

Notes of telephone conference between National Foods Milk Limited and the Australian Competition and Consumer Commission (ACCC)

Tuesday 28 September 2004

Attendees: Richard Lewis – Partner, Deacons
Yi Foong Ng – Lawyer, Deacons
Sarah Corbett – Lawyer, National Foods
Gary McMahon – National Distributor Manager, National Foods
Joanne Palisi – Director Adjudication Branch, ACCC
Michael Green – Project Officer, ACCC

National Foods Milk Limited (NFML) reiterated several points made in their submission to the ACCC dated 28 September 2004 on the Milk Vendors Association's (the MVA) request for interim authorisation and provided the following comments in relation to the MVA's request for interim authorisation:

Interim Authorisation

- There is no need for interim authorisation to be granted in respect of NFML vendors. The first tranche of NFML contracts to expire will be in May 2005. This is ample time for the ACCC's final determination to be known before this occurs.
- NFML strongly dispute the factual matters asserted by the MVA. In particular, NFML is not putting any pressure on vendors to sign new agreements within a specific timeframe or be denied the opportunity to sign new contracts at a later date.
- At the meeting held with vendors on 1 September 2004, NFML outlined an indicative process under which it would conduct individual meetings with vendors in September and October 2004. It was envisaged that where appropriate, vendors would be given a draft version of the new contract at the individual meeting. NFML has not held any such meetings as yet but is keen to do so because following the September 1 meeting, vendors have an expectation that there will be meetings through September and October and vendors want to know about their future. NFML wishes to enable individual vendors to sign contracts voluntarily should they wish to do so prior to the ACCC issuing a final determination. However, NFML is comfortable if distributors wish to await the ACCC's final decision before negotiating and finalising new contracts.
- If interim authorisation was granted NFML submits that it would be unlikely to enter into negotiations with the MVA prior the ACCC issuing a final determination.
- NFML submits that it would be difficult for the market to return to the pre-interim authorisation state if the ACCC subsequently denies authorisation or grants authorisation subject to conditions. Specifically, NFML is concerned that as a single bargaining party, the MVA could potentially gain access to price and other confidential information from both processors under interim

authorisation which would be difficult to unwind if ACCC ultimately refused to grant the authorisation or granted it subject to conditions.

- NFML is also concerned that if contracts with another processor are finalised during the period of the interim authorisation, this may affect NFML's ability to negotiate the terms of its own contracts even if ACCC does not grant a final authorisation.

NFML contracting arrangements

- The terms of the current contracts between NFML and its vendors do not generally vary between vendors apart from different territories and customers. The proposed new contracts would also not generally vary between vendors.
- NFML has endeavoured to have a dialogue with the MVA and has provided the MVA with two drafts of the proposed new contract for comment. The second draft reflected changes made after discussion with another state association. NFML has not received any response from MVA.

Approved for Public Register and
YES / NO
J / 10 / C