



**Australian
Competition &
Consumer
Commission**

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Our Ref: C2004/1241
Contact Officer: Michael Green
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27 April 2005

Dear

**Re: Milk Vendors' Association (SA) application for authorisation A90927
- final determination**

The Australian Competition and Consumer Commission (the ACCC) has issued a determination granting authorisation in respect of the application for authorisation lodged by the Milk Vendors' Association (SA) (the MVA) on 3 September 2004.

The MVA sought authorisation to collectively bargain on behalf of its members in relation to the terms and conditions of distribution contracts with National Foods Milk Limited (NFML) and Dairy Vale Foods Limited (Dairy Farmers).

The MVA also sought authorisation to represent any vendor or group of vendors in any dispute which may arise between: any vendor or vendors and NFML or Dairy Farmers; any vendor or vendors and any customer, and any vendor or vendors and any other vendor or vendors.

Summary of ACCC considerations

Having considered the application and submissions from the MVA and interested parties, the ACCC grants authorisation, subject to the conditions noted below, for five years.

The ACCC considers the anti-competitive detriment generated by the arrangements to be low. The ACCC considers that, even absent of the arrangements, vendor distribution contracts are subject to somewhat standard terms and conditions. To the extent that, absent authorisation, there is scope for individual vendors to vary the terms of distribution contracts, the arrangements will not reduce their scope to do so.

The ACCC considers that there is some potential for the arrangements, if they were to result in a set of standard, industry wide terms and conditions being adopted, to reduce competition between vendor bargaining groups and inhibit competition between processors.

The ACCC considers that the arrangements will result in some public benefit. In particular, the ACCC considers that improving the bargaining power of vendors, thereby providing



vendors with the opportunity for more effective input into contract terms and conditions, will result in some public benefit. The ACCC also considers that the arrangements are likely to result in some transaction cost savings, which, given competitive pressures within the industry, are likely, at least in part, to be passed on to consumers.

Therefore, after considering all the information before it, the ACCC is of the view that the proposed arrangements give rise to a small public benefit and limited public detriment. In this instance, the ACCC considers that restriction on the common representation and exchange of information regarding contract negotiations between bargaining groups will address concerns that the arrangements might reduce competition between vendor bargaining groups and inhibit competition between processors. The ACCC considers that with such restrictions in place, the anti-competitive detriment generated by the arrangements would be minimal and that any anti-competitive detriment would be outweighed by the public benefits resulting from the arrangements.

Therefore, the ACCC grants authorisation subject to the following conditions:

1. *Bargaining groups negotiating with each processor must not be represented in negotiation by a common person or persons.*
2. *Neither the members of the bargaining groups or bargaining agents acting on their behalf may disclose information obtained by them in the course of collective negotiations, other than to members of the same bargaining group.*

The ACCC is not satisfied that the benefits to the public from the proposed dispute representation arrangements will outweigh any anti-competitive detriment and as such does not grant authorisation to the dispute representation aspect of the application. However, the ACCC notes that on many occasions the MVA's representation of vendors in disputes will not raise concerns under the *Trade Practices Act 1974* (the TPA).

Interim authorisation

On 6 October 2004, the ACCC granted interim authorisation to the MVA for the arrangements. As requested by the MVA, interim authorisation did not extend to the dispute representation system. Interim authorisation, as amended to reflect the conditions imposed in this determination, will continue to protect the proposed arrangements from action under the TPA until the final determination comes into effect or until interim authorisation is revoked.

Application for review

Pursuant to section 101 of the TPA, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for its review. An application for review must be made within 21 days of the date of this determination; that is, on or before 18 May 2005. If no application to review is lodged by this date, the ACCC's determination will come into force on 19 May 2005.

A copy of the determination is available on the ACCC's website at <www.accc.gov.au>.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter or would like a copy of the determination sent to you, please do not hesitate to contact Michael Green on 03 9290 1960.

Yours sincerely

A handwritten signature in black ink, appearing to read 'GJ' followed by a stylized flourish.

Gavin Jones
A/g Director
Adjudication Branch