

**EXCLUSIVE DEALING: NOTIFICATION**

FORM G

TO THE TRADE PRACTICES COMMISSION:

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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 ..... FARMERS UNION FOODS LIMITED ACN 007 869 347 .....	<div>TRADE PRACTICES COMMISSION CANBERRA 13 APR 1993</div>
(see Direction 2 on the back of this form)	
(b) Short description of business carried on by that person ..... The manufacture and wholesale of dairy products.....	
(c) Address in Australia for service of documents on that person ..... C/- Baker O'Loughlin, Solicitors, 15th Floor, AMP Building, 1 King William Street Adelaide 5000. Tel: 233 5555 Facsimile: 212 7518	
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates ..... Distribution of dairy products, in particular fresh white and flavoured milk.....	
(b) Description of the conduct or proposed conduct ..... See attached Agreement, in particular clauses 1.1, 1.3, 1.4, 1.5, 1.6 and 1.7. (see Direction 4 on the back of this form)	
3. (a) Class or classes of persons to which the conduct relates ..... Persons engaged in or proposing to engage in conduct referred to in paragraph 2(a) above.	
(b) Number of those persons — (i) At present time ..... Approximately 41 persons..... (ii) Estimated within the next year ..... Approximately 41 persons.....	
(c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses ..... At this stage it is not known whether all of the persons referred to in paragraph 3(b)(i) will sign the Distribution Agreement..... referred to in paragraph 2(b) above. We will provide you with a list of persons who sign the Distribution Agreement in due course.	
4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice ..... Mr C C A Binks, C/- Baker O'Loughlin, Solicitors, 15th Floor, AMP Building, 1 King William Street Adelaide 5000. Tel: 233 5555 Fax: 212 7518	

Dated ..... April ....., 1993.....

Signed by/on behalf of the person giving this notice

(Signature)

BRENTON L. HIGGINS

(Full name)

GENERAL MANAGER, FARMERS UNION  
(Description) FOODS

9/1989





### 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.

**FARMERS UNION FOODS LIMITED****SUMMARY OF DISTRIBUTION AGREEMENT****INTRODUCTION**

This summary is provided to assist you in understanding the new arrangements for the distribution of our products. However, you should read the distribution agreement carefully and if felt necessary obtain independent advice on its terms.

**PARTIES**

The agreement is between you (if you are the sole operator), you and your partners (if you operate your business with others) or your company (if you operate your business through a company) and Farmers Union Foods Ltd. GN Distributors is a division of Farmers Union Foods Ltd and not a separate company.

**RECITALS**

The recitals summarise the background to the agreement.

**AGREEMENT TERMS****1. Appointment of Vendor**

You are appointed as:

- ▶ the sole and exclusive distributor of our fresh white and flavoured milk products (see clause 1.1); and
- ▶ a non-exclusive distributor of the other products listed in our price list (see clause 1.2);

to the customers listed in the back of the agreement. The appointment is subject to restrictions (see clause 1.3).

These stop you:

- (a) selling competing products unless they are exempted (see clauses 1.3.1 and 1.4);
- (b) selling or trying to sell our products to the customer of another Farmers Union vendor (see clauses 1.3.2 and 1.3.3); or
- (c) selling our products to a vendor or wholesaler that sells competing products (see clause 1.3.4).

You can compete for the business of new outlets (see clause 1.5). Customers can change vendors if they wish (see clause

1.6).

We can also compete for the business of new outlets or supply a customer who requests direct supply whether as a result of a public tender or not (see clause 1.7). If that customer appears on your list we will use our best endeavours to use you to deliver products and provide support services (see clause 1.8).

You may carry on any other reasonably compatible business if that other business does not interfere with the distribution and sale of our products (see clause 1.9).

2. **Term of Agreement**

The agreement is for an initial term of 12 months. You then have a right to extend the term for a further 24 months. After the initial term of 12 months if you choose not to extend or after the 24 month period the agreement can be brought to an end by either of us giving 2 months' notice to the other.

3. **Terms of Trade**

We have updated our standard conditions of sale. These will apply to all products purchased from GN Distributors.

4. **Vendor's Duties**

This clause lists your main duties. Most of those duties reflect current practices. The main aim is to achieve a minimum standard of performance, service, dress and equipment for all vendors. In particular:

- (a) We may request security for the payment of our accounts. This accords with our past practice of requiring bonds or bank guarantees (see clause 4.7).
- (b) We will pay the cost of decorating your vehicle. However you must pay the cost of removing any advertisements upon sale, disposal or cessation of use of the vehicle (see clause 4.10).
- (c) We have prepared a "vendor manual" to assist in the conduct of your business and to set out clear procedures to be followed (see clause 4.17).

5. **Duties of Farmers Union**

This section protects the rights given to you to service the "Listed Customers". We will also give you marketing and logistical support.

**6. Performance Review**

We will continue or introduce where not already operating, quarterly performance reviews. Reasonable performance standards and sale targets are expected to be met. Sales targets will be determined after consultation with you and with reference to the prevailing industry and economic conditions. We may terminate the agreement if performance standards or sale targets are not met.

**7. Trademarks**

You are given a right to use our trademarks but we retain all rights in those trademarks.

**8. Product Quality and Procedures**

This reflects current practice and is dealt with in more detail in the vendor manual. In particular you are required to comply with our product recall procedure.

**9. Customer/Vendor Disputes**

Once again this reflects current practice. You must notify us of any dispute or complaint and must rectify that dispute or complaint as soon as possible. We have the right to take any action we consider necessary to resolve the dispute or complaint including arranging for direct supply.

**10. Vendor Indemnity**

You are liable for the consequences of your own acts and omissions as well as the acts and omissions of your employees, agents and contractors.

**11. Continuance of Supply to Listed Customers**

If you cannot perform your duties because you are ill or on holiday or for any other reason you must notify us and make suitable arrangements for someone else to perform your duties. We may take any action we consider necessary to ensure the continued and timely supply of products to your customers.

**12. Associates and Employees**

You cannot avoid the restrictions concerning the sale of competing products by setting up an "associate" to distribute those products. The term "associate" basically means a person accustomed to acting or under a direct or indirect obligation to act in accordance with your directions or wishes. You are in breach of your obligations under the agreement if you do so. You are also responsible to ensure that all your employees, agents and contractors

comply with your obligations under the agreement.

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### 13. Default and Termination

We may terminate the agreement immediately if:

- ▶ you are behind in the payment of your accounts,
- ▶ you fail to remedy a notified breach,
- ▶ you repeatedly breach the agreement,
- ▶ you become insolvent,
- ▶ you cease to carry on business,
- ▶ you try without consent to transfer your rights under this agreement; or
- ▶ you are convicted of a dishonesty offence.

