

Our reference
ECS/PREM5520-9016605

Waterfront Place
1 Eagle Street Brisbane QLD 4000
GPO Box 9925 QLD 4001
Tel (07) 3228 9333
Fax (07) 3228 9444
www.corrs.com.au

**CORRS
CHAMBERS
WESTGARTH**
lawyers

8 February 2008

By express post

FILE No:
DOC:
MARS/PRISM

Sydney
Melbourne
Brisbane
Perth
Gold Coast

Mr David Hatfield
Acting General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Partner
Eddie Scuderi (07) 3228 9319
Email: eddie.scuderi@corrs.com.au

Dear Sir

Premium Milk Ltd authorisation A90972—application for minor variation

We act for Premium Milk Ltd (**Premium**).

Background

On 12 December 2001, the ACCC authorised Premium to collectively bargain on behalf of milk producers in relation to farm-gate milk prices for supply to Pauls Ltd (authorisation A90745; ACCC file C2000/1335). The authorisation was granted until 1 July 2005.

On 13 May 2005, Premium applied for revocation and substitution of the previous authorisation (authorisation A90972; ACCC file C2005/798). On 9 November 2005 the ACCC granted that application. The authorisation came into force on 1 December 2005. (The ACCC granted interim authorisation for the period from 1 July 2005 to 1 December 2005.)

The conduct authorised is described in paragraph 11.4 of authorisation A90972:

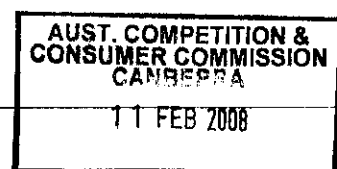
The ACCC grants substitute authorisation A90972 pursuant to section 88 of the [Trade Practices Act] and the Competition Code for Premium and its current and future members to engage in collective bargaining arrangements in accordance with:

- *the Consolidated constitution of Premium Milk Ltd; and*
- *the Milk Supply Agreement.*

An earlier reference to the consolidated constitution in paragraph 4.4 is said to be "Adopted by Premium's members on 22 June 2001".

Application for minor variation

In the constitution that was in effect when the ACCC previously considered Premium's applications, only milk producers in Queensland could be members of Premium. The consequence of this was that Premium could only collectively bargain for Queensland milk



8 February 2008

Australian Competition and Consumer Commission

**Premium Milk Ltd authorisation A90972—application for
minor variation**

CORRS
CHAMBERS
WESTGARTH
lawyers

producers. However, it has become convenient for Premium to collectively bargain on behalf of milk producers in northern New South Wales, who also supply milk to Parmalat Australia Ltd.

Premium therefore amended its constitution (in accordance with the procedures in the constitution) to permit members from outside Queensland. The amendments were expressed to be subject to ACCC approval.

We **attach**, for the ACCC's information a copy of the relevant resolutions passed at the Premium annual general meeting on 27 November 2007.

Eight New South Wales milk producers (all no further south than a line between Grafton and Glen Innes) have indicated a willingness to be members of Premium. There are currently 172 Queensland members.

On one view, Premium's amendment of its constitution does not require a variation of the authorisation. Premium intends to continue to collectively bargain consistently with its constitution and the Milk Supply Agreement with Parmalat Australia Ltd.

However, out of an abundance of caution and to remove any doubt, Premium applies to the ACCC under section 91A(1) of the *Trade Practices Act* for a minor variation of authorisation A90972. We **attach** a completed Form FA for this variation.

Confidentiality


No part of this letter or the attachment is confidential.

Further information

Premium is happy to provide any further information the ACCC may require to consider its application, and is also prepared to discuss the variation and its effect with the ACCC. Please let us know if the ACCC would like to do so.

Yours faithfully

Corrs Chambers Westgarth



Eddie Scuderi
Partner

attachments

Relevant resolutions passed at Premium Milk 2007 AGM

Resolutions 1–5 passed at the annual general meeting on 27 November 2007 did not relate to Premium Milk Ltd's constitution.

Resolutions 6–9 were passed subject to ACCC approval.

Resolution 6: Constitution

To amend clause 1.1 of the Constitution for the definitions of Milk Producer and Zone by adding "and/or outside Queensland", so that the amended definitions shall read—

"Milk Producer" means a person who conducts a business in Queensland, and/or outside Queensland, of producing milk for sale.

"Zone" means an area of the state of Queensland, and/or outside Queensland, delineated in the Zone Map applicable from time to time.

