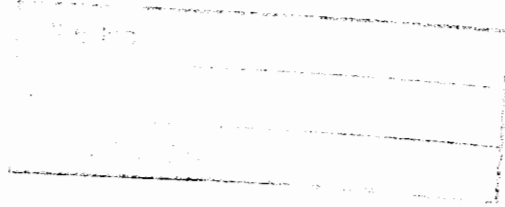




## Australian Dairy Farmers



Australian Dairy Farmers Limited  
Level 6, 84 William Street  
MELBOURNE VIC 3000

Telephone +61 3 9642 8066  
Facsimile +61 3 9642 8166  
Email [adf@dairy.com.au](mailto:adf@dairy.com.au)  
Website [www.adff.com.au](http://www.adff.com.au)

ABN 76 060 549 653

8<sup>th</sup> April, 2005

Mr Scott Gregson  
Acting General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
P.O. Box 1199  
DICKSON ACT 2602

Dear Scott

Please find attached a submission from the Australian Dairy Farmers Limited (ADF) for revocation and substitution of the current ADF Collective Bargaining Authorisation that is due to expire on 30<sup>th</sup> June, 2005.

The ADF firmly believes there is a need for a further authorization from 30<sup>th</sup> June, 2005 to allow groups of dairy farmers that have formed under the authorization to continue to collectively negotiate with a dairy company for the supply of their milk. The attached submission provides detail of the evolution of collective bargaining groups in the dairy industry and the evolutionary thinking by dairy companies to the application of collective bargaining.

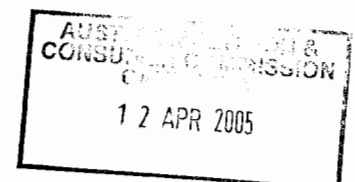
There is now a broader understanding that collective bargaining can provide the opportunity for win/win outcomes for both dairy farmers and a dairy company, and a continuation of the current authorization will provide for this to further evolve to the benefit of all parties to a negotiation.

The ADF recognizes that the process for considering this application for an authorization post 30<sup>th</sup> June, 2005 may not be completed by that date. Therefore, the ADF formally requests an extension to the current authorization post 30<sup>th</sup> June, 2005 until there is a final determination made by the Commission on this application.

I look forward to further discussions and consultations with the Commission on this application. Please do not hesitate to get in touch on any element of this correspondence and application.

Yours sincerely,

J.H. McQueen  
Chief Executive Officer



# **Australian Dairy Farmers' Limited**

## **Application for an Authorization**

### **From the Trade Practices Act**

#### **To Allow Collective Negotiation by Dairy Farmers**

#### **Background**

The Australian Dairy Farmers' Limited (ADF) in August 2001, was granted an authorization from the Trade Practices Act to allow dairy farmers to collectively negotiate for terms and conditions of milk supply to a dairy company.

In the first three years of the authorization, there were several groups formed under the authorization. In most instances dairy companies have not been prepared to negotiate with a group and, therefore, there have been few effective outcomes from the collective bargaining process.

There was one collective bargaining group in Western Australia that did have the opportunity to enter into negotiations with a dairy company in 2002. However, that negotiation process ended in mid 2002 without an outcome that could be attributed to the collective bargaining group. With the group in question, the dairy company with which they were negotiating informed their suppliers that they were intending to cut contracted volumes by 40% and gave all their suppliers less than one weeks notice of this decision.

The fact that the ADF authorization did not have a mechanism to facilitate a negotiation between a collective bargaining group and a dairy company, and the breakdown of the negotiations in Western Australia provided a signal to other farmers that the collective bargaining process would not be effective. Accordingly, there was little activity with groups already formed and no new groups were formed during the two years between mid 2002 and mid 2004.

However, in that two-year time frame the powers of the Retail Grocery Ombudsman were enhanced to allow the Ombudsman to facilitate meetings between a company and farmers. This facility provided a renewed interest in collective bargaining groups.

In the second half of 2004, there were two new groups formed in NSW that entered into negotiations with a dairy company. There have been some outcomes from one of these negotiations that have given a renewed interest amongst dairy farmers to form collective bargaining groups. In the first quarter of 2005 there have been three new collective bargaining groups form under the ADF authorization.

