



**Australian  
Competition &  
Consumer  
Commission**

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09 December 2005

Ms Jenni Mattila  
Jenni Mattila & Co Lawyers  
P O Box 1685  
DOUBLE BAY NSW 1360

Dear Ms Mattila

**Dairy WA's applications for authorisation – pre-determination conference**

Thank you for your letter of 30 November 2005 advising of Dairy WA's withdrawal of its application for authorisation of collective boycott provisions (A90961), and providing the attached documents.

I note that you have claimed confidentiality for the survey results and summary report from Advantage Communications and Marketing. I advise that your request to have the submissions excluded from the public register has been granted.

Thank you for forwarding Ms Marino's opening presentation to the pre-determination conference on 28 November 2005. I take this opportunity to respond to a number of issues raised in Ms Marino's address.

I note Dairy WA's assertion that the ACCC encouraged Dairy WA to apply for authorisation for a collective boycott. I re-iterate my comments in my letters to you of 6 January and 11 February 2005 that the ACCC does not generally express a view on the content or merit of proposals other than to highlight areas of information deficiency; identify areas where further clarification would assist consideration of the application; and to provide guidance on the necessary processes or procedures.

The ACCC has always maintained the view that collective boycotts have the potential to cause serious disruption to industry participants, consumers and the economy in general. The ACCC has consistently advised that collective boycott proposals in a collective bargaining context should only be considered in special circumstances. Indeed in my letter of 11 February 2005, providing comment on the draft application, I noted that some of the mitigating features previously identified by the ACCC in



relation to collective bargaining arrangements may not be present in the proposal as presented and suggested that these matters be addressed prior to submitting the final application.

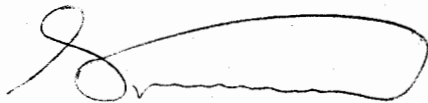
I note further Ms Marino's comments that Dairy WA only became aware of the ACCC's concerns in respect of the effect the milk negotiating agency would have on the future operations of Challenge Dairy Co-operative (Challenge) in the draft determination.

I note that at the meeting in Perth on 22 April 2005 (attended by Ms Marino and yourself), Dr King specifically raised the question regarding the future of Challenge and the contractual issues with regard to dairy farmers' DRUs under the proposed milk negotiating agency. Further, questions 21a and 21b of the ACCC's schedule of questions of 28 April 2005 sought Dairy WA's response concerning the relationship between the agency arrangements and Challenge's DRU system. Despite an outline of the potential benefits to DRU holders, Dairy WA's response failed to address how dairy farmers' contractual obligations under the agency arrangement could co-exist with the DRU system.

Attached are the minutes of the pre-determination conference and I confirm that these minutes are not a verbatim record of proceedings but a summary of matters raised. I look forward to receiving Dairy WA's submission addressing the issues discussed at the pre-determination conference and would appreciate if the submission could reach our office by close of business on **Wednesday 21 December 2005**. We also note that you advised that you would submit an economist's report and other documentation from external advisers.

A copy of this letter will be placed on the ACCC's public register. Should you have any queries or questions in relation to this letter, please contact either myself or my staff. Siobhán O'Gara can be contacted on (08) 9325 0608 or Susan Philp on (02) 6243 1354.

Yours sincerely



Scott Gregson  
General Manager  
Adjudication Branch

**PRE DETERMINATION CONFERENCE**

**MINUTES OF MEETING**

**Applications for authorisation A90961 and A90962**

**lodged by**

**Dairy Western Australia (Dairy WA)**

**Pre-Decision Conference  
10:00am, 28 November 2005  
Novotel Langley, Perth**

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-determination conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

**Attendees:**

<b>Australian Competition &amp; Consumer Commission</b>	<b>Dr Stephen King (Chair)</b> Commissioner  <b>Scott Gregson</b> General Manager, Adjudication  <b>Siobhán O'Gara</b> Project Officer - Adjudication
<b>Dairy WA (Applicant)</b>	<b>Nola Marino</b> Chairman (Spokesperson)  <b>John Cutbush</b> Director  <b>Leslie Chalmers</b> CEO  <b>Jenni Mattila</b> Jenni Mattila & Co, Lawyers
<b>Challenge Dairy Co-operative Ltd</b>	<b>Mr Peter Giddy (Spokesperson)</b> CEO  <b>Mr Larry Brennen</b> Chairman  <b>Mr Laurie Cransberg</b> Supply & Logistics Manager  <b>Mr Paul Fitzpatrick</b> Clayton Utz