Upon termination you must pay:

- ▶ all our outstanding accounts,
- ▶ return all our property,
- ▶ cease to use our trademarks,
- ▶ remove at our cost advertising appearing on your vehicle; and
- ▶ terminate any public registration.

We can take all necessary steps to ensure that you comply with the above requirements.

### 14. Vendor as Independent Contractor

You are an independent contractor and do not act as our agent. You must indicate that you are an independent contractor at all times and cannot enter into agreements on our behalf.

### 15. Force Majeure

The term "force majeure" basically means an act, omission or circumstance over which you cannot exercise control. This clause excuses a breach of the agreement arising as a result of such an act, omission or circumstance. For example, you would not be in breach of your obligations under the agreement if you were unable to carry out those obligations as a result of a natural disaster.

**16. Assignment**

You cannot assign, sub-let or subcontract your rights under this agreement without our consent. However, we cannot unreasonably withhold that consent if certain requirements are satisfied.

You must first offer to sell your business to us. If we do not want to buy your business you may sell it to a third party purchaser if that person is of good financial standing and has a proven ability to conduct the business. In addition all money owed by you to us must have been paid and all obligations complied with. You and the third party purchaser must also execute a transfer, lease or subcontract in a form approved by us.

We can assign our rights under the Agreement.

**17. Notices**

This provision sets out how we can serve notices on each other.

**18. Entire Agreement, Severance and Governing Law**

These are standard provisions in most agreements.

**19. Trade Practices Act**

We have lodged the agreement with the Trade Practices Commission. If they require changes we will meet with you to agree those changes.

**20. Interpretation**

This clause sets out the meaning of various terms used in the agreement. In particular the "Listed Customers" are set out in Schedule B and the "Products" are set out in Schedule C.

## FARMERS UNION FOODS LIMITED

## DISTRIBUTION AGREEMENT

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## DISTRIBUTION AGREEMENT

DISTRIBUTION AGREEMENT dated

1993

BETWEEN FARMERS UNION FOODS LIMITED ACN 007 869 347 of 19-31  
London Road Mile End South Australia ("Farmers Union")

AND The party specified in Item 1 of Schedule A

("Vendor")

## RECITALS

- A. Farmers Union carries on the business of processing, manufacturing and the wholesale supply of dairy products.
- B. G N Distributors is a division of Farmers Union and undertakes the distribution of Farmers Union products throughout the State.
- C. The Vendor wishes to purchase Products for distribution and for that purpose has requested Farmers Union to appoint the Vendor as a distributor of Products.
- D. Farmers Union agrees to appoint the Vendor as a distributor of the Products and the Vendor agrees to accept that appointment and distribute the Products on the following terms and conditions.

## AGREEMENT

## 1. APPOINTMENT OF VENDOR

## 1.1 Grant of Exclusive Rights

Farmers Union appoints the Vendor as the sole and exclusive distributor of the Products listed in Item 1 of Schedule C to the Listed Customers during the term of this Agreement subject to the following terms and conditions.

## 1.2 Grant of Non-Exclusive Rights

Farmers Union appoints the Vendor as a non-exclusive distributor of the Products listed in Item 2 of Schedule C to the Listed Customers during the term of this Agreement subject to the following terms and conditions.

## 1.3 Vendor Restrictions

The Vendor will not during the term of this Agreement:

- 1.3.1     **Competing Products** - be directly or indirectly concerned or interested in the sale, advertisement or promotion of any products which are similar to or which compete or might compete or interfere with the sale of the Products;
- 1.3.2     **Non-Listed Customers** - directly or indirectly sell Products to an existing customer of Farmers Union or a Farmers Union Distributor;
- 1.3.3     **Solicit Non-Listed Customers** - solicit or entice, or endeavour to solicit or entice, an existing customer of Farmers Union or a Farmers Union Distributor to purchase Products either directly or indirectly from the Vendor; or
- 1.3.4     **Competing Vendors & Wholesalers** - directly or indirectly sell Products to a vendor or wholesaler of any product which competes or might compete with the Products;

1.4     **Exemption for Nominated Competing Products**

Notwithstanding clause 1.3.1 the Vendor may, during the term of this Agreement sell the non-Farmers Union products set out in Item 2 of Schedule A but this exemption will not, in any way, limit the other obligations of the Vendor under this Agreement.

1.5     **New Outlet Customers**

Nothing in clauses 1.3.2 and 1.3.3 will prevent the Vendor from soliciting or enticing, or endeavouring to solicit or entice, or selling Products to an individual who is not an existing customer of Farmers Union or of a Farmers Union Distributor.

1.6     **Customer Nominating New Vendor**

Nothing in clauses 1.3.2 and 1.3.3 will prevent the Vendor from commencing to sell Products to an individual who was a customer of Farmers Union or of a Farmers Union Distributor if that person independently, and without being solicited or enticed by the Vendor, requests the Vendor to supply Products to it instead of Farmers Union or the relevant Farmers Union Distributor.

1.7     **Direct Supply or Tender**

Nothing in this Agreement will prevent Farmers Union from:

- 1.7.1 Non-Listed Customers - soliciting or enticing, or endeavouring to solicit or entice, or selling Products to an individual who is not a Listed Customer;
- 1.7.2 Customer Nominating Farmers Union - commencing to sell Products direct to a Listed Customer if that Listed Customer independently, and without being solicited or enticed by Farmers Union, requests Farmers Union to supply Products to it instead of the Vendor; or
- 1.7.3 Response to Tender - submitting a tender to supply Products to a Listed Customer in response to an invitation to tender issued by that Listed Customer.

#### 1.8 Vendor Delivery Arrangements

If Farmers Union commences to sell Products to a Listed Customer Farmers Union will use its best endeavours to engage the Vendor on a contract basis to deliver Products ordered by, and provide support services to, that Listed Customer during the term of this Agreement.

#### 1.9 Other Business

Subject to clauses 1.3.1 and 1.3.4, the Vendor may carry on, in addition to its business of distributing the Products to the Listed Customers, any other reasonably compatible business if that business does not detract from or interfere with the performance by the Vendor of its obligations under this Agreement.

### 2. TERM OF AGREEMENT

#### 2.1 Initial Term

Subject to clause 13, this Agreement will be for an initial term of 12 months commencing on the date of execution.

