

**RESPONSE TO SUBMISSIONS BY
DAIRY VALE FOODS LIMITED (“Dairy Farmers”)
DATED 9 November 2004.**

1 Proposed Collective Bargaining Process.

It is proposed that the Association will engage in the following conduct in relation to the negotiation of the terms and conditions of distribution contracts:

- (a) The Association will write to vendors (both members and non members of the Association) to notify them of the authorisation and to advise the vendors that they may nominate the Association to negotiate contract terms and conditions on their behalf.
- (b) Vendors may then nominate the Association to negotiate on their behalf.
- (c) The Association will then notify the relevant processor (NFML or Dairy Farmers) that it has been authorised to negotiate on behalf of the relevant vendors.
- (d) The Association will then engage in negotiations on behalf of those vendors with the relevant processor.
- (e) The Association will then report back to the relevant vendors.
- (f) There may then be further negotiations with the relevant processor.
- (g) Ultimately, vendors will make individual decisions as to whether or not to contract with the relevant processor.

2 Dispute Resolution Services

As indicated to the Commission previously, the Association wishes to amend its Application in so far as it relates to the provision of dispute resolution services. The Association no longer seeks to provide any such services. The Association seeks Authorisation to represent any Vendor or group of Vendors in any dispute which may arise:

- Between any Vendor or Vendors and NFML/Dairy Farmers.
- Between any Vendor or Vendors and any customer.
- Between any Vendor or Vendors and any other Vendor or Vendors.

3 Retrospectivity

The Association does not seek Authorisation to re-negotiate existing franchise agreements.

4 Profitability

Since post-Farmgate deregulation occurred on 1 January 1995, the margin applicable to

a one litre carton of white milk attributable to each of the industry groups has increased as follows:

- Farmers \$0.0483
- Wholesale distributors \$0.0325
- Retail distributors \$0.1667
- Processors \$0.48

(see "Annexure A" hereto)

5 **Suppliers In The South Australian Dairy Industry**

Dairy Farmers' description of suppliers and competing products conflates the various functional levels (i.e. manufacturers, wholesalers and retailers), and suggests that they all compete with each other. Supermarkets do not process milk or other dairy products; Dairy Farmers is not a retailer. Dairy Farmers does not compete with supermarkets.

Of the Processors named by Dairy Farmers, the Association says that, to its knowledge:

- Other than Dairy Farmers, only National Foods is a processor in South Australia.
- Parmalat is a distributor only in South Australia; it has eight exclusive distributors/franchisees.
- None of the other named processors is a processor or distributor to any significant extent in South Australia.

6 **Contracts And Customers**

The Association accepts that neither Dairy Farmers nor Vendors "own" customers in the sense of being able to bind customers. The Association does not accept that it is appropriate for Dairy Farmers to interfere in Vendors' dealings with Vendors' customers, nor to dictate to Vendors how the Vendors will deal with their own customers.

To the knowledge of the Association, Dairy Farmers has never granted any request from a Vendor to sell non-Dairy Farmers products.

The alleged benefits enumerated at pages 7-8 are not supported by any factual evidence, even though those alleged benefits are said to flow in some unspecified way via the Vendors to the public at large.

7 Entry And Exit

The assertion that Dairy Farmers franchised businesses are viable is plainly false. Dairy Farmers subsidises those businesses via its “MDAP” programme. Vendors/franchisees who have sold their businesses since the introduction of franchising have done so on the basis that Dairy Farmers will continue to make MDAP payments to them.

In 2003, the Association brokered four sales of rounds to new entrants. In 2004, the Association brokered one such sale. By way of contrast, in 1988, the Association brokered 84 sales to new entrants.

8 Continued Viability Of Independent Distribution Sector

The Association maintains that the unequal bargaining position which has subsisted between individual Vendors, on the one hand, and Dairy Farmers, on the other, has been a significant factor in reducing the viability of many Vendors’ businesses since deregulation. The figures set out in paragraph 4 above support this proposition.

9 Transaction Costs

Like Dairy Farmers, the Association encourages individual Vendors to seek independent legal, accounting and business advice. However, it is an acknowledged fact that few Vendors actually seek such advice. The Association submits that, in reducing the cost to Vendors of such advice, the proposed arrangements would result in more Vendors having the benefit of competent independent legal, accounting and business advice. That advice would not be provided by the Association, but by appropriately qualified and experienced independent practitioners whom the Association would brief on behalf of those Vendors who nominate it as set out in paragraph 1 above.