Resolution 7: Constitution

To amend clause 4.1(a) of the Constitution by adding the words "and/or outside Queensland", so that the amended clause shall read—

to represent producers of milk in Queensland and outside Queensland, and to promote and advance their interests;

Resolution 8: Constitution

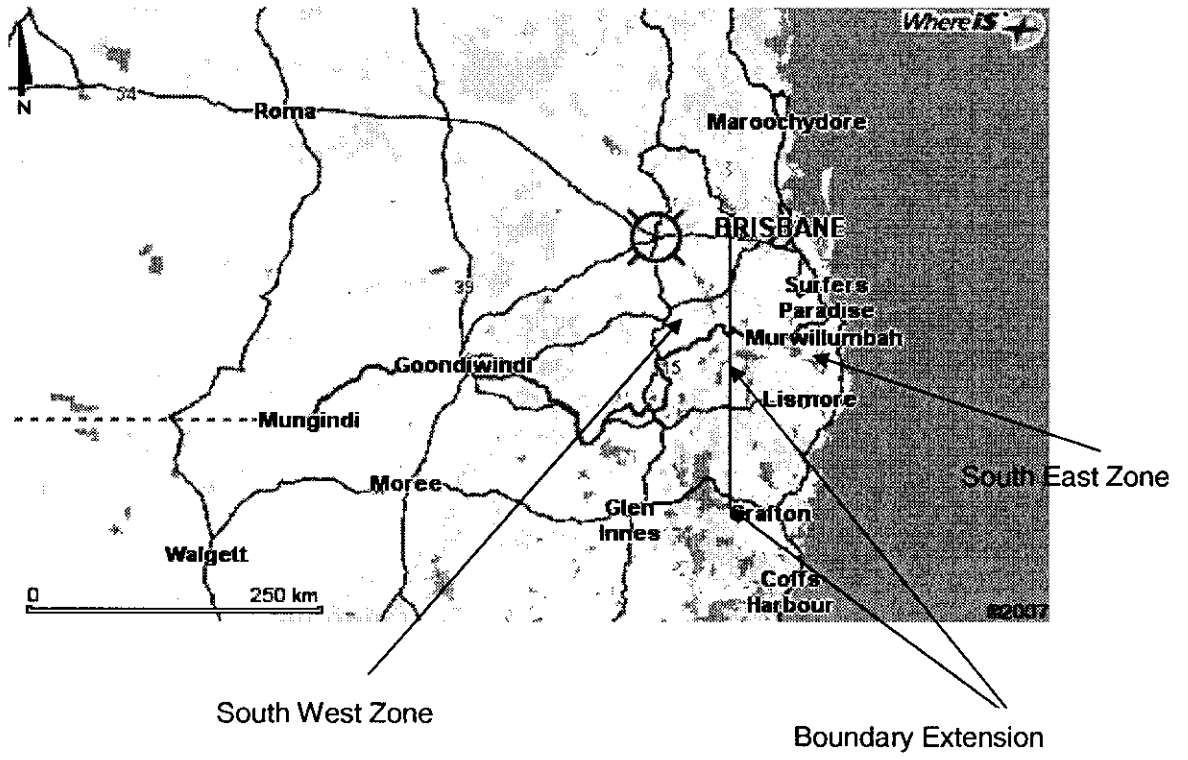
To amend clauses 6.2(a) and (b) by adding the words "and/or outside Queensland", so that the amended Clauses shall read—

- (a) *The Directors may from time to time determine the geographical areas in the South East region of the State of Queensland, and/or outside Queensland, which comprise the Zones.*
- (b) *On registration of the Company, the Members comprise the following Zones, delineated in the Zone Map:*
 - North East Zone (South East Queensland)*
 - North West Zone (South East Queensland)*
 - South East Zone (South East Queensland and outside Queensland)*
 - South West Zone (South East Queensland and outside Queensland).*

Resolution 9: Constitution

To amend the Schedule—Zone Map to provide for Resolutions 6 and 8 as follows—

Extend the boundary between the South West Zone and the South East Zone in a Southerly direction to a point of latitude between Glen Innes and Grafton.



Form FA

Commonwealth of Australia

Trade Practices Act 1974 — subsection 91A (1)

APPLICATION FOR MINOR VARIATION OF A NON-MERGER AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91A (1) of the *Trade Practices Act 1974* for the a minor variation of an authorisation.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)
Premium Milk Ltd
- (b) Description of business carried on by applicant:
(Refer to direction 3)
Negotiation of milk prices.
- (c) Address in Australia for service of documents on the applicant:
c/- Corrs Chambers Westgarth
GPO Box 9925
BRISBANE QLD 4001

2. Minor variation of authorisation

- (a) Description of the contract, arrangement or understanding, or the relevant conduct, for which authorisation was granted, including, but not limited to, the registration number assigned to that authorisation (the original authorisation):
Collective negotiation of farm-gate milk prices and milk quality standards with Parmalat Australia Limited (A90972).
- (b) Provide a description of the goods or services that relate to the authorisation for which variation is sought:
Milk.
- (c) Provide details of the variation for which authorisation is sought, including but not limited to identification of differences between the contract, arrangement or understanding, or the relevant conduct, that was originally authorised and the contract, arrangement or understanding, or the relevant conduct, for which a minor variation of authorisation is sought:
(Refer to direction 4)
Amendment of the constitution of Premium Milk Ltd in accordance with the resolutions passed by the members of Premium Milk Ltd at the annual general meeting on 27 November 2007.

