



Our Ref:

C2005/496

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20 February 2006

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Dear

Dairy Western Australia's application for authorisation - A90962 - determination

The Australian Competition and Consumer Commission (the ACCC) has today issued a determination in respect of the application for authorisation lodged by Dairy Western Australia Ltd (Dairy WA) on 16 March 2005.

Dairy WA sought authorisation to establish a milk negotiating agency to collectively negotiate on behalf of dairy farmers who appointed it to bargain with processors and retailers for the supply of raw milk. Dairy WA originally applied for authorisation to collectively boycott processors in certain circumstances. On 30 November 2005, Dairy WA withdrew the application for authorisation of boycott provisions.

A copy of the determination is enclosed for your information. The determination is also available on the ACCC's website at <www.accc.gov.au>.

Summary of ACCC considerations

In making this decision, the ACCC considered the application and submissions from Dairy WA and interested parties and concluded that the potential public benefits likely to arise from the establishment of the proposed agency would be unlikely to outweigh the potential anti-competitive effects likely to be generated by the arrangements.

In particular, the ACCC was concerned that a number of features of the proposed milk negotiating agency have the potential to have a significant anti-competitive effect. The ACCC was particularly concerned over the potential for:



- the proposed milk negotiating agency to introduce industry-wide agreements and significantly depress competition between dairy farmers on matters such as price;
- the proposed arrangements to unduly restrict the ability of dairy farmers to deal with processors and limit their input into their milk supply contracts with the processors;
- the proposed milk negotiating agency to have a significant detrimental impact on Western Australian dairy processors and in particular the current milk balancing arrangements in the state.

The ACCC considers that the public benefits likely to arise from the proposed arrangements were likely to be minimal.

In its assessment of Dairy WA's application, the ACCC was mindful that Western Australian dairy farmers can continue to collectively bargain under the terms of the interim authorisation granted to Australian Dairy Farmers Ltd on 18 May 2005 pending the release of the ACCC's final determination in relation to ADF's application for authorisation of substitute authorisation A90966. As you may be aware, the ACCC in its recent draft determination has proposed to authorise the ADF collective bargaining arrangements for a further five years.

Application for review

In accordance with section 101 of the *Trade Practices Act 1974*, a person dissatisfied with this determination may apply to the Australian Competition Tribunal for a review of the determination. An application for review must be made within 21 days of the date of this determination - that is, on or before 13 March 2006. The Tribunal is located in the Office of the Registrar of the Federal Court in each state.

If no application to review is lodged by this date, the ACCC's determination will come into force on 14 March 2006.

This letter has been placed on the ACCC's public register. If you have any queries or wish to discuss any aspect of this matter, please contact Siobhán O'Gara on 08 9325 0608.

Yours sincerely

Scott Gregson General Manager Adjudication Branch

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111.398	Mr	Rohan	Jeffs	Woolworths Limited	H	H	1
2	Ms	Mimi	Kind	Coles Myer Ltd			The second
5	Ms	Sally	Standen	Department of Agriculture		-	- Promote
7	Mr	Jim	Hallion	Department of Primary Industries			1
8	Mr	Kim	Evans	Department of Primary Industries		Ħ	1
9	Mr	Peter	Harris	Department of Primary Industries	H		- Second
10	Mr	Jim	Varghese	Department of Primary Industries and Fisheries			-
11	Dr	Mike	Ginnivan	Dairy Australia			-
13	Mr	Wes	Judd	Queensland Dairyfarmers Organisation		-	Section of the Party of the Par
ara amma	Mr ·	Greg	Bradfield	Tasmanian Farmers & Graziers Association			
	Ms	Nola	Marino	Dairy WA		Commence	-
17	Mr	lan	Longson	Department of Agriculture	-		
18	Mr	Andrew	Reitzer	Metcash Trading Limited		***************************************	CONTRACTOR OF THE PARTY OF THE
19	Mr	David	Matthews	Fonterra Co-operative Group			Townson, and
20				San Miguel Corporation Ltd			
21	Mr	Kevin	Sorgiovanni	Harvey Fresh (1994) Ltd			-
22	Mr	Larry	Brennen	Challenge Dairy Co-operative Ltd			The same of the same of
24				Murray Goulburn Co-operative			-
27	Mr	David	Feldman	Department of Agriculture		***************************************	The state of the s
28	Mr	Peter	Giddy	Challenge Australian Dairy Pty Ltd		diponental resident	
29	Mr	Paul	Fitzpatrick	Clayton Utz	П		7
30	Mr	Dave	Poddar	Mallesons Stephen Jaques	П		-
31	Mr	Mike	Norton	Dairy Industry Working Group	***************************************		-
32	Mr	Joe	Nasuti	Manassen Foods Australia		Ì	3
34	Mr	John	Cummings	Independent Grocers Association			1
36	Mr	Bruce	Donnison	Bonlac Foods Ltd		-	*
37	Mr	lan	Zandstra	Dairy Farmers Milk Co-operative Ltd			-
39	Mr	Murray	Richardson	Norco Co-operative Limited			Tomorous and the
40	Mr	Ben	Fargher	National Farmers Federation		***************************************	The second
	Ms	Brianna	Casey	Queensland Farmers Federation		***************************************	Sandanastar.
42	Mr	Ray	Johnson	NSW Farmers Association			-
43	Mr	Peter	Kell	Australian Consumers' Association	П	-	· bonney
44	Mr	Alan	Burgess	Australian Dairy Industry Council	M	Ì	-
45				Australian Milk Producers Association		-	-
47	Ms	Astrid	Heward	National Foods Limited		***************************************	***************************************

	Dairy									
ID	Title	First Name	Last Name	Company Name						
50	Mr	D. J.	Lord	Parmalat Australia						
51	Mr	Richard	Lewis	Deacons						
52	Mr	David	Windsor	Department of Agriculture						
53	Mr	Tony	Pratico	WA Farmers' Federation - Dairy Section						
54	Mr	Danny	Pagoda	WA Farmers' Federation - Livestock Section						
56	Mrs	Jacqui	Biddulph							
57	Mr	John	Giumelli							
58	Mr	John	Cutbush							
59	Mr	Graham	Manning							
60	Mr	Eric	Biddulph							
61	Mr	Bernie	Pummell	Fonterra Brands Australia (P&B) Pty Ltd						