#### 2.2 Extension of Term

The Vendor may extend the term of this Agreement for a further term of 24 months by serving a notice on Farmers Union, not less than 1 month before the end of the initial term, requesting that extension. Farmers Union will grant that extension if the Vendor is at all relevant times not in breach of its obligations under this Agreement.

## 2.3 Termination by Notice

This Agreement will continue after the end of:

### 2.3.1 Initial Term

the initial term of 12 months if the Vendor does not extend the term in accordance with clause 2.2; or

### 2.3.2 Extended Term

the extended term of 24 months if the Vendor does extend the term in accordance with clause 2.2

until terminated by either party giving not less than 2 months notice in writing of termination to the other party.

## 3. TERMS OF TRADE

Farmers Union will sell to the Vendor those Products ordered by the Vendor at Farmers Union's current vendor price and in accordance with Farmers Union's standard conditions of sale at that time.

## 4. VENDORS' DUTIES

The Vendor will:

### 4.1 Best Endeavours - Sell and Promote

Use its best endeavours to actively assist, promote and extend sales of the Products to the Listed Customers.

### 4.2 Time Commitment

Devote its personal best efforts in the carrying on of its business of selling Products to the Listed Customers.

### 4.3 Efficient Conduct of Business

Conduct its business of selling Products to the Listed Customers in an efficient, ethical and businesslike manner with due regard to the standards set out in the Vendor Manual, the convenience of the Listed Customers and their requirements for regular, efficient and timely delivery of Products.

### 4.4 Not to Sell Faulty Products

Not sell or distribute Products which are in any way faulty or defective or have expired use-by dates.

**4.5 Unauthorised Modifications**

Not make any unauthorised changes, modifications or packaging adaptations to the Products.

**4.6 Unauthorised Representation**

Not make any representations, statements or warranties about the Products other than those which are expressly authorised by Farmers Union in writing.

**4.7 Security for Payment**

If requested by Farmers Union, provide such security as Farmers Union may require to secure the payment of Farmers Union's accounts.

**4.8 Records & Access**

Keep accurate accounts and records and on request by Farmers Union report to it and allow an authorised officer of Farmers Union access to, and make copies of, those accounts and records.

**4.9 Vendor Advertising**

Submit all advertising and promotional material prepared by it and all documents on which it is proposed that the Trademarks will appear to Farmers Union for prior approval.

**4.10 Vehicle Advertising**

Decorate (at Farmers Union's cost) the Vendor's vehicle in the colour and style directed by Farmers Union and remove those decorations at the Vendor's cost prior to the sale, disposal or cessation of use of that vehicle.

**4.11 Non-Farmers Union Advertising**

Not paint, write or display on the Vendor's vehicle or other equipment any non-Farmers Union advertising material unless first approved by Farmers Union.

**4.12 Storage and Delivery**

Store and distribute the Products in accordance with the provisions of the Act and the Vendor Manual.

**4.13 Standard of Vehicle**

Keep the Vendor's vehicle in a clean and tidy condition, in good mechanical working order and in

accordance with the requirements of the Act, the Vendor Manual and any other relevant legislation.

**4.14 Licences**

Hold and renew all licences and authorities required by law for the purposes of carrying on the business of the sale and delivery of dairy products including without limitation all licences and registrations required in respect of the Vendor's vehicle.

**4.15 Public Liability Insurance**

Effect with a reputable insurer at the Vendor's cost public liability insurance.

**4.16 WorkCover Registration**

Ensure that all employees, agents and contractors of the Vendor are registered with WorkCover and provide proof when requested of that registration.

**4.17 Vendor Manual**

Comply with all procedures, requirements or stipulations contained in the Vendor Manual.

**4.18 Secrecy**

Not divulge any information in relation to Farmers Union's affairs or business or method of carrying on business including without limitation all information contained in the Vendor Manual.

**5. DUTIES OF FARMERS UNION**

Farmers Union will:

**5.1 Supply of Products**

Supply Products ordered by the Vendor in accordance with Farmers Union's standard conditions of sale.

**5.2 Variation in Product Range**

Notify the Vendor of any proposed addition to or deletion from the range of Products and maintain a range of products which optimise returns to both Farmers Union and the Vendor.

**5.3 Variation of Prices**

Notify the Vendor of any change in the prices for the Products and issue as soon as possible new price lists

reflecting those changes.

**5.4 Restrictions on Sale by Farmers Union**

Not sell Products directly to a Listed Customer unless that sale arises under clauses 1.7, 9.3, or 11.2.

**5.5 Marketing Advertising and Promotion**

Undertake such marketing, advertising and promotion of the Products as Farmers Union believes is necessary including without limitation direct marketing, advertising and promotion of the Products to Listed Customers.

**5.6 Promotional Material**

Make available for use by the Vendor such brochures, point of sale advertising material and samples as Farmers Union believes is necessary to assist the sale of Products to Listed Customers.

**5.7 Uniforms**

Provide and share the cost of any uniforms required to be worn by the Vendor.

**5.8 Vendor Manual - Notification of Requirements**

Give to the Vendor a copy of the current version of the Vendor Manual and notify the Vendor promptly of any updates or modifications to the Vendor Manual.

**5.9 Training**

Hold training programs for the Vendor concerning the distribution of the Products and the conduct of the business of distributing the Products.

**5.10 Representatives**

On a regular basis, send a representative to visit the Vendor and the Listed Customers for the purpose of promoting sales of the Products.

**5.11 Safeguard Vendor's Exclusive Rights**

Use its best endeavours to safeguard the sole and exclusive rights granted under this Agreement to the Vendor including taking all steps as are available to Farmers Union to prevent an infringement of those rights by another Farmers Union Distributor.

## 5.12 Product Quality

Ensure that products are processed, supplied, stored, packaged, labelled, date coded and delivered in accordance with the Act and are of merchantable quality at the time of supply.

## 6. PERFORMANCE REVIEW

### 6.1 Quarterly Performance

At intervals of 3 months during the term of this Agreement, the parties will conduct a performance review.

### 6.2 Notice of Unsatisfactory Performance

If, as a result of any performance review Farmers Union is not satisfied with the performance of the Vendor, Farmers Union may serve upon the Vendor a notice in writing setting out reasonable performance standards and (if applicable) sales targets fixed with reference to prevailing industry and economic conditions, to be achieved by the Vendor within the period set out in that notice.

### 6.3 Termination for Unsatisfactory Performance

If, after the expiration of the period set out in that notice, Farmers Union reasonably determines that there has not been sufficient improvement in the performance of the Vendor, Farmers Union may immediately terminate this Agreement by notice in writing to the Vendor.

