

Mr David Hatfield and Ms Monica Bourke
Adjudication Branch
ACCC
David.hatfield@accc.gov.au
Monica.bourke@accc.gov.au

9 September 2008
Matter 81321152
By email

Dear David and Monica

DFMC and ACF amended application for authorisation and request for interim authorisation

Thank you for giving our client, National Foods, the opportunity to comment on this matter.

Background

As you are aware, the recent amendments to the DFMC and ACF authorisation application arise from agreements that have been entered into for the sale of ACF to National Foods. The ACCC has recently conducted a comprehensive review of this proposed transaction and has granted 'informal clearance' subject to agreed s 87B undertakings put forward by National Foods.

Authorisation

National Foods supports the grant of authorisation in this matter.

If ACF is acquired by National Foods, the proposed authorisation will facilitate the continuation of existing back-to-back milk supply arrangements, thereby providing greater certainty and reduced commercial disruption for dairy farmers, ACF / National Foods and the DFMC.

Interim authorisation

Prior to completion of the ACF sale process it is commercially essential that ACF and the DFMC offer their farmer members the Revised Farmer Supply Contracts. This allows the following steps to occur:

- affected dairy farmers can make an informed decision on the proposed ACF / National Foods transaction. These dairy farmers will need to understand the contract terms and conditions that are intended to apply after the acquisition occurs; and
- National Foods will obtain comfort regarding milk supply security, which is a critical element of the ACF business that it wishes to acquire.

In putting forward the Revised Farmer Supply Contracts it must be understood that the proposed contract terms and conditions (including the pricing elements) have the function of facilitating the sale process in the manner outlined above. Under the proposal the back-to-back pricing arrangements will only apply if:

- 1 National Foods acquires ACF (in accordance with the ACCC informal clearance); and

Doc 3.005176483.4

2 the ACCC grants ACF and DFMC final authorisation.

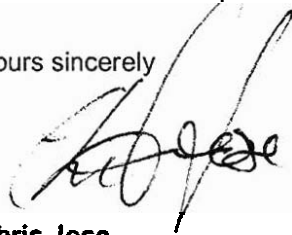
Given this conditionality and ACCC oversight of each relevant element of the proposal, National Foods believes the interim authorisation sought by ACF and the DFMC arises from an abundance of caution (ie in National Foods' view, a substantive trade practices issue does not arise from the conduct in question).

Notwithstanding this position, National Foods submits there is a compelling case for the grant of a timely interim authorisation:

- there is no detriment associated with the interim authorisation proposal. The pricing arrangements in question will only apply after the ACCC has reviewed the matter and granted final authorisation;
- the interim authorisation will have no impact if final ACCC authorisation is not granted (as the proposed pricing arrangements will not be applied);
- the proposal is solely designed to facilitate the ACF / National Foods sale process, which has already been 'cleared' by the ACCC. Affected farmers, National Foods, ACF and the DFMC will obtain information that is essential to their commercial decisions and this will result in significant benefits to all parties; and
- there are a large number of dairy farmers affected by the proposed transaction spread across a wide geographic area. The communication process in relation to the proposed transaction must commence as soon as possible in order to the satisfy the transaction conditions and deadlines set out in the applicants' supporting submissions.

Please feel free to contact us if you have any additional queries.

Yours sincerely



Chris Jose
Partner
Freehills

+613 9288 1416
+61 411 514 487
chris.jose@freehills.com



Peter McDonald
Senior Associate
Freehills

+61 3 9288 1597
+61 422 815 933
peter.mcdonald@freehills.com