- (d) Facts and evidence relied upon in support of the claim that the variation is a minor variation:

The proposed variation will not involve a material change in the effect of the authorisation because:

- the nature of the collective bargaining engaged in by Premium (*ie*, by regional milk producers with Parmalat) does not change;
- because of the nature of Premium's collective bargaining (*ie*, to supply milk to Parmalat in Brisbane), the variation is only likely to affect Parmalat suppliers in northern New South Wales;
- only eight milk producers from northern New South Wales propose to become members of Premium; there are currently 172 Queensland members;
- the voluntary nature of membership of Premium does not change;
- the duration of the authorisation does not change.

3. Parties to the contract, arrangement or understanding (whether proposed or actual), or conduct, for which variation of authorisation is sought

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding, or the relevant conduct:

Not applicable.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(*Refer to direction 5*)

Not applicable.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

4. Public benefit claims

- (a) Provide submissions regarding the effect of the minor variation upon the public benefits resulting or likely to result from the original authorisation:

The variation would expand the class of potential members of Premium (and therefore potential participants in the collective bargaining arrangements. The marginal effect of the variation would therefore be to lower the transaction costs for the new members, and for Parmalat Australia Ltd who would no longer need to negotiate individually with those producers (see paragraphs 9.15–9.20 of authorisation A90972).

The variation would also improve the bargaining position of milk producers outside Queensland (in practice, in northern New South Wales), allowing them to take advantage of Premium's collective bargaining, as oppose to individually negotiating with Parmalat (see paragraphs 9.21–9.30 of authorisation A90972).

(*See Direction 6 of this Form*)

- (b) Facts and evidence relied upon in support of these claims:
Premium relies on the facts and evidence reviewed by the ACCC in connection with authorisation A90972.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

- 1 The farm-gate supply of raw milk to dairy processors in much of eastern Australia.
- 2 The domestic retail market for drinking milk.
- 3 The domestic market for the supply and acquisition of dairy products.
- 4 The international market for the supply and acquisition of dairy products.

(See paragraphs 7.3–7.4 of authorisation A90972).

(See Direction 7 of this Form)

6. Public detriments

- (a) Provide submissions regarding the effect of the minor variation upon the detriments to the public resulting or likely to result from the original authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 2 (b) above and the prices of goods or services in other affected markets:

Premium is unaware of any public detriment associated with the variation. The minor nature of the variation means that any incremental effect caused by the variation is unlikely to add to the public detriments associated with authorisation A90972, which were “minimal” (paragraph 8.37 of authorisation A90972).

(See Direction 8 of this Form)

- (b) Facts and evidence relied upon in support of these claims:
Not applicable.

7. Further information

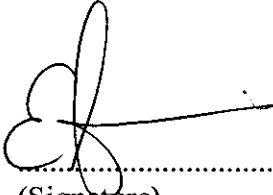
- (a) Name, postal address and telephone contact details of the person authorised by the applicant to provide additional information in relation to this application:

Mr Eddie Scuderi
Partner
Corrs Chambers Westgarth
Waterfront Place
BRISBANE QLD 4000

post: GPO Box 9925
BRISBANE QLD 4001
fax: (07) 3228 9444
email: eddie.scuderi@corrs.com.au

Dated 8 February 2008

Signed on behalf of the applicant

A handwritten signature in black ink, consisting of a large, stylized 'E' followed by a horizontal line extending to the right.

.....
(Signature)

Eddie Scuderi
Partner
Corrs Chambers Westgarth
Solicitors for the applicant

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which the authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which minor variation of authorisation is sought.

In providing these details:

- (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If minor variation of authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where minor variation of an authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of the likely effect of the minor variation upon those public benefits considered to result or to be likely to result from the original authorisation, including quantification of those effects where possible.
 7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for authorisation.
 8. Provide details of the likely effect of the minor variation upon those detriments to the public, including those resulting from the lessening of competition, which may result from the original authorisation. Provide quantification of these effects where possible.