## 7. TRADEMARKS

### 7.1 Licence

Farmers Union grants to the Vendor a non-exclusive licence to use the Trademarks in the manner permitted by this Agreement solely in connection with the distribution of Products to the Listed Customers in accordance with this Agreement.

### 7.2 Ownership

The Vendor acknowledges that it has no right or interest, and Farmers Union is the exclusive owner of all right and interest in the Trademarks, the Vendor Manual and all records, advertising copy and other articles or things supplied by Farmers Union to the Vendor.



### 7.3 Improper Use by Vendor

The Vendor will not do anything which is calculated or may derogate from or infringe the rights of Farmers Union in relation to the Trademarks or any other industrial property right or entitlement of Farmers Union.

### 7.4 Improper Use by Third Parties

The Vendor will immediately notify Farmers Union of any improper or wrongful use of the Trademarks or other industrial property rights or entitlements of Farmers Union and assist Farmers Union in taking all steps to prevent that improper or wrongful use.

## 8. PRODUCT QUALITY AND PROCEDURES

### 8.1 Notification

The Vendor must immediately notify Farmers Union of any Products which do not comply with the standards set out in the Act or the Vendor Manual or of any complaint received by the Vendor concerning the quality of the Products.

### 8.2 Product Recall Procedure

If Farmers Union recalls any Products for health, safety or quality reasons, the Vendor will co-operate with Farmers Union in relation to such recall and will comply with the "product recall procedure" set out in the Vendor Manual.

## 9. CUSTOMER/VENDOR DISPUTES

### 9.1 Notification

The Vendor will immediately notify Farmers Union of any complaint made against the Vendor by a Listed Customer or any dispute between a Listed Customer and the Vendor.

### 9.2 Vendor to Resolve

The Vendor will promptly rectify or resolve the complaint or dispute in such a manner as to maintain good relations with the Listed Customer.

### 9.3 Farmers Union Intervention

Notwithstanding clause 5.4 Farmers Union may take any action necessary to resolve any complaint or dispute including without limitation arranging for the direct

supply of Products to the Listed Customer by Farmers Union or a Farmers Union Distributor.

10. VENDOR INDEMNITY

The Vendor will be liable for all acts and omissions of the Vendor, its employees, agents or contractors and will indemnify Farmers Union for any loss, damage or costs sustained by Farmers Union as a result of an act or omission of the Vendor, its employees, agents or contractors.

11. CONTINUANCE OF SUPPLY TO LISTED CUSTOMERS

11.1 Inability to Perform Duties

If the Vendor is unable to carry out its duties under this Agreement, the Vendor must immediately inform Farmers Union of that fact and the reason why and arrange at the Vendor's cost for a person and/or a vehicle approved by Farmers Union to carry out the Vendor's duties under this Agreement.

11.2 Direct Intervention by Farmers Union

Notwithstanding clause 5.4, if the Vendor has not arranged for a person and/or a vehicle approved by Farmers Union to carry out the Vendor's duties under this Agreement, Farmers Union may take any action necessary to ensure the continued and timely supply of Products to the Listed Customers including without limitation arranging for the direct supply of Products to the Listed Customers by Farmers Union or a Farmers Union Distributor.

12. ASSOCIATES AND EMPLOYEES

12.1 Vendors' Associates

The Vendor will be deemed to be in breach of its obligations under this Agreement if an Associate of the Vendor does any act which, if done by the Vendor, would be a breach of the Vendor's obligations under this Agreement.

12.2 Vendors' Employees, Agents and Contractors

The Vendor will ensure that all its employees, agents and contractors comply with the obligations imposed upon the Vendor under this Agreement.

13. DEFAULT AND TERMINATION

13.1 Right of Termination

Farmers Union may, terminate this Agreement immediately by notice in writing to the Vendor if:

- 010
- 13.1.1 Default in Payment - any money due by the Vendor to Farmers Union remains unpaid after its due date for payment;
  - 13.1.2 Failure to Remedy Breach - the Vendor is in breach of this Agreement and that breach is not remedied within 7 days of notice to the Vendor to remedy the same;
  - 13.1.3 Repeated Breach - the Vendor has breached this Agreement 3 or more times during any 6 month period;
  - 13.1.4 Insolvency of Vendor - the Vendor becomes or resolves to become or is under threat of becoming subject to any form of insolvency administration;
  - 13.1.5 Vendor Ceases Business - the Vendor ceases or is unable to carry on its business of distributing the Products to the Listed Customers;
  - 13.1.6 Unauthorised Transfer - the Vendor attempts to transfer or assign any right or obligation under this Agreement without the consent of Farmers Union; or
  - 13.1.7 Vendor Convicted of Offence - the Vendor is convicted of an offence which, in Farmers Union's opinion, may adversely affect the interests of Farmers Union.

## 13.2 Consequences of Termination

Upon termination of this Agreement the Vendor must immediately:

- 13.2.1 Pay All Outstanding Accounts - pay to Farmers Union all money due and owing to Farmers Union;
- 13.2.2 Return Farmers Union Property - return to Farmers Union all equipment, manuals, advertising material and other property belonging to Farmers Union;
- 13.2.3 Cease Use of Trademarks - cease to use and display the Trademarks and any other industrial property right or entitlement of Farmers Union;
- 13.2.4 Remove Trademarks - deliver to Farmers Union the Vendor's vehicle and any other property

on which the Trademarks and Farmers Union's advertising material appear for removal of the Trademarks and advertising material at Farmers Union's expense; and

- 13.2.5 Terminate Registration - terminate any registration, record or public entry indicative of any association of the Vendor with Farmers Union.

### 13.3 Right to Enforce Compliance

If the Vendor does not immediately comply with any of the obligations set out in clause 13.2, Farmers Union may take such steps as are necessary to ensure compliance including without limitation entering any premises in which the property of Farmers Union, the Vendor's vehicle or the Vendor's other property is kept and seizing possession of that property.

### 13.4 Remedies at Law

Termination of this Agreement will not affect the rights of either party in respect of any prior breach of this Agreement.

## 14. VENDOR AS INDEPENDENT CONTRACTOR

### 14.1 Vendor as Independent Contractor

The Vendor is an independent contractor and nothing in this Agreement will constitute, or be construed as constituting, the Vendor as the partner, agent, joint venturer, employee or legal representative of Farmers Union.

### 14.2 To Indicate Capacity in which Acting

The Vendor will in all correspondence and other dealings relating directly or indirectly to the sale of Products clearly indicate that the Vendor is acting as a principal.