This new impetus to form collective bargaining groups this year is not simply because of an interest from dairy farmers. Dairy companies have now provided support for the concept even though they have previously been opposed.

For example at a recent dairy farmer meeting at Beaudesert in southern Queensland, four dairy companies, including Dairy Farmers Cooperative, National Foods, Parmalat and NORCO publicly supported the collective bargaining concept.

The most noticeable change in attitude has come from National Foods Limited. This company opposed the original ACCC determination for the ADF authorization and appealed the granting of the authorization to the Australian Competition Tribunal.

However, National Foods have now publicly stated in at least two places, the one named above, and at a State Council meeting of the Queensland Dairyfarmers Organisation, that they support collective bargaining under the authorization granted to the ADF.

This is an important step in the effective use of collective bargaining through the authorization granted to the ADF. During the original application process the ADF made representation that collective bargaining was a mechanism to develop a more professional relationship between dairy farmers and the dairy companies to which they supply their milk.

The recent developments, both by dairy farmers forming into collective bargaining groups and dairy companies prepared to negotiate with the group(s), demonstrate that the effective use of the collective bargaining concept is evolving as both farmers and dairy companies recognize the mutual benefits of the process.

The ADF has previously argued that collective bargaining should be a mechanism to create win/win outcomes for both dairy farmers and dairy companies. The more recent examples of collective bargaining groups being formed and negotiating with a dairy company provides strong evidence that both sides of the market for a farmers milk are recognizing the benefits collective negotiation can bring to both their businesses.

### **Business Environment for Dairy Farmers**

Dairyfarmers, by law, must have their milk processed by a dairy company before it can be sold to a consumer (either end point or intermediary). In addition, dairy farmers must have their milk collected from their farm no greater than every two days – firstly because the milk, in its raw state, does not keep long under storage, and secondly, because there is a limit to the holding capacity that a dairy farmer can maintain on their property. In many dairy farming areas of Australia there is typically only one dairy company facility, which leaves little or no choice about where dairy farmers can market their milk.

These circumstances lead to individual dairy farmer businesses being at a significant disadvantage in the market place for milk with them having virtually no bargaining power and, therefore, are the ultimate price takers. They take what the local processor is prepared to offer for the terms and conditions of milk supply – this includes price, but price is not the only issue where the dairy company applies terms for the supply of milk. There are also volume, quality, access to the dairy farm, seasonality of supply, etc. etc. that are incorporated into supply agreements between the dairy farmer and the dairy company.

The relationship a dairy farmer has with the company they supply (whether it is a co-operative or a proprietary) is the same – the company states what the terms and conditions of supply and the price to be paid for the supply and the dairy farmer in most parts of Australia has the choice of either taking the offer or ceasing to be in the business of dairy farming. Most dairy farmers in Australia are too small to have any bargaining position other than as a taker or leaver of the offer from the Company. However, if a group of dairy farmers can aggregate their supply and form a more professional business relationship with the company they supply they will be in a stronger negotiation position with a company.

An authorization for suppliers to form a collective bargaining group allows farmers and companies to enter into detailed and confidential discussions about their respective businesses. These discussions can and do lead to better understanding by both sides of the business environment they are operating within and their future prospects.

This information sharing leads to both farmers and companies becoming better informed which is an essential element of any successful negotiation that leads to win/win scenarios. Without an ability to have a legal avenue to discuss the business environment and market place, through the collective bargaining process, such detailed discussions cannot take place. The costs of undertaking such detailed discussions between a dairy company and each individual dairy farmer supplier are simply not physically nor economically feasible.

### **What is Being Sought?**

The ADF is seeking to have the current authorization for collective bargaining determination provided by the ACCC and the Australian Competition Tribunal reauthorized from 1<sup>st</sup> July 2005, for a five year term to 30<sup>th</sup> June, 2010.

The ADF is seeking to continue the authorization from the Trade Practices Act to provide a broad overarching legal framework for groups of dairy farmers to collectively work together to assess and take up market opportunities wherever they may arise in Australia.

