

A90961.

Form A

Commonwealth of Australia
Trade Practices Act 1974 ---- Sub-section 88(1)

EXCLUSIONARY PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under sub-section 88(1) of the *Trade Practices Act 1974* for an authorisation under that sub-section

- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.
- (Strike out whichever is not applicable).

(PLEASE READ DIRECTIONS AND NOTICES ON BACK OF FORM)

1. (a) Name of Applicant

Dairy Western Australia Ltd ('Dairy WA')

.....
(See Direction 2 on the back of this Form)

(b) Short description of business carried on by applicant

Dairy WA is an unlisted public company. The majority of current dairy farmers in Western Australia are shareholders.

Dairy WA's role is to make strategic commercial investments that will strengthen the Western Australian Dairy industry and improve the stability, viability and profitability of dairy farmers in Western Australia in a manner consistent with its corporate responsibilities. Dairy WA has been appointed to undertake this role of establishing a milk negotiating agency at a meeting of dairy farmers in September 2004. Dairy WA may establish a separate legal entity to carry out the role of the Milk Negotiating Agency, should the authorization or an interim authorization be approved. References in this application to DairyWA includes where relevant the Milk Negotiating Agency(MNA)

Description of business proposed to be carried on by the milk negotiation agency:

- (1) Dairy WA proposes to establish a collective bargaining group (a Milk Negotiating Agency) open to all WA dairy farmers who appoint it to negotiate and enter into contracts for the supply of their milk to local, national or international processors or retailers.*
- (2) Dairy WA proposes to negotiate on behalf of the WA dairy farmers who have authorized it to do so and enter into contracts with any retailer or processor willing to negotiate with it for the purchase of that milk. It is proposed that each negotiation would take place separately at the conclusion of the dairy supply contracts that are currently in force.*
- (3) Property in the milk does not pass to Dairy WA it is an agency arrangement for the negotiation, sale and where agreed by the parties, the delivery of milk.*
- (4) Dairy WA proposes to enter into voluntary written agreements with dairy farmers in WA to collectively negotiate supply contracts for their milk .It is*

anticipated that these agreements will be individualized in relation to their terms and conditions based on the requirements for the supply of milk and any special conditions agreed with the dairy farmer, for example 5 day or 7 day supply, transport arrangements, option to supply additional milk should new contracts become available, as well as pricing arrangements.

- (5) Dairy WA proposes to enter into individually negotiated agreements with processors or retailers for the supply of milk collectively owned by WA dairy farmers who have authorized it to do so in writing. It is anticipated that each contract would be individualized based on the agreed outcome of the negotiations.*
- (6) Dairy WA may arrange for transport services for milk on behalf of WA dairy farmers who have authorized it to do so, where contracts negotiated with processors or retailers permit a choice of transport services.*
- (7) Dairy WA may arrange access for WA dairy farmers to independent testing facilities for milk for the purpose of complying with standards and quality requirements under the supply agreement entered into by Dairy WA on their behalf with processors.*
- (8) If WA dairy farmers have established a tolling arrangement for the processing of their milk products, Dairy WA proposes, if authorized to do so by them in writing, negotiate and contract for the sale and delivery of those products on those WA dairy farmers behalf. Dairy WA during the term of the authorization, will not undertake milk processing or sales to consumers.*

(c) Address in Australia for service of documents on the applicant

*Jenni Mattila & Co
Suite 202, 135 Macquarie Street, Sydney NSW 2000
Phone (02) 9252 7177, Fax (02) 9251 3826*

2. (a) Brief description of contract, arrangement or understanding and, where already made, its date

Please see Form B. Voluntary contracts for supply of milk between WA dairy farmers and Dairy WA or a body established by it for that purpose.

(b) Brief description of those provisions of the contract, arrangement or understanding that are, or would or might be, exclusionary provisions

(i) Provisions preventing a dairy farmer who has authorized Dairy WA in writing to act on their behalf from negotiating directly or entering directly into contracts with processors or retailers without the consent of Dairy WA. It is intended that the contract entered into by dairy farmers with Dairy WA is to be binding and exclusive. Non-compliance to result in collective boycott of that processor or retailer by other dairy farmers contracted to Dairy WA.

(ii) Provisions to permit Dairy WA or dairy farmers who have authorized Dairy WA in writing to negotiate and enter into contracts for supply on their behalf, to refuse to supply processors where no current contract is in place.

(iii) Provisions to permit WA dairy farmers who have appointed Dairy WA as their agent may refuse to supply processors where no current contract is in place or where there is are changes to the terms and conditions and price offered by a processor that has not

been agreed with Dairy WA and the processor seeks to enforce the contract with the dairy farmer.

.....
(See Direction 4 on the back of this Form)

(c) Names and addresses of other parties or proposed parties to contract, arrangement or understanding

Dairy WA, and all present and future dairy farmers in Western Australia (being members or non-members of Dairy WA) who enter into an agreement to appoint Dairy WA or a body established by it for that purpose, to collectively negotiate with dairy processors or retailers in Western Australia, Australia and internationally, on their behalf.

.....
3. Names and addresses (where known) of parties and other persons on whose behalf application is made
Dairy WA or a body established by Dairy WA to undertake negotiations on behalf of dairy farmers.

*Dairy WA's physical address is: Gate 10 Claremont Showground
 Ashton Avenue,
 Claremont, WA 6010,
The postal address is: P O Box 75,
 Claremont, WA, 6910.*

.....
4. (a) Grounds for grant of authorisation
Please see Attachment.

.....
(b) Facts and contentions relied upon in support of those grounds
Please see Attachment.

.....
(See Notice 1 on the back of this Form)

5. This application for authorisation may be expressed to be made also in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

(a) Is this application to be so expressed
No.

.....
(b) If so, the following information is to be furnished: --

(i) the names of the parties to each other contract, arrangement or understanding

.....
(ii) the names of the parties to each other proposed contract, arrangement or understanding which names are known at the date of this application

.....
(See Direction 5 and Notice 2 on the back of this Form)

6. (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)
No.

(b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

No.

(c) If so, by whom or on whose behalf are those other applications being made?

No.

7. Name and address of person authorised by the applicant to provide additional information in relation to this application

Jenni Mattila & Co
Suite 202, 135 Macquarie Street, Sydney NSW 2000
Phone (02) 9252 7177, Fax (02) 92513826

Dated.....16.....March 2005.

Signed by/on behalf of the applicant

Jenni Mattila
.....
(Signature)

JENNIFER MATTILA
.....
(Full Name)

Solicitor for Dairy WA.
.....
(Description)