### 14.3 Not to incur Liability on behalf of Farmers Union

The Vendor will not incur any liability on behalf of Farmers Union or in any way pledge or purport to pledge the credit of Farmers Union or accept any order or make any contract binding upon Farmers Union.

## 15. FORCE MAJEURE

- 15.1 Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out an obligation under

this Agreement and that party:

15.1.1 gives to the other party prompt notice of that Force Majeure with reasonably full particulars thereof and, insofar as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and

15.1.2 uses all possible diligence to remove that Force Majeure,

that party will not, subject to clause 15.3, be liable to the other party for failure to perform that obligation.

15.2 If after 3 months the Force Majeure has not ceased or been overcome, the parties will meet in good faith to discuss the situation and endeavour to achieve a mutually satisfactory resolution to the problem.

15.3 An obligation to pay money is never excused by Force Majeure.

15.4 The requirement that any Force Majeure be removed with all possible diligence will not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the party affected.

## 16. ASSIGNMENT

### 16.1 Assignment by Vendor

The rights and obligations of the Vendor under this Agreement are personal to the Vendor and are created on the faith which Farmers Union has in the Vendor personally. The Vendor will not transfer, assign, lease, subcontract, encumber or otherwise deal with its rights under this Agreement or attempt to do so except with the written consent of Farmers Union which consent will not be unreasonably withheld if the following requirements are satisfied.

### 16.2 First Right of Refusal

If the Vendor wishes to sell its business as a Farmers Union distributor it must first offer that business to Farmers Union on terms no less favourable than those offered to a third party. If Farmers Union does not accept that offer within 14 days of receipt the Vendor may, subject to clause 16.1, sell its business to a third party on the same terms and conditions as offered to Farmers Union.

### 16.3 Qualities of Incoming Vendor

The person to whom the Vendor wishes to transfer, assign, lease, subcontract or otherwise deal with its rights under this Agreement must be a person, firm or corporation of good financial standing with a proven ability to conduct a business similar to that carried on by the Vendor and agree to execute a transfer, assignment, lease or subcontract in a form approved by Farmers Union.

### 16.4 No Default

All moneys owed by the Vendor under this Agreement must be paid in full, all obligations complied with and all defaults remedied as at the date of that transfer, assignment, lease or subcontract.

### 16.5 Costs

The Vendor will pay all Farmers Union's costs of and incidental to determining the suitability of the person in question and the preparation of all necessary documentation.

### 16.6 Changes in Shareholders and Directors

If the Vendor is a company then any proposed change in directors or shareholders of the Vendor will be deemed to be an assignment under clause 16.1 requiring the prior written consent of Farmers Union.

### 16.7 Assignment by Farmers Union

Farmers Union may at any time assign its rights under this Agreement by notice in writing to the Vendor and the Vendor will do all acts and things reasonably required to affect that assignment.

## 17. NOTICES

All notices under this Agreement must be in writing and may be given by personal delivery or by mail addressed to the Vendor or to Farmers Union at their respective addresses set out in this Agreement or at such other address as either party may designate in a notice to the other party and, in the case of service by post, service will be deemed to be effected on the next day following the day of postage.

## 18. ENTIRE AGREEMENT

### 18.1 Entire Agreement

This Agreement and all documents referred to in this Agreement represent the entire agreement between the Vendor and Farmers Union and supersedes all prior

representations and agreements in connection with its subject matter.

## 18.2 Inconsistency

If there is any inconsistency between this Agreement and the documents referred to in this Agreement, the provisions of this Agreement will, to the extent of that inconsistency, take precedence.

## 19. SEVERANCE

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement are and continue to be valid and enforceable in accordance with their terms.

## 20. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of the State of South Australia.

## 21. TRADE PRACTICES ACT

If the Trade Practices Commission or a court is of the opinion that this Agreement or any part of this Agreement does not comply with the Trade Practices Act, Farmers Union and the Vendor will enter into negotiations to amend this Agreement to ensure that this Agreement does comply with the Trade Practices Act. Notwithstanding anything else contained in this Agreement, if the parties cannot reach an agreement concerning those amendments within 30 days of the commencement of negotiations either party may immediately terminate this Agreement by notice in writing to the other.

## 22. INTERPRETATION

In this Agreement unless the context otherwise requires:

22.1 "Act" means all acts, regulations and industry codes of conduct governing the manufacture, sale and delivery of dairy products in South Australia;

"Associate" will have the meaning given to that term in Section 26AAB(14) of the Income Tax Assessment Act if each reference to "taxpayer" is replaced by the term "Vendor", and includes without limitation any person accustomed to acting, or under an obligation to act (whether formal or informal, direct or indirect) in accordance with the directions, instructions or wishes of the Vendor however communicated;

"Farmers Union Distributor" means a person appointed by Farmers Union to distribute its dairy products in

accordance with an agreement in substantially the same form as this Agreement;

"Force Majeure" means an act, omission or circumstance over which a party could not reasonably exercise control including without limitation any act or omission of the other party;

"Listed Customers" mean the individuals listed in Schedule B and any other individuals who become customers of the Vendor during the currency of this Agreement (otherwise than as a result of a breach by the Vendor of this Agreement) and "Listed Customer" means any one of those individuals;

"Products" means the products listed in Schedule C as varied by Farmers Union;

"Trademarks" means all trademarks, logos, insignia and product descriptions of Farmers Union irrespective of whether they are, or are not, registered pursuant to the Trademarks Act 1955 (Cth) or the Designs Act 1906 (Cth) or protected by the Copyright Act 1968 (Cth) or at common law;

"Vendor Manual" means the procedures and standards manual prepared by Farmers Union and includes all updates of and modifications to that manual;

- 22.2 a reference to a person includes a corporation and the legal personal representatives, successors and assigns of that person;
- 22.3 paragraph headings are for convenience reference only and will not affect the interpretation of this Agreement;
- 22.4 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; and
- 22.5 the Schedules and Recitals form part of this Agreement.

EXECUTED as an Agreement.

SIGNED for and on behalf of  
FARMERS UNION FOODS LIMITED  
by an authorized officer:

)  
)  
)

.....  
Signature

.....  
Witness

.....  
Name

.....  
Office Held



SIGNED for and on behalf of  
the Vendor by an authorised  
officer:

)  
)  
)

.....

.....

.....  
Witness

.....

.....

**Where the Vendor is a partnership all partners must sign.**

SCHEDULE A

Item 1

Vendor

Name: .....  
Address: .....  
.....Postcode.....  
Ph: (W).....(H).....Fax.....