The authorization sought is to allow the members of any groups operating under the authorization the power to negotiate both price and supply terms and conditions and to allow each group to address more than one market option at any one point in time.

Without the current authorization, which is due to terminate on 30<sup>th</sup> June, 2005, it is illegal for two or more dairy farmers to collectively negotiate with a dairy company(ies) for the supply of milk.

The authorization being sought is for any number of dairy farmers to collectively negotiate with one or more dairy companies for the supply of milk and that those farmers in the collective negotiation group could be in any region of Australia. This is important because of the need to take advantage of any market opportunity that is available to a group of farmers.

For example, if a group of farmers in Northern NSW wish to collectively negotiate for the sale of milk to a company in, say Brisbane, then that group of farmers would need to have their milk transported from their local area to Brisbane. It would be a very low marginal cost for that group of farmers to pick milk up from other farmer members of the group in parts of South East Queensland on the way to the company processing facilities in Brisbane. Therefore, the collective bargaining group of farmers, in this case, would be in a region that would include northern NSW, and South East Queensland.

The ADF consistently argued throughout the process of developing the current authorization that membership of a collective bargaining group should not be restricted by artificial boundaries of either States, or defined regions within a State. The authorization sought is to allow any group of farmers to form into a collective negotiation group, with the region to be defined by the membership of the group. This element of the current authorization has allowed groups to form across state boundaries by virtue of the group of farmers 'community of interest' and has been an advantage in bringing small businesses of similar philosophies, production systems, and future outlook together to create an environment of working together and with a dairy company to achieve a mutually beneficial outcome.

### **Taking Advantage of Current and New Market Opportunities**

Dairy farmers should be able to take advantage of market opportunities without limitation or restrictions from the current market dynamics of the dairy industry throughout Australia. However, many dairy farmers currently feel 'locked into' their existing company, but it is important that dairy farmers are in a position to consider all market opportunities, both domestic and export oriented, and not be restricted by artificial boundaries.

Collective bargaining allows a significant opportunity for dairy farmers to become much better informed of the market place and provide a significant improvement in information flow to dairy farmers through each group as they and their negotiating committee assess individual market opportunities.

The register of members of a collective bargaining group also provides a mechanism to communicate to all members of a negotiation group the necessary 'approvals' in line with the ACCC guidelines to ensure the negotiation process stays within the law and that this continues to be well understood by all members of the group.

The ADF believes farmers should be able to take advantage of new marketing opportunities for their milk but the current dairy company arrangements make the introduction of new marketing opportunities severely limiting, at best.

Under current arrangements any new company wishing to enter the dairy processing/manufacturing market has little choice but to purchase milk from a current milk receiver company because of the difficulty of reaching satisfactory supply arrangements with a number of individual dairy farmer businesses. This means any current company with little or no direct farmer suppliers, or any new entrant, is at a significant competitive disadvantage because they are essentially required to purchase milk from their competitor in the market place, which can lead to an uncompetitive market position.

The capacity for new market opportunities to increase competition for farmer milk supply is severely limited by the Trade Practices Act because it forbids two or more dairy farmer businesses negotiating collectively. However, if a new entrant wished to set up dairy processing/manufacturing operations, they could approach the ADF for help. The ADF, through its authorization, could advertise the fact that there was this opportunity available and one or more groups of dairy farmers could seek to negotiate supply terms and conditions with that new entrant for the supply of milk.

However, taking advantage of new market opportunities is not simply about new entrants to the market. As stated earlier, a negotiating group could use its authorization to explore more marketing opportunities for their milk than they have had the opportunity to do in the past because of the capacity to aggregate their milk supply. Such opportunities could include better use of the spot market for milk to supply a different company to the major contracted supply, or to have contracted supply to more than one company.

The ADF believes such opportunities for dairy farmers would not only improve the competitive market for milk supply in Australia but also encourage efficiencies at the dairy company level.

Currently, a dairy company, through the mechanism of how they deal with their suppliers, can simply maintain or increase their bottom line by paying farmers less, particularly in those areas where there is little or no choice of who a farmer can supply their milk. However, if there is some improved competitive pressure for the supply of milk, there will be pressure for the dairy company to improve its production efficiencies rather than simply passing costs back to farmers. The authorization should lead to improved efficiencies throughout the production chain.

