given by post shall be deemed received;

32

- (a) On the third business day after posting.

13.5 Service by Facsimile

A notice demand or communication given by facsimile transmission shall be deemed received on the issue of a transmission confirmation report by the sender's facsimile equipment provided transmission is completed during normal business hours and if not then on the commencement of normal business hours on the next business day.

13.6 Form Received

A communication sent by facsimile shall be deemed given in the form transmitted unless the message is not fully received in a legible form and the addressee immediately notifies the sender of that fact.

14. ENTIRE AGREEMENT

This agreement constitutes the entire agreement and understanding between the parties which shall have the effect to the entire exclusion of all or any prior arrangements and undertakings (express implied or collateral) between the parties.

15. ASSIGNMENT

The benefit of this Agreement may not be assigned or transferred by the Vendor by operation of law or otherwise without the prior written consent of the Principal. The Principal may assign its benefits and rights under this Agreement. An assignment of any shares in a corporate Vendor shall be deemed to be an assignment of this Agreement requiring the consent of the Principal.

16. GOVERNING LAW

This Agreement shall be governed by and construed in all aspects in accordance with the laws of South Australia and the parties submit to the jurisdiction of the courts of that state.

SCHEDULE 1**THE PRODUCTS**

The Products are determined by the attached Dairy Vale Product list.
Dairy Vale reserves the right at any time to add any item to, withdraw any item from and to modify or change any of the Products.

SCHEDULE 2**THE TERRITORY**

The following store locations.

Deliveries to households in the streets highlighted in the attached map.

EXECUTED by the parties

SIGNED for and on behalf of]
 DAIRY VALE CO-OPERATIVE LTD]
 by]
 being a person duly authorised by]
 DAIRY VALE CO-OPERATIVE LTD]
 and in the presence of:

..... Witness
 Name of Witness (print)

SIGNED by
 in the presence of

..... Witness
 Name of Witness (print)

SIGNED for and on behalf of]
]
 by]
 being a person duly authorised]
 by]
 and in the presence of:

..... Name
 Name of Witness (print)

SIGNED by]
 in the presence of]

..... Name
 Name of Witness (print)

TABLE OF CONTENTS

		Page
1)	Executive Summary	1
2)	Background	2
	a) Product Distribution	2
	b) Product Mix - White and Flavoured Milk	2
	c) Vendor Profitability	3
	d) Deregulation of the SA Dairy Industry	3
	e) Farmers Union's response	
3)	The Market	4
	a) Geographic	4
	b) By Product	5
4)	Competition	6
	a) The Competitive Process	6
	i) Ease of Entry	
	ii) Independent Vendors	
	iii) Product Differentiation and Sales Promotion	
5)	Dairy Vale's Contract to Independent Vendors	7
	a) The Public Benefit	8
	b) Competitive Benefits of Dairy Vale's Vendor Contract	8
6)	Appendices	
	Appendix I: Letter from Farmers Union	9
	Appendix II: Dairy Vale Vendor Contract	10

EXECUTIVE SUMMARY

The distribution of milk products in the area known as the South East of South Australia has traditionally been undertaken by independent milk distributors known as Vendors.

Although never defined, they have tended to operate as a Cartel, distributing competing milk products within well defined zones.

With the gradual deregulation of the dairy industry in South Australia, and the resultant increase in competition with the Beverage industry, Dairy Vale is preparing to meet this competition "head on".

As part of this process, the need to manage our product distribution system becomes vital, especially when many of our competitors are already doing so.

Consequently Dairy Vale has offered distribution contracts to all existing milk vendors in the South East, for the exclusive distribution (unless otherwise specifically agreed between the Principal and Vendor), of dairy products. This is for an initial period of 18 months.