<b>Fonterra Brands Australia (P&amp;B) Pty Ltd</b> formerly PB Foods Ltd t/a Peters & Brownes	<b>Mr Bernie Pummell</b> (Spokesperson) Chief Operating Officer  <b>Mr Tony Moore</b>
<b>Harvey Fresh (1994) Ltd</b>	<b>Mr Kevin Sorgiovanni</b> (Spokesperson) Owner and Managing Director  <b>Mr John Scolaro</b> Director  <b>Mr Guy McDonald</b> National Accounts Manager
<b>National Foods Milk Ltd</b>	<b>Astrid Heward</b> Legal Counsel  <b>Paul Pafumi</b> (Spokesperson) National Supply Manager – Milk  <b>Eamonn Rath</b> Milk Supply Manager - WA
<b>Yelverdale Holsteins</b>	<b>Mr Robert Poole</b>  <b>Mrs Ruth Poole</b>
<b>Western Australian Department of Agriculture</b>	<b>Kate Ambrose</b> Policy Officer  <b>David Feldman</b> Policy Advisor (Policy & Planning)
<b>Western Australian Farmers' Federation</b>	<b>Tony Pratico</b> (Spokesperson) President - Dairy Council  <b>Danny Pagoda</b> Executive Officer for Livestock
<b>Dairy Industry Working Group</b>	<b>Mike Norton</b> Chairman
<b>Member for Stirling in the Western Australian Parliament</b>	<b>Terry Redman, MLA</b> – National Party of Australia
<b>Dairy farmer</b>	<b>John Giumelli</b>
<b>Dairy farmer</b>	<b>Jacqui Biddulph</b>
<b>Dairy farmer</b>	<b>Eric Biddulph</b>
<b>Dairy farmer</b>	<b>Michael Partridge</b>
<b>Dairy farmer</b>	<b>Graham Manning</b>

## ***Introduction***

**ACCC Commissioner, Dr Stephen King** welcomed attendees and made some introductory remarks outlining the purpose of the conference and declared the pre-determination conference open.

Commissioner King invited Dairy WA, as the party who requested the conference, to make the opening statement.

**Nola Marino** – thanked the ACCC for holding the conference in Perth; advised that Dairy WA would be making a detailed submission based on advice from a consultant economist and privileged advice from a barrister. Ms Marino advised that Dairy WA was withdrawing its application for collective boycott (A90961) and submitted:

- the market consists of 4 processors; the 2 largest control 70-75% of the market and pay a similar price to dairy farmers; accordingly dairy farmers are locked in as there is no advantage in transferring to another processor;
- dairy farmers are unlikely to transfer to Challenge because it pays the lowest price; accordingly there is no significant capacity for competition;
- the ACCC decision impedes competition as it locks suppliers into processors and they are unable to compete;
- Dairy WA will make a formal submission addressing any issues raised at the conference.

Commissioner King clarified with Ms Marino regarding the withdrawal of Dairy WA's application for boycott and requested that Dairy WA submit the request in writing. (Dairy WA has since provided a written record of Ms Marino's presentation for the public register).

## ***PROCESSORS***

**Paul Pafumi, NFML** submitted:

- NFML re-iterates comments in its submission;
- NFML supports the ACCC's draft determination;
- will respond in writing to issues raised in Ms Marino's presentation.

**Bernie Pummell, Fonterra Brands** submitted that:

- there are no additions to the submission made by Peters & Brownes;
- the price that Peters and Brownes pays is the price that can be afforded given the open market conditions in which it operates and the range of products it produces;
- supports the ADF collective bargaining arrangements.

**Kevin Sorgiovanni, Harvey Fresh** submitted that:

- Harvey Fresh supports the proposed collective bargaining arrangements and what the group is trying to do;

- supports the withdrawal of the application for collective boycott as dairy farmers should have the freedom to do what they choose;
- stresses that 'milk is milk' and price differentials should be eliminated as they disadvantage farmers, ie. volume discounts should not apply and quality incentives should remain in place.

### ***DAIRY FARMERS***

**Michael Partridge** – addressing the 'milk is milk' comment:

- he supplies 3 different companies and obtains 3 different prices for the same quality milk with the lowest price received for surplus milk;
- price is a function of the risk imposed on the dairy farmer.