### **Why Not Form a Supply Co-operative?**

There have been some comments made during the original ADF application and following the determination to allow collective bargaining groups to form under the ADF authorization, that farmers can form supply co-operatives as an alternative to collective bargaining. However, the option of forming supply co-operative(s) is cumbersome with significant legal and financial, and administrative co-operative law issues that must be dealt with on an ongoing basis.

Under the Trade Practices Act it would also be illegal for a supply co-operative to negotiate milk pricing and supply terms and conditions on behalf of its members unless the co-operative actually takes ownership of the milk from its members prior to negotiations with company(ies) for the supply of milk.

Forming a detailed and complex company structure with staffing and financial requirements to manage the purchase and sale of milk is not a solution for most dairy farmers because of the complexity and costs associated with its formation and ongoing operation. A supply co-operative may be a long term option for some farmers but is not an option which farmers can, or will, use to act through collective action in response to market opportunities.

### **Why won't the Authorization allow farmers to dictate to processors?**

This was a question of concern to both the ACCC and the Australian Competition Tribunal when considering the first application for an overarching authorization for collective bargaining through the ADF. The experience of collective bargaining groups under the ADF authorization is that collective bargaining cannot and will not dictate to a dairy company – the options for a dairy company are many and varied and it is clear that not all farmers in any one region will choose to be a member of a group. The experience also has demonstrated that the arguments the ADF put forward to the ACCC and the Australian Competition Tribunal were valid, ie that Australian milk pricing at the farm gate is driven by world market prices.

About 55% of Australia's total milk production is exported in the form of dairy products. Most of these exports are from the State of Victoria, with Tasmania and South Australian milk production also contributing significantly to exports. Therefore, the world market price for dairy products will be the significant determinant of the price paid at the farm gate for milk produced in Victoria, in particular.

However, products, which are exported, are also sold on the domestic market, which will always ensure a domestic price that is referenced to the world price. Therefore, the authorization cannot and has not led to a leveraging of farmgate prices to farmers primarily supplying milk for the domestic market to unrealistic levels. This means that milk will flow to any domestic market opportunity where the price unreasonably exceeds export returns whether at the farm or at the company level.

Another significant issue surrounding the above question is that the authorization has not and will not lead to a position where companies will not have milk supply to satisfy their requirements. There will always be supply available to companies operating on either the domestic or export markets. The issue will be what volumes are required and the price that the company is prepared to pay for the milk.

The price a company is prepared to pay will depend on the market dynamics at any one time. It will primarily be determined by world market prices. However, it will also be determined by the degree of seasonality the company is prepared to accept for supplied volumes, the quality requirements set by the company, the type of on-farm food safety program which milk is produced under, and a range of other supply requirements (animal welfare, animal health, feeding regimes, etc.) the company may wish to set for the milk they require to satisfy the customers in the market place in which they operate.

It is all these issues separate to price that lead to significant transaction efficiencies for dairy farmers and dairy companies through a collective bargaining process and, therefore achieve a better outcome for both dairy farmers and dairy companies.

## **Conclusion**

The overall thrust of the initiative is to foster an environment for negotiation and outcome that will deliver a more professional relationship between a dairy farmer and the company they supply. Collective bargaining also provides an opportunity to fostering improved competition for farmer's milk, irrespective of the destination of the resultant product. These objectives will drive efficiency at the farm level because world prices are the determinant of domestic market prices. It will also drive efficiencies at the dairy company level and, to some degree, balance up the negotiating position held by individual farmers today.

An important opportunity for the industry in seeking the continuation of the authorization is to continue to develop a change to the culture of the milk supply process. Farmers will need to become more confident about being mobile and prepared to move their milk to the best opportunity, including spot market opportunities. They will also need to become more confident, as a group, to manage the logistics of the resultant changes in future supply arrangements in order to take advantage of marketing opportunities that may arise in the future. Similarly there will be a cultural change in the company sector of the industry, as they will need to compete for milk supply rather than take it for granted.

John McQueen  
April, 2005