

RESTRICTION OF PUBLICATION OF PART CLAIMED

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

Your ref: A90961/A90962

Dear Mr Gregson

Response to Coles Myer Submission dated 15 April 2005

Dairy WA agrees with Coles Myer Ltd that its application does not comply with the existing ADFP authorisation due to expire on 30 June 2005.

In addition to the 3 points raised, Dairy WA also seeks the right to negotiate with retailers directly for the sale of tolled milk.

It is for these reasons that Dairy WA seeks a specific authorisation for WA as we believe, as stated in our Application, the current collective bargaining arrangements have clearly failed and the WA dairy industry is in market failure.

Please see NCC Occasional Series; Dairy Now & Then, The Australian Dairy Industry since De-Regulation by Ridge Partners dated Oct 2004, page 34 (at Tab 4 of documents provided with the Attachment to the Application for Authorisation):

'The role of collective bargaining

Collective bargaining is available to the dairy industry as a result of a 'blanket' authorization obtained by ADF on behalf of industry. This facility has had very limited, if any, effective application in the industry for two reasons;

Most milk is sourced by dairy cooperatives – who have not engaged in the process as they consider their role to include bargaining on behalf of their farmers.

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Milk processors such as National Foods and Parmalat (for Victorian supply) have been reluctant to engage in the process as they have been able to source sufficient requirements without a formal negotiation process provided under the authorisation.'

The WA National Foods Collective Bargaining Group is most noted for the response their attempts to negotiate drew from National Foods. i.e. Collective bargaining group members had their contract milk supply cut by 40% whilst dairy farmers who stayed outside the arrangements were unaffected.

Dairy WA strongly contends that a new approach is necessary if the WA dairy industry is not to collapse within the next 12 months.
Please see Part 9, pp18 – 20 of the Attachment to the Application for Authorisation provided to the ACCC on 16 March 2005 ("Attachment")

Page 1 - 'CML strongly objects to the current applications ... CML's view is that the Applications would bring no public benefits.'

Please see Part 9, pp21 – 23 of the Attachment.

Dairy WA submits that the major public benefit of the application would be to prevent the likely imminent collapse in the WA dairy industry, which if allowed to occur would lead to higher prices paid by consumers if milk must be imported from other states. Please see page 13 of the Attachment and Appendix 2, page 19 of the additional document provided to the ACCC on 16 March 2005, "Economic evaluation of two possible milk pricing systems in Western Australia".

CML's Comments on Collective Bargaining Arrangements (Heading on Page 3)

CML stresses it only has direct relationship with processors, not producers.
Dairy WA accepts that CML does not wish to have contracts or enter negotiations with Dairy WA. However CML decision should not prohibit other retailers from entering into such arrangements should they choose to do so. Dairy WA would however need authorisation for such negotiations to take place.

We are surprised that CML is unaware of milk tolling. CML does after all pay processors to label milk for CML's homebrand. Dairy WA merely proposes to contract processors to process the milk on contract for sale to retailers. This approach improves efficiency of processing equipment that is not being used to capacity at the present time and provides additional income for both the dairy farmer and the processor.

CML's Comments on Collective Boycott Arrangements (Heading on Page 4)

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.

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.

Recalcitrant farmers who sought to negotiate outside Dairy WA in breach of the contract could seriously damage processors who had contracted for their milk. It is reasonable that contracts be enforceable.

Dairy WA 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 sake of negotiation of the contracts but involve ongoing obligations on both the dairy farmer, Dairy WA and the processor.

The dairy farmer contract with Dairy WA 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 Dairy WA contract. Provisions within the Dairy WA contract will allow the dairy farmer to contract outside the Dairy WA arrangement with the consent of the Dairy WA. Obviously Dairy WA has an obligation to ensure that all contracts are met. If a dairy farmer wished to supply milk to a third party, Dairy WA would need to arrange for the shortfall to be made up by another dairy farmer.