**Mike Norton, Dairy Industry Working Group** – submitted:

- that the experience with the meat marketing co-operative has shown that it is important to extract the best price from the selected, targeted markets;
- a survey of dairy farmers indicates that the current price received for milk is unsustainable and in the next 12 months there will be a further 80 exits from the industry.

**John Scolaro, Harvey Fresh** – submitted:

- that the plight of farmers is recognised and there is a need to increase their profitability;
- however, were the collective bargaining group to have control of 70% of the milk supply it would create a major risk without input from processors;
- attributes of the milk designate the different prices received and processors decide the uses for the milk – drinking milk or dairy product;
- currently, there is not a lot of margin for the processors and it is doubtful the retailers will take a drop in margin.

**Tony Pratico, WAFF** – submitted:

- competition is lacking because the processors act as mini-monopolists with 2 processors controlling 70% of the market;
- processors have the ability to reduce intake of milk from dairy farmers but increase their intake by trading with their competitors;
- Challenge takes milk and on-sells it at a higher price than it pays to its dairy farmers, which is not in the spirit of a co-operative which should be working in the best interests of its members.

## *ADF authorisation*

### **Mr Pratico** submitted that:

- the South Australian model only succeeded because they had an alternative (Warrnambool Cheese & Butter) but the ADF authorisation does not work in WA;
- changes are required to the ADF authorisation to allow cross-processor collective negotiation and to account for the significant differences in WA compared to Victoria.

### **Jenni Mattila** – submitted:

- we can negotiate on a processor by processor basis but not across processors; if there was a collective bargaining group across WA there would be an issue with the ACCC;
- the proposed arrangements are voluntary – no compulsion to participate; negotiate farmer by farmer; terms and conditions not fixed;
- under ADF dairy farmers are locked into a single processor resulting in a monopoly situation; the ADF authorisation makes the lack of competition in WA worse – creates more problems.

### **Michael Partridge** – submitted that:

- as the former chair of the National Foods collective bargaining group he believes the process does not work in WA as it does in the eastern states because they have an alternative;
- suppliers to National Foods in WA negotiated in good faith and National Foods cut their contracts by 40% without any notice or warning;
- unable to identify how Dairy WA proposal will work when ADF arrangements did not work; but dairy farmers will be able to negotiate across processors;
- Challenge and Dairy WA must work together; Challenge cannot drive the price up – Dairy WA has to do that.

### **Paul Pafumi, National Foods Milk Ltd** – submitted that:

- the situation regarding the National Foods collective bargaining group was more complex and the reduction in contract supply was not 40% - it was just over 27%.

## *Challenge Dairy Co-operative Ltd*

### **Larry Brennen** – submitted that:

- there are a number of mistaken assumptions regarding Challenge;
- Challenge takes in milk and places products in value-added areas;
- Challenge has a role in balancing and facilitating milk supply.

**Tony Pratico** in response to a question by Commissioner King regarding the interaction between Challenge and the proposed milk negotiating agency, submitted that:

- initially the Dairy Industry Working Group consistently worked with Challenge to develop a model and there was a Challenge director on the Working Group;
- no concerns were ever expressed by the Challenge member when Delivery Rights Units (DRUs) were discussed.

**Nola Marino** – submitted that:

- Dairy WA was not aware that the relationship with Challenge was an issue until the draft determination was issued;
- if there are concerns and these are put to us, we are in a position to answer them.

**Commissioner King** expressed the view that the issue had been raised but in any event asked that Dairy WA take it as a request that the issues regarding Challenge be addressed.

**Peter Giddy** – submitted that:

- a number of years ago, Challenge paid the highest average price and now is paying the lowest average price because its price is determined by the world commodity price;
- CDC is in its infancy and started with old assets and was under capitalised; CDC now has accessed new capital, has a shareholder on the Board and has a strategy moving forward;
- Dairy WA claims it will access value-added markets. However, Peters & Brownes has already accessed and targeted value-added markets; Harvey Fresh is a growing successful exporter and CDC has developed international niche markets;
- the proposed arrangements will stifle investment in the WA industry.

**Mike Norton** – submitted that:

- unless something happens there will no longer be 4 processors in WA; the price of land in the SW has doubled; there are serious environmental issues; many dairy farmers won't join CDC but they have their small loyal band of suppliers; a reduction and rationalisation of the asset base and processors' infrastructure is required; the state is falling behind in its capital base.

**Bernie Pummell** – submitted:

- Peters & Brownes has had discussions with the other processors regarding the requirement to increase efficiencies in the industry in WA; from an operational perspective the working relationships are very good and another vehicle is not required.



