

David Johnston

Senator for Western Australia

Chairman of the Joint Statutory Committee for Native Title and
the Aboriginal and Torres Strait Islander Land Fund

FILE No:

DOC:

MARS/PRISM:



Mr Graeme Samuel
Chairman
Australian Competition and Consumer Commission

**MINISTERIAL
URGENT**

By facsimile:
(02) 6243 1199 (Canberra)

Dear Sir

I have been consulted by a group of constituents who are currently endeavouring to survive within the dairy industry in Western Australia.

You may be aware that recently they submitted an application for authorisation and interim authorisation **A90961/90962**.

Accordingly, I would be pleased if you would accept this correspondence as both a direct approach by me and also as a submission from an interested party.

Your adjudication General Manager Mr Scott Gregson (the decision maker at first instance) has also received a detailed written submission and backgrounding from Mr David Mortimer of the Food and Agriculture Div. of the Dept. of Agriculture Fisheries and Forestry.

Whilst there are complex and technical competition issues in the collective bargaining/collective boycott proposal as contained within the application there is, in my respectful submission, an overriding consideration - *namely the capacity to preserve a commercial milk production capability in Western Australia*. I feel this factor has been overlooked or downplayed in Mr Gregson's initial adjudication as set out in his correspondence of 27 May 2005 to the applicant's consultant solicitor Ms Mattila.

To further expand upon the point - Western Australia is currently experiencing a period of expansion and growth across a broad range of industrial sectors save for one vital area, namely grocery retailing. Currently Western Australia is experiencing a damaging contraction in competition in the retail grocery market with further damaging flow-on into each of the various agricultural produce sectors feeding that market.

The downward pressure from the two dominant retail grocery chains has in turn squeezed milk processors National Foods and Peters and Brownes. The obvious effect of this knock-on is that milk producers are receiving prices which leave them no alternative but to exit the industry.
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These processors do and will continue to maintain a very high degree of control over dairy farmers with or without the proposal contained within this application and are in a position of superior bargaining power.

In a perfectly level playing field or fair market a contraction in dairy farmers may be deemed an expedience of the market and as a staunch supporter of national competition I would not usually be concerned by the natural vagaries of the free market. In this instance however I am concerned that the outcome for Western Australian consumers will be that the retail price of milk will *rise far in excess of rises in the cost of production or other normal market influences*.

The WA market cannot readily access cheap *fresh* milk from the Eastern States or New Zealand for a number of reasons all relating to cost and transport logistics. As a result we have a contracting dairy industry delivering high profits at the retail end and subsistence prices and below at the farm gate. The ultimate losers in this factual market assessment are both dairy farmers and most crucially, consumers.

The Western Australian consumer will soon be confronting a market that will have contracted to produce a shortfall of up to 100 million litres. Obviously price will be the only tool against a steadily increasing demand, milk occupying the position it does for consumers.

Currently there are approximately 280 milk producers in Western Australia with more than one third of them expressing to the Dairy Industry Working Group a strong desire to leave the industry.

I say again, this industry and market background foreshadows a *substantial price hike for milk in Western Australia in the short to medium term unrelated to fair market conditions*.

The proposal within this application in my submission would have gone a substantial way toward promoting greater competition within the industry and providing a stable and cost efficient outlook for both producers and consumers.

There is currently a growing understanding in the community of the damage and cost of increasingly concentrated market power. The retail grocery industry is probably at the top of these concerns. This is against a background where the capital cost and difficulties associated with re-entry into the milk production market are very high.

As a further matter of concern it is my understanding that the process involved in the review of the application is not as clear and transparent as it might have been. My constituents have enumerated a number of circumstances and conduct by ACCC officers which indicate that they may have had concerns relating to some aspects of the application. (cont'd page 3)

The applicants were not given any clear outline of those concerns or the basis thereof and were given no opportunity to answer or explain or respond to those concerns. Indeed the letter advising interim refusal appears to be a stock standard pre draft response.

One of the most alarming aspects of the process was the demand for the applicant's commercially sensitive projections to be published. Dairy farmers have been at the mercy of the processors' commercial in confidence price and cost projections yet in this application no confidentiality was afforded to this applicant in circumstances that frankly, I find puzzling. My amazement is further amplified by the notation in correspondence advising refusal that one of the grounds was insufficient information. I remain concerned with such a process.

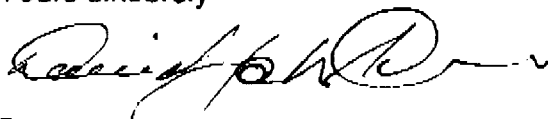
Generally my constituents are most unhappy with the conduct of the ACCC officials in the course of their evaluation of the proposal. I would like to address those matters separately and at a later date as they simply distract from the essential issue at hand – the price of milk for producers and consumers in Western Australia and the outcome for this application.

I am assured that the applicants remain ready to answer and explain all ACCC queries and concerns.

I am available to discuss these matters with you or any of your officers at a mutually convenient time and urge a serious and thorough review of this decision in light of the above.

I look forward to your response and your earliest convenience.

Yours sincerely



Senator David Johnston
Senator for Western Australia
24 June 2005

cc The Hon Warren Truss, Minister for Agriculture
cc The Hon Chris Pearce, Parliamentary Secretary to the Treasurer