



Australian
Competition &
Consumer
Commission

Our Ref: New file
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6 June 2007

This letter with enclosures
was posted to the
attached list of interested
parties SC 6/6/07

Dear

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Applications for authorisation A91051, A91052 and A91053 lodged by National Foods Milk Limited and Australian Cooperative Foods Limited- interested party consultation

The Australian Competition and Consumer Commission (the ACCC) is currently conducting an interested party consultation process in relation to three applications for authorisation made by Foods Milk Limited (National Foods) and Australian Cooperative Foods Limited (Dairy Farmers).

The purpose of this letter is to invite you, as a potentially interested party, to comment on the issues outlined in this letter and in the applications received from National Foods and Dairy Farmers.

Background

The ACCC is the independent Australian Government agency responsible for administering the *Trade Practices Act 1974* (the Act). A key objective of the Act is to prevent anti-competitive arrangements or conduct, thereby encouraging competition and efficiency in business resulting in a greater choice for consumers in price, quality and service.

The Act, however, allows the ACCC to grant immunity from legal action for anti-competitive conduct in certain circumstances. One way businesses may obtain immunity is to apply for what is known as an 'authorisation' from the ACCC. Broadly, the ACCC may 'authorise' businesses to engage in anti-competitive arrangements or conduct where it is satisfied that the public benefit from the arrangements or conduct outweighs any public detriment.

In assessing the public benefits and detriments of an authorisation application, the ACCC undertakes a public consultation process seeking comments on the application from interested parties. Following an initial consultation process, the ACCC will issue a draft decision for comment. The ACCC will then reconsider the application in light of any further submissions, and release its final decision.



Applications for authorisation by National Foods and Dairy Farmers

On 4 June 2007, the ACCC received three applications for authorisation lodged by National Foods and Dairy Farmers concerning a joint tender process for milk haulage services in South Australia.

A copy of the applications for authorisation and supporting submission is enclosed for your information. These documents will also be available on the ACCC's website www.accc.gov.au (by the following the Public registers and Authorisations links).

To assist the ACCC in its consideration of the applications for authorisation lodged by National Foods and Dairy Farmers it would be helpful to obtain your comments on the likely public benefits and the likely effect on competition, or any other public detriment, from the proposed arrangements.

If you intend to provide a submission in relation to the applications, I would be grateful if you could do so by close of business **1 July 2007**.

Interim authorisation

National Foods and Dairy Farmers have requested interim authorisation to permit them to commence joint negotiation with the successful tenderer about the proposed milk haulage arrangements.

Interim authorisation would allow the joint negotiation with the successful tenderer to commence as if it had full authorisation while the substantive applications are being considered by the ACCC.

The ACCC endeavours to deal with requests for interim authorisation quickly. In making an assessment as to whether it is appropriate to grant interim authorisation, the ACCC is not required to undertake a full assessment of the benefit and detriment likely to arise as a result of the proposed conduct.

The ACCC decides whether to grant interim authorisation on a case by case basis. Should an applicant request interim authorisation, the ACCC will usually consider a range of factors, including harm to the applicant and other parties if interim is or is not granted, possible benefit and detriment to the public, the urgency of the matter and whether the market would be able to return to substantially its pre-interim state if the ACCC should later deny authorisation.

The ACCC is interested in your views on the request for interim authorisation. Should you intend to make comment on the application for interim authorisation, I would appreciate if you could do so by close of business **21 June 2007**.

How to provide a submission

From 1 January 2007, a six-month time limit now applies to the ACCC's consideration of applications for non-merger authorisations. The time limit imposes a discipline on all those involved in the authorisation process. Consultation with interested parties will take place according to an indicative timetable and the ACCC may be limited in its ability to take into

account information provided outside those timeframes. An indicative timetable for the consideration of this matter is attached.

The ACCC asks for submissions to be in writing so they can be made publicly available. They are placed on a public register for this purpose.

Persons lodging a submission with the ACCC may request that information included in the submission be excluded from the public register in certain circumstances. Submissions which are excluded from the public register may still be taken into account by the ACCC when conducting its assessment of an authorisation application. Guidelines for seeking exclusion from the public register are attached for your information.

If you wish to lodge a submission, please address your submission to:

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
DICKSON ACT 2602

Submissions can also be lodged by email to adjudication@accc.gov.au or by facsimile on 02 6243 1211. If relevant, please provide a preferred email address for any future correspondence from the ACCC.

Please inform us if you do not wish to make a submission at this time, but would like to be informed of the progress of these applications at the draft and final determination stages. You can also forward this letter to any other party who may wish to make a submission to the ACCC regarding this application. Please also inform us if you wish to be removed from the ACCC's list of interested parties for this matter.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Cameron Martin on (02) 6243 1107 or Sharon Clancy on (02) 6243 1217.

Yours sincerely

Scott Gregson
General Manager
Adjudication Branch

National Foods / Dairy Farmers applications for authorisation A91051, A91052 and A91053

Indicative Timetable

4 June 2007	Lodgement of application and supporting submission.
6 June 2007	Public consultation process begins.
21 June 2007	Closing date for submissions on interim authorisation.
1 July 2007	Closing date for submissions from interested parties on substantive application for authorisation.
Early July 2007	ACCC decision regarding interim authorisation.
July 2007	Applicant responds to issues raised in the public consultation process.
July / August 2007	Draft determination.
August / September 2007	Public consultation on draft determination including any conference if called.
September / October 2007	Final determination.

**Applications for authorisation A91051, A91052 and A91053
lodged by National Foods and Dairy Farmers**

List of interested parties

Australian Dairy Farmers Limited
B-d Farms Paris Creek Pty Ltd
Booth Transport Pty Ltd
Dairy Authority of South Australia
Dairy Industry Association of Australia
De Cicco Industries Pty Ltd
Fonterra Co-operative Group Limited
STD Illman Pty Ltd
Kalari Pty Ltd
McColl's Transport Pty Ltd (Pure Logistics)
Murry Goulburn Cooperative Co Ltd
National Farmers' Federation
Primary Industries and Resources SA
SA Dairyfarmers Association
SA Milk Haulage
South Australian Farmers' Federation
SRH Haulage Pty Ltd
United Dairy Power
Warrnambool Cheese and Butter Factory Co Ltd