Dairy WA intends that there be a notice period before the implementation of any boycott probably of 14 days. The circumstances where an individual farmer and processor triggered a boycott would only arise where:

- the dairy farmer had not sought or obtained consent to negotiate outside the Dairy WA contract;
- the milk the dairy farmer proposed to sell was already contracted by Dairy WA to another processor; and
- Dairy WA had contacted both the dairy farmer and the processor and they dairy farmer failed to honour the existing MNA contract.

CML Comments on Other details of the proposed MNA arrangements (Heading on Page 4)

We note that CML believes that the volume of milk for sale in WA is not declining and that existing dairy farmers are growing in size to pick up the shortfall. Herd numbers have fallen from 72,000 at deregulation to 60,000 in February 2005. Please see p10 of the Attachment regarding Herd Information, and the referenced letters at Tabs 12 – 14 of the supporting documents provided with the Attachment).

[CONFIDENTIALITY HAS BEEN GRANTED ON THESE REFERENCES]

Dairy WA currently has concerns about the accuracy of the reported milk volumes being reported to Dairy Australia.

CML Comments on Public Benefit (Heading on Page 4)

1. Improved bargaining power

Dairy WA submits that improved bargaining power for farmers is necessary for continuation of the WA dairy industry. The public benefit arising is, as set out at page 2 of this letter.

With respect to CML's comments on surplus profits and margins in the sale of milk, please see pp 66 – 67, in particular, Finding 38 of the Economics and Industry Standing Committee Report on the Sustainability of the Dairy Industry in Western Australia, at Tab 15 of the supporting documents provided with the Attachment.

2. Transaction Cost Savings

South Australian Milk Haulage has informed the West Australian Farmers' Federation that transport costs (including testing) would be \$0.016 per litre, based on an average distance of 180 km. This is considerably less than the charge imposed by processors.

3. Redistribution of Monopsony profits

Please see our comments above regarding "Improved bargaining power". Dairy WA submits that the redistribution of monopsony profits would be a public benefit as it would assist dairy farmers receiving a sustainable price whilst not necessarily increasing the retail price paid by consumers. The retail price to consumers is a matter for the retailers not the dairy farmers. There does not appear to be a direct correlation between the raw milk price and the shelf milk price.

4. Easing the transition to Industry Deregulation

Dairy WA submits that the activities proposed, by easing the transition to industry de-regulation, must themselves be a public benefit as the result will be the ongoing maintenance of viable dairy farms. Increasing world prices for milk should improve the viability of the WA industry. Whilst WA dairy farmers provide a higher percentage of milk to the white milk market their raw milk prices remain lower than prices interstate.

5. Improving the Viability of Small farms

Dairy WA submits that without authorisation for the activities proposed, it would be especially difficult for small farmers to develop or take advantage of any high value export markets which may be developed.

6. Opening Up New Markets

The price for raw milk in WA, in the average price range, varies from 24 (Challenge Dairy Co-operative) to 32 cents per litre (Harvey Fresh). PB Foods and National Foods pay an average of 28 cents per litre. Challenge Dairy Co-operative pays as little as 14.6cents per litre to suppliers who do not hold Delivery Rights Units.

It is anticipated that the average price for raw milk in Victoria on a 12 month contract will be 35 cents per litre. Murray Goulburn has issued a press release indicated a price of 40 cents per litre. Reported prices in Queensland are as high as 45 cents per litre on contract i.e. not a spot milk market price.

The price differential between WA (using a price of 24-28 cents per litre) and the Eastern States for raw milk is therefore between 8 - 21 cents per litre.

Whilst existing multinational processors operating in WA would obviously not wish to sell raw milk to their parent company's competitors in the Eastern States, WA dairy farmers have no such restrictions.

The price differential of 8-21 cents per litre and the circumstances in which WA dairy farmers find themselves now justifies the opening up of interstate markets.

The shortfall in production in the NZ dairy industry has also resulted in increasing prices in the world markets opening up further opportunities for WA milk given the proximity to Asia. Please see Farm On-line Report dated 20 May 2005, attached.

Yours faithfully,

Jenni Mattila

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