

# ADDISONS

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1 October 2004

Mr Michael Green  
Project Officer  
Australian Competition & Consumer Commission  
PO Box 1199  
DICKSON ACT 2602

**By Facsimile: (02) 6243 1199**  
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Dear Mr Green

**Re: Interested party consultation on arrangements for the distribution of dairy products in South Australia**

We refer to the telephone conference on Monday, 27 September 2004 between you, Joanne Palisi of the ACCC, Brett Wright of Dairy Farmers and Alison Meares of Addisons.

We enclose the notes of the telephone conference which were initially prepared by you and have been amended by us in accordance with Dairy Farmers' instructions. We are instructed that Dairy Farmers does not request confidentiality over the notes.

Please contact Alison Meares if you have any questions.

Yours faithfully

**ADDISONS**



**Alison Meares**  
**Partner**

Encl.

## Notes of telephone conference between Dairy Farmers and the Australian Competition and Consumer Commission (ACCC)

Monday, 27 September 2004

### Attendees:

Brett Wright –	Group Secretary & Legal Officer, Dairy Farmers
Alison Meares –	Partner, Addisons
Joanne Palisi –	Director Adjudication Branch, ACCC
Michael Green –	Project Officer, ACCC

Dairy Farmers submitted the following:

### Interim Authorisation

- There is no urgent need for interim authorisation to be granted to the Milk Vendors Association (SA) for collective bargaining with Dairy Farmers.
- The first franchisee signed the new Dairy Farmers Home Delivery Franchise Agreement and Route Trade Franchise Agreement (the “Agreements”) in July 2003.
- There are currently 32 franchisees who have 5 year Agreements with Dairy Farmers.
- There are currently 6 franchisees with agreements that have expired that could be affected by interim authorisation if granted. Dairy Farmers is currently completing the process with the franchisees of collecting all necessary licences and insurances etc and waiting the 14 day period required under the *Franchising Code of Conduct* before signing. Dairy Farmers expects these contracts to be re-signed within the next few weeks.
- There are currently 2 franchisees with agreements that will expire this year that could be affected by interim authorisation if granted.
- To the best of senior management’s knowledge, Dairy Farmers has not received any complaints, questions or comments from these franchisees (or others) in relation to the new Agreements.
- Dairy Farmers provides support for franchisees, including the provision of Franchise Business Managers who can assist them in the process of entering into the Agreements. Dairy Farmers also encourages franchisees to seek independent advice consistent with the *Franchising Code of Conduct*.
- Although Dairy Farmers does not have access to membership records, based on historical information Dairy Farmers estimates that only approximately 6 of its current franchisees are members of the Milk Vendors Association.
- Dairy Farmers is concerned that granting interim authorisation without considering the substantive issues of the application may disrupt its franchise system which has operated in South Australia since March 2001 and is working well.
- Dairy Farmers is also concerned that any disruption of the franchise system will affect its and franchisees reputation with customers in the marketplace, damaging relationships and may impact on the distribution of products to customers and consumers.

- Dairy Farmers notes the ACCC's advice that the interim authorisation only deals with paragraphs (a) and (b) of the Milk Vendors Association's Application. In respect of paragraph (c) Dairy Farmers submits that the Agreements, the *Franchising Code of Conduct* and the Office of Mediation Adviser provide for dispute resolution mechanisms. It is not appropriate for the Milk Vendors Association to replace these existing contractual and statutory dispute resolution mechanisms. Furthermore, customers should not be forced to deal with the Milk Vendors Association in respect of disputes between franchisees and customers.

### **Dairy Farmers' franchise system**

- Dairy Farmers introduced its franchise system for the distribution of its products to home and route customers in NSW in 1997, in QLD in 1998 and in SA in 2001.
- Prior to the introduction of the franchise system in each state, Dairy Farmers conducted consultation with various interested parties including the Milk Vendors Association (SA).
- There are currently approximately 45 franchisees in SA, 32 of whom signed five year contracts in 2003 or 2004. There are currently 8 franchisees with contracts that either have expired or are about to expire and who are yet to sign new Agreements. There are only minor issues with 6 of these franchisees and it is expected that they will sign new Agreements within the next few weeks. There are approximately 2 franchisees whose two year agreements will expire this year. There are 5 vendors who have never signed agreements.
- The new Agreements are for five years with a five year option.
- The Agreements involve both home delivery and route trade customers and give vendors the right to supply listed customers rather than defined territories. Franchisees purchase products from Dairy Farmers and re-sell the products to home delivery customers and also to the smaller route trade customers. Franchisees provide a fee based delivery service to some of the larger route trade customers.
- Franchisees can set their own price at which they re-sell milk to customers, although their ability to set the price is subject to normal competitive constraints such as the price milk is sold at nearby retail outlets. For some customers who are part of a group buying arrangement a maximum price is set. Franchisees are free to set the price at or below the maximum price for such customers.
- Franchisees do not generally compete with each other for existing customers, but there is competition between franchisees for new customers.
- When the franchise system was introduced in each state, Dairy Farmers established local and state Franchise Councils which are comprised of representatives of franchisees and Dairy Farmers. These act as a forum for discussion and complaints and as a dispute resolution system. Changes to the franchise agreements are also discussed with the various state Councils.
- Franchise agreements do not generally vary between franchisees, apart from the listed customers. There has also been little substantive change in the franchise agreements since the franchise system was introduced in SA in March 2001. Changes made have reflected statutory obligations and to reflect

the operations of the franchise system. Changes to the Agreements have been discussed with the SA state Council.

- Dairy Farmers provides a variety of support to franchisees at times including promotions; marketing; sales support from Dairy Farmers Franchise Business Managers and Area Sales Managers; initial and ongoing training in various aspects of the franchise system, food safety and business operations.

#### **Other information**

- Dairy Farmers submits that there are other processors in SA, as well as Dairy Farmers and National Foods, who provide competition in SA, including Parmalat and other processors (eg. Warrnambool Cheese and Butter; Peters & Brown; A2 milk and various smaller processors such as Tweed Vale).
- Dairy Farmers also submits that processors are subject to competition from foodservice distributors, other beverage companies (soft drink; juice and water companies) and supermarkets that sell milk and dairy products or products that compete with milk and dairy products.
- Dairy Farmers is concerned that granting an interim authorisation without considering the substantive issues of the application will affect Dairy Farmers' franchise system but will not affect other companies which compete with Dairy Farmers.