The Public Benefit associated with this course of action includes:-

- 1) The promotion of competition in the market place, with retailers having an additional flavoured milk to choose from. Consequently price off specials, advertising and sales promotions will increase between the companies in the market place.
- 2) Vendors will be professionally trained to compete in the area of sales and service with Farmers Union, Coca Cola and Schweppes. This will improve the viability of the 23 milk vendors in a region of high unemployment.
- 3) The by-passing of the Vendors Area Agreement, thus allowing more than one vendor to call on any particular retailer.
- 4) The economic development of the region, including the continued operation of our local dairy and the resultant benefits for employees, and local dairy farmers.
- 5) The introduction of a new range of flavoured milks, which means increased consumer choice. This would not have occurred had the "status quo" remained, due to entrenched attitudes of milk vendors.

As indicated in the main body of this paper, this distribution arrangement is similar in concept to schemes being operated by both Coca Cola and Schweppes drinks. It does not exclude vendors from carrying non dairy products from other companies.

Background Information

Dairy Vale owns and operates a local dairy situated in Mt Gambier. It produces both white and flavoured milk which is sold throughout the "South East" of South Australia.

The factory directly supports 110 local dairy farmers, who provide milk for the production of both milk and cheese products. Fifty people are employed in the factory, which directly injects over \$20 million into the local community.

a) Product Distribution

Nearly all white and flavoured milk is distributed to retail customers in the South East by 23 independent milk vendors. While these products form the most significant part of a vendor's business, most also carry other dairy products, like cheese, yoghurt and cream, plus other non dairy products of which orange juice is an example.

All vendors have traditionally operated under a Code of Conduct known as the Vendors Area Agreement. This was signed on September 6th 1983 between the vendors and Lakeland Dairies, and limited vendors to particular retail areas.

Given that vendors really operated as a "Cartel", this agreement resulted in retailers being served by only one vendor. (Note: As the TPC already has a copy of this area agreement, I do not propose going into its details).

However it needs to be stated openly that Dairy Vale has never been a signatory to this agreement, having purchased Lakeland Dairies during September 1991. We believe that this agreement has been anti-competitive in nature, and accordingly, has never been recognised by us.

While vendors in the South East distribute over 90% of milk products, it needs to be added that Dairy Vale also owns one truck which delivers milk products to 30 outlets in open competition to the vendors.

b) Product Mix - White and Flavoured Milk

Upon purchasing Lakeland Dairies in September 1991, Dairy Vale acknowledged the existing agreement with Farmers Union Foods regarding the distribution of their flavoured milk range throughout the South East.

Dairyvale also manufacturers Lakeland's "Light" range of flavoured milk and "Big M" which is packed under an agreement reached with the Victorian Dairy Industry Authority (VDIA).

Consequently nearly all vendors have distributed Dairy Vale's white milk (produced in Mt Gambier), a limited range of Dairy Vale flavours, and the complete range of Farmers Union flavours, which have been sourced from Adelaide.

(3)

Ultra Heat Treated (UHT) white milk from Victoria is also sold in the region. This product is warehoused by the major supermarkets groups. This has resulted in the following market shares:

White Milks

Dairy Vale White Milk	80%
Farmers Union Pura White	5%
Interstate UHT Milk	15%

Flavoured Milks

Lakeland Light, and Big M	25%
Farmers Union Flavours	70%

There is no doubt that vendors have been happy with the status quo, especially in relation to Flavoured Milk, and have seen little or no reason to introduce the premium Dairy Vale range of flavours, available to them from Adelaide.

c) Vendor Product Profitability

The South Australian Prices Commissioner through the Prices Act controls the Processor (Dairy Vale) and Wholesale milk prices throughout South Australia for fresh White Milk.

Although fresh White milk sales are higher in the South East than Flavoured Milks (by a ratio of 3-1), the profitability of flavoured milks is substantially greater, as illustrated by the following example.

Product	WHOLESALE PRICES		Margin %
	Vendor	Shop	
White Milk (1 litre)	72.44	81.50	12.6
Flavoured Milk			
600ml	69.00	90.00	30.4
500ml	58.00	79.00	36.2

For the average vendor, the profitability of White and Flavoured milks is about equal.

d) Deregulation of the South Australian Dairy Industry

The South Australian Dairy Industry has historically been regulated, to ensure that milk of a high standard is available to the public. Consequently the price of white milk has, until recently, been controlled from the farm to the retailer.