Name: .....  
Address: .....  
.....Postcode.....  
Ph: (W).....(H).....Fax.....

Name: .....  
Address: .....  
.....Postcode.....  
Ph: (W).....(H).....Fax.....

Item 2

Exemption - Competing Products (Clause 1.4)

**SCHEDULE B****Listed Customers (Clause 22.1)**

## SCHEDULE C

## Products (Clause 22.1)

Item 1 - Exclusive Products (Clause 1.1)

Item 2 - Non-Exclusive Products (Clause 1.2)

# PAKER O'LOUGHLIN

BARRISTERS · SOLICITORS · NOTARIES

## PARTNERS

DEAN C. DAVIES  
ANTHONY B. FULLER  
CHARLES C. A. BINKS  
TERENCE C. EVANS  
RICHARD J. PASH  
NEVILLE W. MARTIN  
EWAN J. VICKERY  
LARRY J. OPIE  
ROBERT L. RICHARDS  
GREGORY T. BROWN  
PAUL D. BEAR  
JOHN A. FOUNTAIN  
PETER J. MYHILL  
DENIS O. SIMPSON  
PETER C. HEINRICH

JOHN K. WELLINGTON  
SIMON T. O'LOUGHLIN  
PAUL V. SLATTERY  
ROBYN M. PAK-POY  
STEPHEN P. WHITE  
ANDREW D. SHORT  
RALPH BONG  
NEIL L. STRAWBRIDGE  
PETER G. CHESTER  
ROSEMARY J. BATT  
PETER A. CAMPBELL  
RAYMOND L. BEVEN  
NEIL GORDON  
GREGORY M. MAY

## SENIOR ASSOCIATES

HON. K. TREVOR GRIFFIN MLC  
PENelope A. ELDRIDGE  
DAVID W. FIDLER  
JOHN A. HOMBURG  
MICHAEL R. BURNETT  
JANE EKIN-SMYTH  
STEPHEN B. WILLIAMS  
GUY C. BIDDLE  
F. ADRIAN SWALE  
CLAYTON D. WOHLING  
CATHERINE A. GUTHLEBEN  
GRAHAM D. EDMONDS - WILSON  
JOHN M. LEVY  
SIMON J. MORTIMER  
RICHARD J. MANUEL

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Postal Address  
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ADELAIDE SA 5001

Fax (08) 212 7518  
DX 131 ADELAIDE

## CONFIRMATION OF FACSIMILE

OUR REFERENCE

YOUR REFERENCE

WRITER'S DIRECT LINE

CCAB:CDW 7 525554 CN93/4

(08) 233 5423

10 June 1993

Ms Eleanor Moses  
Mergers & Adjudication Branch  
Trade Practices Commission  
PO Box 19  
BELCONNEN ACT 2616

FACSIMILE: (06) 264 2803

Dear Ms Moses

Farmers Union Foods Limited ("Farmers Union") - Notification -  
CN60016

We refer to your letter dated 12 May 1993 and confirm that we act  
for Farmers Union in relation to this matter.

In that letter you requested a submission from Farmers union to  
support its notification. In particular, you have sought Farmers  
Union's views on:

- ▶ The likely effect of the exclusive dealing conduct upon  
competition; and
- ▶ any public benefits likely to result from that exclusive  
dealing conduct.

You have also requested information concerning the dairy products  
market in South Australia and the current system of distribution.

### 1. Introduction

Farmers Union is committed to developing a professional and  
efficient distribution system using a network of independent  
distributors who are committed to Farmers Union and the  
vigorous promotion of its products.

Pressure to change the distribution system has been mounting  
since May 1990 when the Trade Practices Commission refused to  
authorise the Master Retail Vendors Associations' Code of  
Practice in relation to wholesale milk vending. That

A MEMBER OF THE MINTER ELLISON LEGAL GROUP

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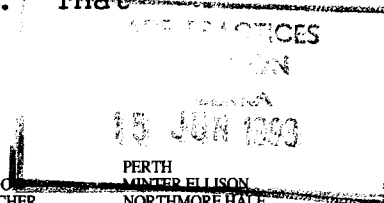
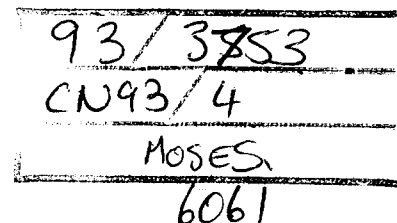
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MORRIS FLETCHER  
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GOLD COAST  
MINTER ELLISON  
MORRIS FLETCHER  
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PERTH  
MINTER ELLISON  
NORTHMORE HALE  
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determination makes it clear that the area agreement system is so anti-competitive as to be contrary to the terms of the *Trade Practices Act*. Most distributors have either purchased or set up their businesses when the area agreement system operated. The demise of the area agreements has therefore reduced the value of distributors' businesses and created uncertainty.

Before the effect of this determination could be fully considered, the State Government review of the dairy industry was announced. As a result of that review most regulations governing distributors are to be abolished by the beginning of 1995. Distributors and processors alike recognise that changes must now occur. However those changes must, as far as is possible, endeavour to maintain the value of distributors' businesses and provide an opportunity for less economically viable distributors to recover some part of their investment.

The creation by each of the processors of a system of exclusive distributors/franchisees having a right to service specified outlets will protect the value of distributors' businesses, promote competition between distributors selling competing brands and at the same time better serve the needs of consumers. Competition between brands is not vigorously promoted under the current system of dual (as compared to exclusive) distributors. Even though a distributor may carry more than one brand, in practice he or she will prefer one brand over another. Often a distributor will carry a competing brand to discourage the manufacturer of that brand "by-passing" the distributor and selling directly to the retail outlet. This practice discourages competition between brands at the distributor level which in turn, limits consumer access to competing brands.

Change is inevitable and any additional uncertainty as to the future system of distribution in the State can only worsen the position of distributors, processors and consumers alike. Regardless of what system Farmers Union and its distributors adopt, if large retailers require an alternative form of distribution (ie direct supply or warehousing) Farmers Union will have no alternative but to meet this requirement. In the end the system of distribution adopted will be driven by Farmers Union's desire to service retailers and consumers in the most efficient and productive manner.

Farmers Union has been working on the details of a revised distribution system for some time. The lodgement of the Dairy Vale Notification (CN92/11) and the subsequent "signing up" of all distributors in the South-East and the Riverland region (within a short period of time) by Dairy Vale, has meant that Farmers Union has had to accelerate this process.

