

Martin, Cameron

From: Martin, Cameron
Sent: Friday, 8 June 2007 10:54 AM
To: 'andrew.riordan@deacons.com.au'
Cc: Channing, Darrell; Gregson, Scott
Subject: National Foods and Dairy Farmers applications for authorisations A91051, A91052 and A91053 - interested party consultation [SEC=UNCLASSIFIED]

Categories: SEC=UNCLASSIFIED
Attachments: Authorisation Letter.pdf
ACCC Classification: SEC=UNCLASSIFIED

Our Ref: Trackit 28520
Contact Officer: Cameron Martin/Sharon Clancy
Contact Phone: (02) 6243 1107

8 June 2007

Mr Andrew Riordan
Deacons
GPO Box 4592
MELBOURNE VIC 3001

Sent by email

Dear Mr Riordan

National Foods and Dairy Farmers applications for authorisations A91051, A91052 and A91053 - interested party consultation

I refer to the above mentioned applications for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 4 June 2007.

Please find attached, for your information, a copy of the letter that the ACCC sent to potentially interested parties as part of its public consultation process. All publicly available submissions will be posted on the ACCC internet site at www.accc.gov.au. Alternatively, at the end of the consultation period the ACCC can arrange for you to receive a copy of all publicly available submissions received in relation to the application.



Authorisation
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Scope of any authorisation

Paragraph 7.2 of the supporting submission indicates that National Foods and Dairy Farmers (the applicants) have jointly undertaken a tender process. This appears to indicate that part of the process for which immunity has been sought has taken place. I note that, pursuant to subsection 88(12) of the Act, the ACCC does not have the power to grant authorisation retrospectively to agreements or contracts already made.

Interim authorisation

The applicants have requested that the ACCC grant interim authorisation to enable them to

commence joint negotiation with the successful tenderer about the proposed milk haulage arrangements.

As you may be aware the ACCC does not generally grant interim authorisation in circumstances where it is concerned that the market may be unable to return to its pre-interim state if the authorisation is later denied. Additionally, the ACCC does not have the power to grant interim authorisation retrospectively to agreements or contracts already made.

The applicants have submitted that, if interim authorisation is not granted, they will lose the opportunity to collectively negotiate. However, there is no elaboration of this point, such that it is difficult to determine why interim authorisation is urgently required.

So that the ACCC may assess the applicants' request for interim authorisation it would be appreciated if you could provide further information clarifying the request no later than **close of business, Monday, 18 June 2007**. In particular, I would ask that you provide further information on the applicants' claim of urgency.

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.

Yours sincerely

Cameron Martin obo

Scott Gregson
General Manager
Adjudication Branch