With the gradual move towards deregulation, as detailed in the Dairy Industry Review White Paper of July 1992, the need for South Australian milk processors to prepare for more vigorous price competition has become evident.

e) Farmers Union's response

Farmers Union is part of the National Food Group based in Melbourne.

(4)

In preparing for the deregulation of the dairy industry in several states, it is developing its Pura brand of White milk in Victoria, South Australia and Tasmania.

At the time of writing, Pura is sold in most areas of Victoria and South Australia, including parts of the South East.

It is also looking to control the distribution of its products into the market place. As part of this process, it wrote to Dairy Vale on November 10th 1992 to inform us that the distribution and sales agreement for its range of flavoured milks was to be terminated on December 1st 1992. As indicated by the letter in Appendix I, it was to control the distribution of these products via its Golden North subsidiary in Mt Gambier.

As confirmed by the vendor at Kingston on Friday 27th November 1992, the Golden North facility has the ability to take White milk orders from vendors, and distribute the product throughout the South East.

II The Market

a) Geographic

This market is considered to be part of the wider South Australian market, due to the majority of dairy products sold in this area being sourced from Adelaide by both Dairy Vale and Farmers Union.

All sales activities are controlled from Adelaide for both companies. This includes sales representative visits, pricing, and promotions.

However as the industry moves closer towards deregulation between now and January 1st 1995 (when processor and wholesale price controls are removed) the possibility exists that this market will expand further to include Western Victoria. Pura milk is already sold extensively throughout Victoria and National Dairies has a dairy situated at Horsham in Victoria which is closer to Mt Gambier than Adelaide is.

As highlighted by the Trade Practises Tribunal in "Queensland Co-op Milling Association and Defiance Holdings Ltd"⁽¹⁾, the tribunal in highlighting that the identification of markets is an essential first step in determining the state of competition stated that:

"We take the concept of a market to be basically a very simple idea. A market is the area of close competition between firms, or putting it a little differently, the field of rivalry between them".

In using this definition, there is indeed close rivalry between Dairy Vale and Farmers Union throughout South Australia, including the South East.

⁽¹⁾ Australian Trade Practises Reporter (1976) 40-012

(5)

b) By Product

Economists sometimes talk about the Cross Elasticity of Demand for a Product. ⁽²⁾ If the price of a particular product increases, then consumers may purchase a substitute product instead.

The higher the positive cross elasticity of demand, the greater the degree of substitutability between products.

It is our opinion that fresh liquid milk products are part of what is loosely termed the "Beverage" market, which includes such products as Soya Milks, Fruit Juices and Soft Drinks.

There is a positive cross elasticity between these products, resulting in them being substitutes for each other to varying degrees.

For example a 375ml can of Coca Cola sells in Mt Gambier for approximately \$1.20. In the same fridge can be found a 500ml Dairy Vale flavoured milk for approximately \$1.30. A price rise of 10% in flavoured milk will see some consumers switch to Coca Cola, (assuming Cokes price stays the same) given that both products are often impulse buys, and appeal to a similar target group.

With regards to White milk, although there is currently very little retail price competition due to deregulation being in its introductory phase, there is still substitution between Dairy Vale and Farmers Union. Consumers consider the products to be homogeneous in nature, as evidenced by the often heard expression "milk is milk". It should be noted that this will change as deregulation bites from January 1995.

⁽²⁾ Cross Elasticity of Demand: The percentage change in the quantity of a good demanded when the price of another good increase by 1 percent. From:

Economics: Stanley Fischer
Rudiger Dornbusch
Richard Schmalensee

IV

(6)

Competition

As established in the previous section on "the market", Dairy Vale is facing competition from a wide range of products in addition to its traditional milk rival.

In the case of Coca Cola and Schweppes, they are all aggressive marketers in the South East and regularly use a combination of quantity discounts, advertising and sales promotions to generate sales.

Both companies use independent exclusive franchisees to distribute their products to retail outlets with Schweppes using two trucks and Coca Cola up to eight trucks at any one time.