## 2. Proposed Distribution System

- 2.1 At this stage Farmers Union only intends to offer contracts to distributors in the Murray Districts, Barossa/Mid-North and Far North regions of the State. These terms do not define precise areas, but are rather used by Farmers Union to group together various distributors. We enclose for your information a list of the distributors to whom contracts have been offered. It is requested that this list be retained on a confidential basis as it contains sensitive commercial information. We also enclose a map of South Australia indicating the regions and main towns in which the distributors operate.
- 2.2 Finally we enclose a current version of the Distribution Agreement. We have highlighted the amendments that have been made since lodgement of the original Distribution Agreement in April of this year. These amendments have resulted from negotiations with distributors during the intervening period, and represent concessions made by Farmers Union at the request of distributors. At this stage, approximately 22 Distribution Agreements have been signed up. We also enclose an unmarked copy of the Distribution Agreement for your file records.
- 2.3 Before considering the specific issue, it is important to highlight the major provisions of the Distribution Agreement. Many of these provisions usually appear in this type of Agreement and are either for the purpose of strengthening the links between the parties and/or for the purpose of promoting strong competitive activity.
- 2.3.1 Clause 1.1 only grants exclusive rights in respect of the distributor's current customers and in respect of a limited range of products (ie white milk, modified milk and flavoured milk). No exclusive rights are given in relation to the remainder of Farmers Union's product range, (ie cheese, cream etc) as those products are already widely distributed by both the current distributors and large warehousing organisations. No exclusive geographic zones or areas of influence are allocated to any distributor.
- 2.3.2 A distributor is prohibited from selling competing products (see clause 1.3.1) except to the extent of any exemption granted under clause 1.4. In practice, Farmers Union has exempted from the prohibition (subject to various terms and conditions agreed upon between Farmers Union and the relevant distributor) most non-Farmers Union

products currently sold by distributors.

- 2.3.3 Both Farmers Union and the distributor are free to compete for the business of new customers (see clauses 1.5 and 1.7.1). In addition, there is no prohibition against either Farmers Union or a distributor supplying another distributor's "Listed Customers" if that "Listed Customer" requests Farmers Union or the distributor to do so. (See clause 1.6, 1.7.2 and 1.7.3.)
- 2.3.4 Clauses 1.9, 4.1, 4.2 and 4.3 make it clear that a distributor is able to carry on another business provided that business does not detract from, or interfere with, the performance of the distributor's obligations under the Distribution Agreement.
- 2.3.5 The Distribution Agreement is for an initial term of 12 months. Thereafter the distributor may extend the term for 2 further periods of 24 months. The distributor has both the security of a fixed 5 year term if desired and the flexibility of terminating the Distribution Agreement at the 12 month or 36 month mark.
- 2.3.6 Clause 4 sets out the distributor's duties and basically reflects and formalises current practices. Clauses 4 and 5 demonstrate Farmers Union's commitment to establishing an efficient, professional, more competitive, cost effective and high quality system of distribution in South Australia. Farmers Union believes that in the long term this will add value to each distributor's business by enhancing the goodwill and reputation of a "Farmers Union Distributorship". The ultimate goal of the system is to encourage distributors to play a greater role in the marketing and sale of Farmers Union's products for consumer benefit.
- 2.3.7 Product quality and dispute resolution procedures are put in place by clauses 8 and 9.
- 2.3.8 Procedures ensuring continued supply to customers are set out in clause 11. This provision reflects Farmers Union's overriding concern to ensure continuity of supply of its products to all customers in the event of any breakdown in the distribution system.
- 2.3.9 Farmers Union has prepared an initial version of



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the Distributors Manual which details various standard procedures and requirements, none of which are relevant to the competition issue. It is envisaged that this manual will be expanded over the years as standard procedures and systems are adopted for the efficient and productive operation of a "Farmers Union Distributorship". Eventually, uniforms and training programs will be introduced.

### 3. Requested Information

You have requested specific information concerning the 5 issues listed at the end of your letter of 12 May 1993.

#### 3.1 The Relevant Markets in the Areas Covered by the Agreements

Historically the South Australian white milk market has been roughly divided into 7 areas. This has come about because most white milk sold in those areas is produced by local processing plants under local brand names. For example, in the Riverland region white milk produced by a local dairy known as "Fallands" is the main brand. In the South-East region "Lakelands" white milk has traditionally held the majority of the market. In the Barossa/Mid-North and Far North region "Golden North" white milk has been the main brand. In the Murray Districts region Farmers Union white milk (now known as "Pura") is the main brand. In the Central Region (which includes the Adelaide metropolitan area and accounts for over 80% of all white milk sold in South Australia) Farmers Union and Dairy Vale each hold a significant portion of the white milk market and vigorously compete to improve their share of that market despite current legislative restrictions relating to the pricing of white milk.

Even before deregulation, there was no reason (other than economic constraint) why any particular brand of white milk could not be sold in any one of the other regions. One of the main thrusts of deregulation is to create a statewide market for white milk. Brands are becoming more important in promoting the sale of white milk. Despite increased market penetration in each of the country regions by both Farmers Union and Dairy Vale white milk, there is still strong local support for the locally produced and manufactured brands.

Farmers Union's flavoured milk is sold throughout South Australia in competition to Dairy Vale's flavoured milk, interstate brands of flavoured milk and other non-dairy beverages such as soft drinks and fruit juices. Farmers

Union competes against these other beverages for the limited refrigerator space available in retail outlets. Most of the main players in the beverage market (ie the major soft drink and fruit juice manufacturers) use a system of exclusive distributors to market, promote and sell their products. These distributors are required to comply with minimum standards of quality and service.

As a result of these matters the market for flavoured milk is very different to the market for white milk. There is a much stronger brand identification in relation to flavoured milk. Consequently, flavoured milks are promoted throughout the State in much the same manner as for example soft drinks, confectionery, snack foods etc.

### 3.2 The Existing Arrangements for the Distribution of Farmers Union Milk

In the medium to short term, there will be very little difference between the distribution system as formalised by the Distribution Agreements and the distribution system that currently operates in each region. All but 2 vendors in the Far North and Barossa/Mid-North region already sell exclusively Farmers Union and Golden North products. The other 2 vendors sell a small amount of Dairy Vale products. Dairy Vale products are distributed throughout the Far North and Barossa/Mid-North using either Dairy Vale's own vehicles, general grocery distributors or one of Dairy Vale's own distributors. The same is true in the Murray Districts region, except that a number of those distributors also sell a small amount of Dairy Vale products. In most cases the Dairy Vale products sold have no direct Farmers Union equivalent.

