

# NATIONAL FOODS



21 December 2005

Scott Gregson  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission

**By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)**

Dear Mr Gregson

**Applications for Authorisation A90961 and A90962 by Dairy WA – further submissions by National Foods Milk Limited (“National Foods”)**

I refer to your letter dated 9 December 2005 enclosing minutes of the pre-determination conference and a copy of Dairy WA’s opening statement at the conference.

The purpose of this submission is to re-iterate National Foods’ previous submissions in light of the withdrawal by Dairy WA of its application for authorisation of collective boycott provisions (A90961), and to respond to the comments made in Dairy WA’s opening statement.

**1 Withdrawal of application for authorisation of collective boycott provisions**

National Foods considers that the withdrawal of the application in respect of the collective boycott provisions does not remove the potential for public detriment. This potential attaches to the proposed collective bargaining conduct, and consequently will remain, even in the absence of the ability to engage in a collective boycott.

In particular, National Foods considers that the potential for the following detrimental impacts remain:

- (a) a decrease in, or absence of, competition between dairy farmers in relation to price, leading to increased prices for raw milk sold to processors and retailers. Such increased prices will either be passed

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onto consumers, or in the event that processors cannot pass the price rises onto retailers, the processors' viability may be impacted;

- (b) the potential for the adoption of industry-wide contracts, which removes the incentive for innovation or efficiency in the production and supply of raw milk by dairy farmers, to the detriment of dairy farmers with scale or location advantages;
- (c) entrenched barriers to entry through the development of long-term contracts between dairy farmers and processors; and
- (d) possibility of disclosure of confidential information of processors and retailers.

In addition, National Foods remains concerned about the lack of detail in the Dairy WA application in relation to how it would secure supply of adequate volumes of raw milk to processors throughout the year, and also how it would manage milk-balancing issues in the market.

## **2 Response to Dairy WA's opening statement ("Opening Statement")**

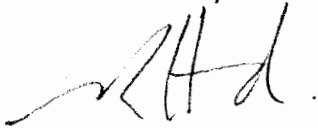
National Foods notes that many of the points made in the Opening Statement were largely unsubstantiated. In particular, National Foods notes the following:

- the Opening Statement asserts that there is no significant competition for dairy farmers' milk. In this respect, we note that National Foods has recently lost suppliers to both Harvey Fresh and Challenge Dairy;
- the Opening Statement states that "PB&NF do not want to increase the price paid to existing or new suppliers on a permanent basis". National Foods cannot comment in respect of Peters & Brownes, but we note that last year National Foods did increase its contracted volumes from farmers, resulting in an overall increase in the amounts paid to farmers; and
- National Foods in particular rejects the assertion that it and Peters & Brownes engage in any "parallel pricing" conduct, or that National Foods is in the position of a monopsony purchaser. In this regard, we draw the Commission's attention to National Foods' previous submission (dated 5 May 2005) paragraphs 6.5(6) to 6.5(10). As stated in our previous submission, National Foods has little power to influence the price of milk, as this is determined by a combination of world market prices and local market forces.

Finally, we note that the Opening Statement also commented on the effectiveness of the existing ADF authorisation. National Foods does not agree with Dairy WA's assertions in this respect, but we note that the Commission has now released its draft determination on the ADF's application, and we are in the process of reviewing this and will make further submissions as appropriate.

In summary, National Foods considers that the amended application and further information presented at the pre-determination conference do not alter the underlying analysis that Dairy WA's application for authorisation has the potential to cause significant public detriment, with minimal public benefit. Accordingly, National Foods supports the ACCC's Draft Determination.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A.H.', written in a cursive style.

**Astrid Heward**  
*Senior Legal Counsel*