



1 April 2005

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TELEPHONE 02 9235 4022
FACSIMILE 02 9235 4070
Level 7, Culwulla Chambers
67 Castlereagh Street
Sydney NSW Australia
GPO Box 1433 Sydney
NSW 2001 Australia
DX 262 Sydney
ADN 55 365 334 124

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

By Facsimile: (02) 6243 1211
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Dear Sir

**Dairy Vale Foods Limited, trading as "Dairy Farmers"
Milk Vendors' Association (SA) Inc ("MVA") - Application for Authorisation A90927**

I refer to the Pre-Determination Conference held at the ACCC's Adelaide office on Tuesday, 22 March 2005.

I am instructed to make the following submissions on behalf of Dairy Farmers to assist the ACCC in reaching a final decision in respect of the draft Determination.

1. Dairy Farmers remains concerned that the conduct referred to in the MVA's application may result in a collective boycott by vendors in respect of dealings with Dairy Farmers, or a collective refusal by vendors to deal with Dairy Farmers except on terms unacceptable to Dairy Farmers. Such conduct will substantially lessen competition and ultimately harm the supply of dairy products to the public. Such harm is not outweighed by the small benefits identified by the ACCC in the draft Determination.
2. As previously advised, almost all vendors have recently signed a 5 year Franchise Agreement with Dairy Farmers. Both Dairy Farmers and Franchise Owners are therefore bound by the terms of the Franchise Agreements for 5 years. The MVA was unable at the Pre-Determination Conference to specify in any detail what conduct they propose to engage in over the next 5 years, in respect of Dairy Farmers' Franchise System. In Dairy Farmers' opinion, it is impossible to determine what public benefits (if any) will result from conduct which cannot be specified. Dairy Farmers submits that it is therefore impossible for the ACCC to determine that there will be public benefits in respect of dealings with Dairy Farmers which are outweighed by the detriments set out in the draft Determination.
3. The claim that vendors have an unequal bargaining position is not true in respect of Dairy Farmers' Franchise Owners. Franchise Owners actively negotiate with Dairy Farmers the terms of the Franchise Agreements and the ongoing operation and



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management of the Franchise System in South Australia. Dairy Farmers must first consult with elected representatives of Franchise Owners before implementing changes to the Franchise System. Without the authorisation this situation will still continue.

4. If notwithstanding the above, the ACCC proposes to grant the authorisation then Dairy Farmers is concerned that the ACCC should provide that:
- (a) the authorisation specifies precisely what conduct the MVA is authorised to engage in, in respect of the Dairy Farmers' Franchise System;
 - (b) there is no obligation on Dairy Farmers to re-negotiate existing Franchise Agreements as part of the authorisation;
 - (c) any information obtained by the MVA as part of its discussions with Dairy Farmers and with National Foods Milk Limited ("National Foods"), must not be shared with vendors represented by the MVA who have no involvement with a particular processor. Dairy Farmers agrees with the comments made by National Foods in its submission dated 18 March 2005 in respect of "ring-fencing" of confidential information;
 - (d) the authorisation is granted only in respect of collective bargaining and does not provide a blanket protection for any other conduct or any provision of a negotiated contract which infringes the *Trade Practices Act 1974* (Cth);
 - (e) the authorisation only covers vendors residing and operating businesses in South Australia and does not apply to vendors who reside or operate businesses in other States or Territories of Australia. The MVA is not authorised to act in respect of any such persons; and
 - (f) the MVA must notify Dairy Farmers of all communications given to Dairy Farmers' Franchise Owners. Dairy Farmers should be able to ensure that the MVA accurately reports to Dairy Farmers' Franchise Owners what it is authorised to do. Dairy Farmers acknowledges the MVA's advice at the Pre-Determination Conference that it is willing to do this.

Please contact me if you have any questions.

Yours sincerely

A handwritten signature in black ink, appearing to read "Alison Meares", written over a horizontal line.

Alison Meares

Partner

Email: alison.meares@addisonslawyers.com.au