10 Opt Out Clause

The Dairy Farmers submission refers, on page 14, to “aggressive canvassing” by the Association; to the application of “pressure” by the Association; to the disruption of Dairy Farmers franchised system and beyond. The use of such emotive and inflammatory language is unhelpful and is unsupported by any factual evidence.

The cost of any representation provided by the Association to non-members will be significantly less than the cost to such members of obtaining advice and representation

individually.

In relation to the alleged successful operation of the Dairy Farmers franchise system, see 7 and 8 above.

Dairy Farmers provides no details in relation to the 'public detriment' which it alleges.

ANNEXURE

'A'

NATIONAL FOODS COMPARISON OF PRICE OF 1 LITRE CARTON OF MILK

DATE	FARM GATE PRICE	VENDOR PRICE	SHOP PRICE	RETAIL PRICE	PROCESS OR MARGIN	WHOLESALE MARGIN	RETAIL MARGIN	WHOLESALE MGN %	RETAIL COST
17.2.92	\$ 0.4414	\$ 0.7083	\$ 0.7866	\$ 0.9600	\$ 0.2669	0.0783	0.2517	11.05	35.54
9.7.92	\$ 0.4460	\$ 0.7157	\$ 0.7948	\$ 0.9600	\$ 0.2697	0.0791	0.2443	11.05	34.13
17.1.93	\$ 0.4460	\$ 0.7387	\$ 0.8233	\$ 0.9900	\$ 0.2927	0.0846	0.2513	11.45	34.02
18.8.93	\$ 0.4460	\$ 0.7487	\$ 0.8333	\$ 1.0000	\$ 0.3027	0.0846	0.2513	11.30	33.56
1.1.94	\$ 0.4549	\$ 0.7737	\$ 0.8600	\$ 1.0300	\$ 0.3188	0.0863	0.2563	11.15	33.13
24.7.94	\$ 0.4629	\$ 0.8137	\$ 0.9042	\$ 1.0800	\$ 0.3508	0.0905	0.2663	11.12	32.73
DEREGULATION (POST FARM GATE) DATE 1.1.95									
12.2.95	\$ 0.4629	\$ 0.8501	\$ 0.9420	\$ 1.1200	\$ 0.3872	0.0919	0.2699	10.81	31.75
21.5.95	\$ 0.4908	\$ 0.8985	\$ 0.9950	\$ 1.1900	\$ 0.4077	0.0965	0.2915	10.74	32.44
2.6.96	\$ 0.4924	\$ 0.9350	\$ 1.0350	\$ 1.2400	\$ 0.4426	0.1000	0.3050	10.70	32.62
30.6.97	\$ 0.4978	\$ 0.9675	\$ 1.0700	\$ 1.2800	\$ 0.4697	0.1025	0.3125	10.59	32.30
16.11.97	\$ 0.4978	\$ 1.0070	\$ 1.1100	\$ 1.3300	\$ 0.5092	0.1030	0.3230	10.23	32.08
24.9.98	\$ 0.5112	\$ 1.0440	\$ 1.1500	\$ 1.3800	\$ 0.5328	0.1060	0.3360	10.15	32.18
4.7.99		\$ 1.0810	\$ 1.1900	\$ 1.4500	-	0.1090	0.3690	10.08	34.14
8.7.00		\$ 1.0510	\$ 1.1600	\$ 1.5000	-	0.1090	0.4490	10.37	42.72
9.9.01		\$ 1.1460	\$ 1.2600	\$ 1.6000	-	0.1140	0.4540	9.95	39.62
10.3.02		\$ 1.1460	\$ 1.2600	\$ 1.6000	-	0.1140	0.4540	9.95	39.62
29.9.02		\$ 1.1800	\$ 1.3000	\$ 1.6500	-	0.1200	0.4700	10.17	39.83
15.9.03 \$	0.28	\$ 1.2170	\$ 1.3400	\$ 1.6500	\$ 0.8270	0.1230	0.4330	10.11	35.58

FARMERS

PROCESSOR

WHOLESALE RETAIL

INCREASE PRIOR TO DEREGULATION

0.08

\$ 0.0146

\$ 0.0122

\$

\$ 0.0215

INCREASE SINCE DEREGULATION

0.48

\$ 0.1667

\$ 0.0325

\$

\$ 0.0483