Notes of telephone conference between the Milk Vendors' Association (SA) and the Australian Competition and Consumer Commission (ACCC)

Tuesday 21 September 2004

Attendees:	John Royle –	Royle Lawyers
	Roger Prime –	Milk Vendors Association (SA)
	Joanne Palisi –	Director Adjudication Branch, ACCC
	Michael Green –	Project Officer, ACCC

The Milk Vendors Association (SA) (the Association) submitted the following:

Background information

- Deliveries to supermarkets make up approximately 52% of vendors' deliveries.
- Listed customers make up approximately 43% of vendors' deliveries.
- Home deliveries make up approximately 5% of vendors' deliveries.
- There are currently 207 licensed vendors who are contracted to the two major processing companies. This figure does not include 8 Parmalat vendors and between 7-9 licensed transport & catering businesses.
- Under the *Dairy Industry Act 1992* licensed vendors are still required to have a credit contract with a processor.
- Since total deregulation in 2000, there have been only 33 part or whole rounds sold by the Association (who broker most sales) with only 12 new vendors entering the Industry. The remaining 21 sales were between vendors.
- Four non-members have agreed to be part of any authorised collective negotiation process (three of these have since become members).

National Foods contracting process

- There are 157 vendors contracted to National Foods.
- The majority of vendors have both direct billing deliveries and listed customers. There are only a few vendors who only do direct billing deliveries. Vendors purchase the milk from processors in order to re-sell to listed and home customers.
- Approximately 40% of vendors' contracts are due to expire in May 2005 with a further 50% in November 2005.
- Draft contracts have been provided to vendors on a confidential basis. Legal advisors must sign a confidentiality agreement in order to have access to the contracts. This agreement must be sighted and approved by National Foods before the advisor can see the draft contract.
- National Foods commenced individual meetings with vendors last week and have outlined a timetable under which new contracts should be signed within 4-8 weeks.
- Any time remaining on current contracts will added onto the new contracts if vendors sign within the next 4-8 weeks.
- Vendors feel that if they do not do as National Foods requests (ie. sign contracts within the next 4-8 weeks), they will not be offered new contracts

when the current ones expire. Vendors are aware of the likelihood of industry rationalisation.

- Credit terms are 14 days under National Foods contracts, but it is common practice that vendors have usually traded outside those terms. On occasions National Foods has called up these credit terms for some vendors and this has had the effect of forcing them out of business. It seems that National Foods has enforced its credit terms selectively and not uniformly.

Dairy Farmers contracting process

- A franchise system for vendors was introduced three years ago, involving an initial two year contract with a renewal option for five years by five years. Under the new system Dairy Farmers rationalised rounds that included listed customers in an attempt to equalise the average weekly gross profit per month across vendors.
- There are 42 vendors on franchise agreements and 8 vendors who are contracted and who only supply direct billing deliveries to supermarkets
- Most franchised vendors have now signed up to the five year term although some have not because when the income support package runs out, many franchisees will no longer be viable. Vendors' franchise contracts expire at varying times.
- Dairy Farmers included an income support package when it introduced the franchise system. The package was to last four years - the income support has decreased by one eighth every six months and will run out in June 2005.
- The franchise package envisaged that each vendor would make an average minimum weekly gross profit of $1500, but when the scheme was introduced, only three rounds met that level. Gross profit of the other rounds varied between $395 and $900 per week.

Dispute resolution process

The Association submitted that they need to clarify their intentions for the dispute resolution system. As such, the Association requests that the dispute resolution system not be included in the consideration of interim authorisation.

Consolidation of rounds

The Association submitted that the consolidation process is already taking place and is being directed by the processors. The Association envisages that a collective bargaining process would allow it to assist in managing the way consolidation/rationalisation occurs in a more fair and equitable manner.

Effect of collective bargaining on consumer prices

The Association submitted that there would be no increase in prices charged to consumers as a result of the collective bargaining process. The supermarkets, the buying groups and the processors have increased their margins since deregulation and between them would be able to absorb any increased payments that may go to vendors as a result of the collective bargaining process. There is sufficient price competition at the retail level, and sufficient parity of bargaining power between the major retailers and the processors to ensure this result. Recently, National Foods unilaterally reduced the vendors' margin on flavoured milk into supermarkets by 40% with no flow on effect to consumers. This alone would give them ample funding to absorb any increase in vendors' margins.

Review of notifications

The Association will provide a further submission addressing the processors notified exclusive dealing contracts.