

A90962

Form B

Commonwealth of Australia
Trade Practices Act 1974 --- Sub-section 88(1)
**AGREEMENTS AFFECTING COMPETITION:
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 contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
 - ~~to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition 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 and in certain circumstances the delivery of their milk to processors or retailers. Dairy WA anticipates that the arrangements will create improved economies of scale and encourage improved efficiencies in the WA dairy industry particularly in the area of transport and the provision of milk supply to the closest processing plant.*
- (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 7day 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 retail customers.

(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

- (i) *Authorisation is sought by Dairy WA for an initial period of 5 years to allow Dairy WA to negotiate with processors or retailers on a processor-by-processor and retailer-by-retailer basis on behalf of WA dairy farmers who authorize it to act on their behalf for the supply of milk.*
- (ii) *It is anticipated that each contract between Dairy WA and a processor or retailer would be individual based on the agreed outcome of the negotiations in relation to terms conditions and price. In some circumstances Dairy WA may also arrange for testing or delivery if those terms are included in the contract.*

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 above mentioned contract, arrangement or understanding.

(a) Is this application to be so expressed?

Yes

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

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

Any other processors or retailers currently supplied by WA dairy farmers.

In addition, any other processors or retailers from WA or new and additional markets which will be sought out for Western Australian dairy farmers' milk. The intention is for Dairy WA to seek new markets and contracts for milk. It is not intended to limit

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

Not known at present. Dairy WA will negotiate sales to new and additional markets identified for WA milk on a short and long term basis.

(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.

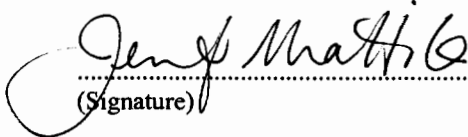
7. Name and address of person authorised by the applicant to provide additional information in relation to this application

Jenni Mattila & Co

Suite 202, 135 Macquarie Street, Sydney NSW 2000
Phone (02) 9252 7177, Fax (02) 9251 3826

Dated: 16 March 2005

Signed by/on behalf of the applicant


.....
(Signature)

JENNIFER MATTALA
.....
(Name)

solicitor to Dairy WA.
.....
(Description)

