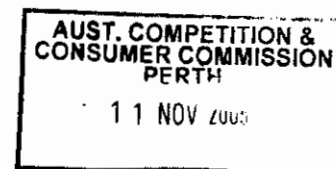




Reference: 05/17466

9 NOV 2005

Mr Scott Gregson
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 6381
East Perth WA 6892



Dear Mr Gregson

Dairy WA – applications for authorisation A90961 and A90962 Draft Determination

I refer to your letter of 17 October 2005 in regard to the draft determination of the Australian Competition and Consumer Commission (ACCC) in respect to an application from Dairy WA for an authorisation under the *Trade Practices Act 1974* (TPA) for collective bargaining negotiations between dairy farmers and milk processors via a milk negotiation agency, with the proposed authorisation also seeking to allow collective boycotts under certain circumstances.

It is noted that the Dairy WA authorisation request relates only to the supply and pricing of milk for the consumer market in Western Australia, and hence does not impact in any way on the supply and pricing of market milk in other States including Queensland.

However, you would be aware from my previous correspondence in regard to TPA authorisation requests by the Queensland dairy industry that, since the national deregulation of the dairy industry in mid-2000, the Queensland Government has consistently, and publicly, supported the concept of collective bargaining negotiations between producer representatives and individual processors as a means of countering the obvious imbalance of market power that exists in the dairy industry. The majority of dairy producers are essentially "captive" to a single processor or, at the most, have a choice between supplying to two processors, due to geographic factors and historic supply patterns - a situation compounded in recent years by the on-going rationalisation of the processing sector.

I think that it is incontestable that, in the dairy industry in the post-regulatory era, stability in producer to processor (and processor to retail) supply arrangements can only be achieved by allowing suppliers to address market imbalance through a proper collective bargaining process – and successful collective bargaining requires TPA authorisation in the first instance.

It is recognised that the ACCC has responded positively to previous industry requests for collective bargaining authorisations, as evidenced by the ACCC's approval for authorisation proposals from both Premium Milk Ltd and the Australian Dairyfarmers' Federation (ADF). The Premium Milk authorisation, originally issued in December 2001 in respect of Queensland supply co-operatives negotiating with Parmalat Limited (formerly Pauls Parmalat Milk Ltd) has been of significant benefit to the Queensland dairy industry, and provided the model for the subsequent ADF collective bargaining authorisation application.

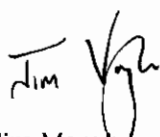
It is also noted that the ADF authorisation was upheld, subject to some minor modifications, in the Australian Competition Tribunal following an application by a particular processor for review of the authorisation decision. In my view, the Tribunal decision is also clear evidence of the need for a proper collective bargaining framework in the dairy industry.

Unfortunately, it would appear that the Dairy WA authorisation proposal goes beyond what has previously been acceptable to the ACCC and contains a number of restrictions that the ACCC considers are not in the public interest.

It may be advantageous to the dairy industry in Western Australia if the ACCC could direct Dairy WA's attention to the previously approved TPA authorisations granted to Premium Milk and ADF. Perhaps a reworking of Dairy WA's application along the lines of the currently approved TPA authorisations relevant to the Queensland dairy industry would be appropriate to assist the Western Australian dairy industry to achieve authorisation under the TPA.

Thank you for the opportunity to comment on this matter. As previously advised, I have nominated Mr Harold Brown as this Department's nominee to handle any further inquiries in respect of TPA authorisation matters. Mr Brown can be contacted on telephone 07 3239 3211 or email harold.brown@dpi.qld.gov.au.

Yours sincerely



Jim Varghese
Director-General