



# Australian Dairy Farmers

FILE No:
DOC:
MARS/PRISM:

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13<sup>th</sup> April, 2006

Ms Susan Philp  
General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
P.O. Box 1199  
DICKSON ACT 2602

Dear Ms Philp

Thank you for the opportunity to comment on the submissions received in relation to the ADF authorization draft determination.

As a general observation, many of the comments are related to the concerns that companies expressed to the ACCC regarding the Dairy WA Authorisation request that sought to have collective boycott as a provision of an their authorization. The WA authorization request has not succeeded, however, it appears to have an adverse impact on the perceptions for the ADF authorization determination.

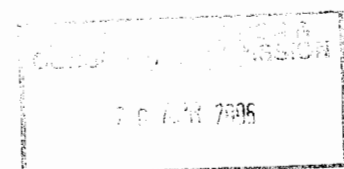
In this regard, the ADF authorization is not like the proposed Dairy WA proposal. The proposed ADF authorisation is very similar to that which has been operating for the past 4 years without reason for the expressed concerns regarding this new authorization for the ADF.

## **National Foods Comments and Proposed Response**

National Foods have made several suggestions for changes to draft conditions. For draft condition 1 they want to exclude any national or state-wide dairy industry or farm support body, association or group from representing a CBG, in addition to the current exclusion of ADF or a third party representing another CBG.

The ADF supports its exclusion and the exclusion of a third party which represents another group. However, the ADF strongly oppose the exclusion of other groups or associations. Other groups and associations can, and in some cases, have provided valuable education and training programmes for CBG negotiation groups in the past and they have the capacity to provide generic information that is of value to a CBG. These groups have recognised they cannot participate in negotiations between a CBG and a company and have demonstrated over the past years of the current authorisation that they have not breached the conditions of the authorisation. There is no evidence to suggest otherwise, and, therefore, the ADF strongly encourages the ACCC to not accept this proposal from National Foods.

The ACCC has tried to simplify the current condition 2 which talks about a shared community of interest for members of a CBG such as an all year round or seasonal producer of milk. The ADF does not have any concern with the ACCC proposal for change. However National Foods believe the current condition 2 should be reinstated in its entirety, and on this proviso, they would support the removal of condition 3.



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The current condition 2 has not been a barrier for the ADF or CGB's to meet. Therefore, ADF would be happy to work with the ACCC and National Foods to find an alternative set of words that will address the concerns expressed, even though we believe those concerns are not supported by the previous operations of the ADF authorisation. The ADF suggests that the ACCC could consider the notion of 'shared community of interest' as described in current condition 2 be incorporated into their revised condition 2.

National Foods want an additional clause added to condition 7 which states: 'The ADF must notify dairy processors of the establishment of a collective bargaining group, and of any change in the composition of that group or the party or parties representing that group, within 7 days after the ADF is notified of such establishment or change'.

The ADF should strongly oppose this proposal. The ADF does not know (and has no reason to know) which dairy company(ies) a CBG wishes to negotiate with or has intentions to negotiate with. To comply with this proposal from National Foods would require the ADF to notify every dairy company that a group has been formed and the membership of the group, even though the group may have no intention of seeking to negotiate with more than one company. This proposal is administratively unworkable.

Similarly, the ADF does not, and should not, interfere in a CBG negotiating committee election process or changes to the composition of the negotiation group. These are issues for the group to decide amongst themselves. The ADF, therefore, strongly opposes this proposal from National Foods.

### **Coles Myer**

Coles Myer concern relates to the removal of condition 3 which precludes all dairy farmers in a region being in a CBG. While the ACCC recognize (as does ADF) that this clause has had virtually no effect (other than to add a layer of complexity), Coles Myer believe it has prevented anti-competitive region wide CBG's forming. It would appear from their correspondence that Coles Myer argument with regard to this proposal relates almost entirely to their concerns regarding the Dairy WA proposed authorization to have a state-wide CBG, and that this could be replicated by the ADF authorization if condition 3 is removed.

As previously stated, the ADF is not concerned with current conditions 2 and 3 nor the proposed new condition 2, and would suggest that, as described above for National Foods, that the ADF and the ACCC work together to develop a set of words that would deliver the intent of the ACCC and satisfy the concerns of National Foods and Coles Myer.

### **Dairy Farmers Milk Cooperative (DFMC)**

It appears DFMC are putting an argument that dairy farmers should not be able to be members of more than one CBG as it undermines their collective bargaining strength as a cooperative. The ADF strongly opposes this suggestion. Dairyfarmers may have more than one dairy farm and, by virtue of location be in one CBG for one farm and in another CBG for a separately located farm. This is not about undermining CBG's, it is about providing choice to a farmer about how they wish to operate their business with (or without) the involvement of other dairy farming businesses in their location(s).

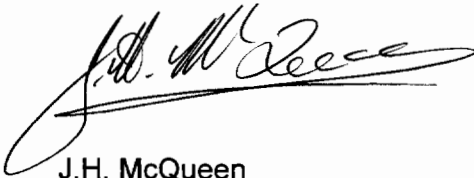
DFMC appear to have concerns about adherence to the current condition that a CBG must have a reasonable expectation of being able to supply a dairy company for them to be in negotiation with that company. The ADF strongly disagrees with this proposition. All CBG's that have been formed under the ADF authorisation have been in locations where the members of the group can and have supplied milk to the dairy company they have negotiated supply terms and conditions.

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DFMC use SA as an example and assert that the outcomes of a CBG negotiation in that State added transaction costs and have risked future processor margins not being able to recoup costs, and hence threaten the local processor. The ADF must strongly oppose this proposition. The CBG negotiated with a dairy company that brought a new competitor into the market for milk in a region of South Australia. The ADF has argued from the very first application for an authorisation that rather than being anti-competitive, the authorisation for CBG's provided an opportunity to create a pro-competitive environment. The outcomes of CBG negotiations in South Australia in 2005 was a demonstration of this element of the authorisation bringing a better competitive environment to the market place for milk, not a detrimental market environment.

The ADF would be pleased to work with you to find solutions to the issues raised by the three submissions to ensure a speedy resolution to the authorisation application.

Yours Sincerely

A handwritten signature in black ink, appearing to read 'J.H. McQueen', with a long, sweeping underline that extends to the left and then curves back under the name.

J.H. McQueen  
Chief Executive Officer