The main differences under the existing arrangements are that:

- ▶ no specific rights are given by Farmers Union to a distributor to sell its products (ie currently distributors are not required to buy and Farmers Union is not required to sell products to a particular distributor);
- ▶ there is no restriction on who a distributor can supply (however, in practice distributors tend to keep to their own customers);
- ▶ there is no restriction on the products that can be sold by a distributor; and
- ▶ there is no formal agreement between Farmers Union

and each distributor, even though a number of the matters set out in the Distribution Agreement reflect current procedures honoured by both parties. In strict terms there is currently no security of tenure for distributors.

### **3.3 Plans by Farmers Union to Implement Similar Contracts in Other Areas**

Farmers Union hopes to implement similar contracts throughout the rest of South Australia by 1 January 1995, being the date upon which the last legislative restrictions on pricing are to be removed. Farmers Union believes that there are significant benefits to be gained from the introduction of such a distribution system throughout the entire State, for not only distributors and Farmers Union, but also retailers and consumers.

### **3.4 The Circumstances under which Exemptions to Contracts are Made**

Basically, the scope and terms upon which an exemption will be granted under clause 1.4 is a matter of negotiation between Farmers Union and the distributor in question. At this stage, Farmers Union has granted specific exemptions where either the distributor already sells the non-Farmers Union product being exempted or, Farmers Union does not make an equivalent product.

### **3.5 Expected Timing and Duration of the Exemptions**

All exemptions so far granted by Farmers Union commence upon signing of the Distribution Agreement. The duration of each exemption depends upon the specific agreement reached between Farmers Union and the relevant distributor. However, the duration of the exemption will usually be linked to the availability and market acceptance of the competing Farmers Union product. Farmers Union has granted exemptions to assist in the transition to exclusive distribution. The duration of an exemption will usually reflect the time the parties believe it will take for distributors to adjust to the new arrangements. In addition, exemptions are also granted to ensure that consumers are not disadvantaged during this transition period. However, eventually Farmers Union expects its distributors to sell only its products.

## **4. Effect on Competition**

### **4.1 As stated before to the Trade Practices Commission, Farmers Union believes that the adoption of a system of**

exclusive distributors in South Australia will result in a more competitive market place.

- 4.2 At the consumer level, distributors separately representing both major processors will visit each outlet and compete to maximise the sales of their particular brand. This should increase competition between brands. At the vendor level, distributors of the same brand will be licensed in relation to specified outlets and will be prohibited from selling to other distributors' outlets. Obviously, this arrangement affects competition between vendors selling the same brand. Under Farmers Union's arrangement, that effect on competition would not be significant because:
- ▶ the retailer is free to change distributors at any time; and
  - ▶ each distributor is free to compete with other distributors for any new outlet.
- 4.3 Obviously the effect on competition will depend upon the circumstances of each case as well as the terms of the distribution agreement. However, contrary to the position in the South-East region, it is unlikely that the frequency of services provided to retail outlets will be decreased under the proposed system. The system operating in the Far North, the Barossa/Mid-North, and the Murray Bridge regions will change very little under Farmers Union's proposed new arrangements. In particular, the granting of extensive exemptions will mean that both Farmers Union and non-Farmers Union products will continue to be distributed in much the same manner. All but a few of Farmers Union's current distributors distribute primarily Farmers Union products. The distribution of competing products in those regions is already accomplished under a totally separate distribution system.
- 4.4 Farmers Union believes the interests of distributors are protected under its Distribution Agreement, in that:
- ▶ the initial term is for 12 months;
  - ▶ distributors have the certainty of 2 further terms of 24 months if they wish to take up that right; and
  - ▶ each right and restriction is specifically dealt with in the Distribution Agreement. This should ensure that there are no uncertainties as to the obligations of the parties.

## 5. Public Benefit

Farmers Union believes that the following public benefits will arise if a system of exclusive distributors is adopted:

- 5.1 Promotion of competition as one processor's distributors compete against the other processor's distributors to maximise sales of their brand to retail outlets.
- 5.2 The efficiency of the distributors' businesses will be increased as a result of the distributors' participation in training programs, and the closer involvement between the parties.
- 5.3 The anti-competitive effect of giving to distributors a right to service particular outlets will be far less than that which arose under the area agreement system. This should enable distributors to retain a significant proportion of the value of their businesses.
- 5.4 Rationalisation of the distribution system resulting in the efficient allocation of resources and lower costs.
- 5.5 High level of assistance being given to distributors by processors in relation to the conduct of their businesses.
- 5.6 Enhancement of the quality of products and expansion of the range of goods available to consumers arising as a result of retailers' increased access to competing brands by each processor's distributors.
- 5.7 Increased availability of competing brands in areas where one brand was principally sold as each processor's distributors compete to sell their brand of product throughout the whole market.

## 6. Summary

- 6.1 In our submission, it is clear that the system of distribution intended to be adopted in the country regions by Farmers Union has no substantial effect on competition at the distributor level. It is also clear in our view that competition will increase at the consumer level as each processor and its distributors compete to increase market share. Farmers Union hopes to achieve increased sales by improving the efficiency and quality of the distribution service and encouraging distributors to play a greater role in marketing. You are no doubt familiar with these aims as they are the same as those pursued by all major manufacturers and franchisors when establishing a distribution system. There are clear benefits to the

33  
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public in encouraging increased efficiency and quality in the method by which basic food products are distributed to consumers.

6.2 Farmers Union has devoted a great deal of time and effort to preparing a comprehensive Distribution Agreement in a "plain English" format. Farmers Union believes the Distribution Agreement is fair to both parties. Farmers Union has over the last 8 weeks met with distributors to explain the objectives and goals of the Distribution Agreement, and to answer any questions or concerns. As a result of negotiations, Farmers Union has made a number of concessions. It has acted in good faith at all times in those negotiations and has not imposed unrealistic deadlines.

6.3 However, it appears that Farmers Union is now being penalised for adopting a less aggressive stand to the implementation of its new distribution system. Commercially, it is essential that Farmers Union finalise the new distribution arrangements as soon as possible. As Dairy Vale has "signed up" their distributors in the South-East and Riverland regions, Farmer Union's existing distribution system in the Far North, Barossa/Mid-North and Murray Districts regions is vulnerable.

We apologise for the delay in finalising the submission. We confirm that you will be in Adelaide next week, and look forward to discussing the issues with you at that time. In the meantime, if you have any questions please do not hesitate to contact the writer.

Yours faithfully  
BAKER O'LOUGHLIN

per 

Charles C A Binks

enclosures