

Simmonds, Martine

From: David.Starkoff@corrs.com.au
Sent: Tuesday, 25 October 2005 12:15 PM
To: Adjudication
Cc: Stewart, Liam; Eddie.Scuderi@corrs.com.au
Subject: Premium Milk Ltd

Attachments: 3796674v2.pdf



3796674v2.pdf (49
KB)

Dear Mr Stewart,

Thank you for your email to us on 20 October 2005 attaching submissions from two interested parties in relation to Premium Milk Ltd's application for revocation of its existing authorisation (A90745) and substitution by application A90972.

I attach Premium's response to those two submissions. Please let us know if the ACCC has any further queries, or if Premium can further assist the ACCC in considering its application.

Premium does not object to this email being placed on the ACCC's public register.

Regards,

David Starkoff
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(See attached file: 3796674v2.pdf)

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Our reference
ECS/DS/PREM5520-9016605
Your reference
C2005/780

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25 October 2005

By email: adjudication@accc.gov.au

Mr Liam Stewart
Acting Assistant Director
Australian Competition and Consumer Commission
470 Northbourne Avenue
DICKSON ACT 2602

Contact
David Starkoff (07) 3228 9816
Email: david.starkoff@corrs.com.au

Partner
Eddie Scuderi

Dear Sir

Application A90972 by Premium Milk Ltd for revocation and substitution of authorisation A90745

We refer to your email to us on 20 October 2005 attaching submissions the ACCC received after publishing its draft determination from Hoffman Partnership (**Hoffman**) and Mr Rodney Willson.

Redactions

We understand that Hoffman and Mr Wilson made requests in accordance with section 89(5) of the *Trade Practices Act 1974* (Cth) in relation to a paragraph in each of their submissions and that the ACCC excluded the paragraphs from the ACCC's public register in accordance with section 89(5A)(b) of the Act.

Though there is no express power in section 89 of the Act for the ACCC to do so, we understand that the ACCC is unwilling to provide us with a complete copy of Hoffman's and Mr Willson's submissions. Accordingly, Premium Milk Ltd (**Premium**) is unable to respond to the redacted portion of Hoffman's and Mr Willson's submissions.

Premium asks the ACCC to bear this in mind when considering this response.

Response to submissions

Both Hoffman's and Mr Willson's submissions are similar (indeed, they are substantively identical except for the closing paragraphs). Premium will deal with them both together.

At the outset, Premium notes that neither Hoffman nor Mr Willson suggest that the ACCC should not grant the authorisation sought by Premium. Neither submission cavils with the ACCC's analysis of the anticompetitive impact of the authorisation and its public benefits.

Some of the points made by Hoffman and Mr Willson support Premium's application for authorisation. For example, they argue that individual farmers are in a poor bargaining position *vis-à-vis* processors and large supermarket chains. They also assert that Premium is too small to effectively collectively bargain. Even if this is true—and Premium submits it is not—it does not adversely affect the ACCC's analysis in its draft determination.

25 October 2005

Australian Competition and Consumer Commission

Application A90972 by Premium Milk Ltd for revocation and substitution of authorisation A90745

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Hoffman, a Premium member, also appears to be aggrieved at Premium's operation. Premium submits:

- (a) that this is not a matter that goes to the ACCC's assessment of Premium's application for authorisation; and
- (b) as the ACCC has noted (see paragraphs 2.5, 7.19–7.20, and 9.3 of the draft determination), there is no compulsion on Hoffman to continue to be a member of Premium and participate in Premium's collective bargaining arrangement.

For these reasons, Premium submits that the ACCC should, in accordance with sections 90(1), 90(3), and 90A(5) of the *Trade Practices Act*, make a final determination to revoke authorisation A90745 and substitute application A90972 for it.

Public register

Premium does not object to this letter being placed on the ACCC's public register.

Yours faithfully

Corrs Chambers Westgarth

A handwritten signature in black ink, appearing to be 'E. Scuderi', with a long horizontal stroke extending to the right.

Eddie Scuderi
Partner