As part of their contract franchisees are not allowed to distribute competitive soft drink products. Anecdotal evidence from several vendors suggests that Farmers Union has been considering a similar scheme for part of South Australia.

a) The Competitive Process

The structure of a market often determines how firms compete within it. The following elements are considered.

i) Ease of Entry

Within the Dairy industry, Dairy Vale and Farmers Union are aggressive competitors with each other. In relation to the market in the South East, the only Farmers Union product currently not distributed throughout the entire region is their Pura white milk. This situation could be quickly remedied due to:

- 1) They are able to supply product from either Adelaide or Horsham in sufficient quantities to satisfy the market.
- 2) They own or have access to depot facilities in Mt Gambier and seven regional centres in the South East.
- 3) Their sister company, Golden North already operates in the region with 2 trucks.

ii) Independent Vendors

Twenty three vendors currently distribute milk products in this region.

Barriers to entry are almost non existent. Vendors do not have to be licensed, while technical expertise is low. They need to meet relevant council by laws regarding hygiene and have access to a small van.

iii) Product Differentiation and Sales Promotion

While different brands of White milk exist within the market place, the high level of regulation within the industry, and pricing structure, has resulted in relatively low brand building.

The majority of consumers still believe that white milk is a homogenous product, as evidenced by the often heard comment:- "milk is milk".

Flavoured milks are a different story altogether, with strong brand building having occurred between both major milk companies, and the soft drink industry.

V Dairy Vale's Contract to Independent Vendors

The market forces at work indicate that Dairy Vale must be able to respond to the increasing competitiveness within the Beverage industry in order to survive.

In reviewing these forces, the major ones include:

- * The move towards Deregulation and therefore increased competition within the Dairy Industry.
- * The activities of major competitors, including Farmers Union, Coca Cola and Cadbury Schweppes.
- * The resistance shown by milk vendors towards distributing and selling an additional brand of flavoured milk, ie Dairy Vale.

In order to introduce the Dairy Vale brand of flavoured milks and successfully compete with the professionally trained distribution chains of Coca Cola and Schweppes, Dairy Vale is now offering all existing vendors in the South East distribution contracts. (see Appendix II)

The following comments need to be made:

Our distribution studies have shown that 8 vendors could handle the distribution of Dairy Vale liquid milk throughout the South East. But due to high unemployment levels in the region, and the potential social costs, all 23 vendors have been offered contracts.

- * Clause 3.14 on Competitive products does allow competitive dairy products to be distributed at our discretion. As an example, we have agreed to vendor's requests to distribute Farmers Union flavoured milk.
- * The contracts do not limit vendors to only distributing dairy products.
- * It is proposed that Dairy Vale products will be delivered by one vendor to a nominated store or household. This does not exclude another vendor carrying competitive dairy products from calling on the same retailer, or the retailer from nominating another vendor.

* These contracts are for an initial period of 18 months only. 60 days notice can then be given by either party for termination.

a) The Public Benefit

In the previously mentioned Queensland Co-op Milling Association Ltd and Defiance Holding Case ⁽³⁾, the tribunal defined Public Benefit as "anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements....the achievement of the economic goals of efficiency and progress".

Public benefit outcomes include:

- 1) The promotion of competition in the market place, with retailers having an additional flavoured milk to choose from. Consequently price off specials, advertising and sales promotions will increase between the companies in the market place.
- 2) Vendors will be professionally trained to compete in the area of sales and service with Farmers Union, Coca Cola and Schweppes. This will improve the viability of the 23 milk vendors in a region of high unemployment.
- 3) The by-passing of the Vendors Area Agreement, thus allowing more than one vendor to call on any particular retailer.
- 4) The economic development of the region, including the continued operation of our local dairy and the resultant benefits for employees, and local dairy farmers.
- 5) The introduction of a new range of flavoured milks, which means increased consumer choice. This would not have occurred had the "status quo" remained, due to the entrenched attitudes of milk vendors.

⁽³⁾ Australian Trade Practises Reporter, 1976 40-012