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To:	Sue Philp	From:	Jenni Mattila
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Phone:	(02) 6243 1239	Date:	May 23, 2005

Re: **Dairy Farmers Submission**
Response to Request for Authorisation A90961 and A90962

Dear Sue,
Response to Dairy Farmers Submission

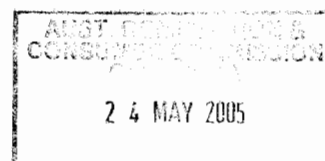
Please find attached our client's response to the Dairy Farmers Submission on the Final Authorisation.

Further documentation and response

We will provide replies to other public submissions in relation to the Final Authorisation today Monday 23 May 2005 unless otherwise advised.

Yours faithfully

Jenni Mattila



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23 May 2005

Mr Scott Gregson
Adjudication Branch
Australian Competition & Consumer Commission
PO Box 1199
DICKSON ACT 2602

Your ref: A90961/A90962

Dear Mr Gregson

Response to Dairy Farmers Submission dated 15 April 2005

We note Dairy Farmers does not oppose the Dairy WA application for collective bargaining.

Dairy Farmers does oppose the Dairy WA application for:

- o Collective boycott; and
- o What they perceive to be interference in the arrangements between the processor and the retailer.

Dairy Farmers Collective Boycott comments

Dairy Farmers has assumed that in the course of a collective boycott there would be an:

"immediate and devastating affect on the supply of milk to consumers in Western Australia"

That is not the intention of Dairy WA and would be unlikely to occur because milk contract renewal dates in WA are staggered – not all contracts are renewed at the same time. Therefore only one processor is likely to be affected. Current practise is that if any processor requires additional milk, that milk is sourced through Challenge Dairy Co-operative (CDC). Processors buy and sell milk among themselves and the shortfall would be addressed by the other processors still operating in the market through sourcing the additional milk through CDC. CDC does not directly supply

the WA market, so in the unlikely event of a boycott of CDC, the WA consumer would be unaffected.

Dairy WA would only seek to implement a boycott if negotiations had broken down and all other avenues had failed to resolve the deadlock. Dairy WA would support a notice period being a condition of approval of any boycott. It is believed that 14 days notice of the intention to implement a boycott would be adequate.

As Dairy Farmers would be aware there is a strong disincentive to implement the boycott provisions as milk is highly perishable and there is little on farm storage available. The cost to dairy farmers would not only be the loss of income but the cost of disposing of the milk.

Individual Negotiations with dairy farmer members of the MNA

We are surprised by this comment from Dairy Farmers as Dairy Farmers itself has enforceable agreements for the supply of milk with its own members.

The MNA would have contracts with the processors and in turn those contracts would be mirrored by contracts with dairy farmers. These contracts are not merely for the negotiation of the contracts but involve ongoing obligations on both the dairy farmer the MNA and the processor.

The dairy farmer contract with the MNA is for a specified period of time matching the arrangements with the processors. The dairy farmer could make other arrangements at the conclusion of the MNA contract. Provisions within the MNA contract will allow the dairy farmer to contract outside the MNA arrangement with the consent of the MNA. Obviously the MNA has an obligation to ensure that all contracts are met. If a dairy farmer wished to supply milk to a third party the MNA would need to arrange for the shortfall to be made up by another dairy farmer just as Dairy Farmers would need to do in the same situation.

Dairy Farmers Submission item 2 and 3

Dairy WA did not intend to comment on the Dairy Farmers business and only comments on the specific situation in WA. Dairy WA acknowledges that co-operatives in all other States in Australia (other than WA) are bound by the Co-operative Consistent provisions of the Co-operatives Act in regard to its relationship with its members; the division of surplus and third party investors.

Dairy WA notes that to the best of its knowledge Dairy Farmers does not sell product in WA.

Dairy Farmers comment item 4

Dairy Farmers states:

"It is not believe it is appropriate for another party such as Dairy WA to be involved in negotiating terms for the sale of packaged milk products to retailers, where Dairy WA and individual dairy farmers will not be processing or manufacturing the products"

Dairy Farmers gives no rationale for this belief.

Dairy WA at the request of its members may arrange for the tolling of milk for sale to retailers. Tolling is a common practice; please note PB Foods recently tolled cheese for CDC through its Brunswick plant.

We also note Woolworths comment that:

"It considers offers from any bona fide tender capable of meeting the conditions of supply set out in the 'Invitation to Tender' document."

Dairy WA included the option in its application due to the common nature of tolling and the potential for obtaining better returns for its members. The proposal may also increase competition in the market place for the benefit of consumers. Retailers may wish to deal with the MNA directly possibly resulting in reduction of costs in the supply chain.

Conclusion

Dairy WA accepts that there needs to be a notice period (possibly of 14 days) prior to a boycott being implemented to allow retailers to make alternative arrangements with other processors in the short term should that be necessary.

Dairy WA acknowledges that there must be criteria to allow dairy farmers to terminate the arrangements with Dairy WA or only provide part of their supply through the Dairy WA, however Dairy WA, as a condition Dairy WA would need to ensure that it could source alternative supplies of milk.

Dairy WA must ensure that the conditions of any existing contract with processors is met by sourcing alternate supply.

Yours faithfully,


Jenni Mattila