**Jacqui Biddulph, Dairy farmer** – submitted that:

- the message from national meetings (Australian Dairy Council and Dairy Australia) she attended recently is that processors and dairy farmers must work co-operatively in order to capture the value in the supply chain and deliver it to the farm gate;
- other important issues include innovation in production and the take-up of new technologies; to do this an environment of trust between the two sectors has to be built up and then both sectors can work together to capture the benefits.

**Michael Partridge** – submitted:

- price needs to increase and returns to the dairy farmer have to increase;
- the retail price has nothing to do with the cost as the retail price goes back to the shareholder.

#### *Survey of dairy farmers*

**Nola Marino** – submitted:

- 2 surveys of dairy farmers have been conducted and the data has been analysed by a consultant economist and the prediction is that the WA dairy industry may consist of 120 producers, who will not be able to take up the herds of those farmers exiting the industry, resulting in a drop in volumes so that only 2 processors will remain;
- the survey questions and the economist's analysis will be made available to the ACCC.

**Robert Poole** – submitted:

- that the questions in the survey were weighted for negative answers.

**Jenni Mattila** – submitted:

- 2 surveys were conducted (June and November) to provide a picture of the industry at the present and how it has been progressing over the immediate past and the data is consistent.

**John Giumelli** – submitted:

- the Dairy Farm Traineeship has been cancelled as the industry is unable to attract young people and the industry does not have the capacity to pay wages;
- profit margins decrease as the business grows.

#### *Future of the WA dairy industry*

**Commissioner King** invited processors to comment on the future of the industry as they perceive it.

**Larry Brennen** – submitted:

- Dairy Australia data reveals that 410m litres were produced in WA in 2003/04 and this dropped to 390m litres in the 2004/05 year – which is insignificant despite the exits from the industry;
- Challenge's intake in 2003/04 year was 95 million; in 2004/05 it was 98.7 million and as at the end of this December we are predicting 4.9% increase on production reflecting the productivity increase in the farm sector.

**Bernie Pummell** – submitted :

- strategies for growth include planned capital investment in the Balcatta and Brunswick plants; acknowledging that the industry has been through difficult times; a key factor in the industry is the bargaining strength of the retailers; however, Fonterra is positive about the future of the industry.

**Kevin Sorgiovanni** – expressed a personal opinion regarding the \$0.11 levy on milk and acknowledged it was not a relevant issue in the current forum.

**Paul Pafumi, National Foods** – submitted that:

- it is important to acknowledge that there are suppliers leaving the industry for other reasons besides price and that exits from the industry are occurring in other states – not just in WA.

**Tony Pratico** – submitted that:

- regarding the discussion regarding rationalisation, will this have the ability to return gains to producers?

**Kevin Sorgiovanni** – submitted that:

- Harvey Fresh pays the higher price and bears the cost of freight in its processing costs while dairy farmers supplying other processors bear their own freight costs.

**Peter Giddy** – submitted that:

- Challenge has no retained earnings as all goes back to the farm base; strategies for moving forward are further capital investment based on its predictions for the future of the industry.

**Larry Brennen** – submitted that:

- the inability of dairy farmers to transfer to a processor of choice is not as restrictive as has been portrayed and there is evidence of suppliers transferring between processors.

**Graham Manning** – submitted that:

- he wanted to transfer to a processor who was offering a higher price for his milk, from a processor with whom he had a 12 month contract. The original

processor held him to the original contract and another 3 months. That wait cost him a lot of money.

### **Closing comments**

#### **Mike Norton – submitted:**

- farmers have to be careful with the decision to move from one processor to another; right price signals can turn the industry around but the systems in place are restricting those signals;
- WA is currently losing its gene pool to overseas markets with a very strong trade in heifers to Saudi Arabia; Philippines; Mexico and China.

#### **Laurie Cransberg – submitted:**

- Challenge's price is moving and there is an increased focus on developing value-added products to be marketed in niche markets.

#### **Tony Pratico – submitted:**

- the QA system in WA, currently managed by the State Health Department, is free at present and it is important it stays that way; it is possible that a QA system could be managed by the milk negotiating agency.

#### **Nola Marino submitted:**

- a letter from Elders Ltd confirming there has been 15 exits from the industry since August;
- quoted from the economist's report to the effect that the milk negotiating agency would introduce more competition

### **Closing**

- Commissioner King, advised that following receipt of all written submissions the ACCC would be likely to issue a decision.