

Transport Workers Union of Australia

SA/NT Branch



Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition & Consumer Commission
GPO Box 3131
Canberra
ACT 2601

FILE No:

DOC:

MARS/PRISM:

23 June 2009

Dear Dr Chadwick,

Re Application for Authorisation

We act on behalf of the Milk Vendors in South Australia and enclose the following documents for lodgement with your office:

- Form B Application for Authorisation
- Attachment to Form B (submission in support);and
- Copy of a letter from the ACCC Waiving the Application Fee

We look forward to receiving confirmation of the lodgement of these documents.

Yours Sincerely

Alex Gallacher
Branch Secretary
Transport Workers Union SA/NT Branch

AUST. COMPETITION &
CONSUMER COMMISSION
CANBERRA

25 JUN 2009

Form B

Commonwealth of Australia

Trade Practices Act 1974 — subsection 88 (1)

AGREEMENTS AFFECTING COMPETITION: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 88 (1) of the *Trade Practices Act 1974* for an authorisation under that subsection:

- to make a contact or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would have or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91146 Transport Workers Union of Australia SA/NT Branch

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

The Union is the Principal Union in the Transport Industry which also now represent South Australian Milk Vendors who are responsible for the distribution of milk and milk products to retail customers and private residents.

- (c) Address in Australia for service of documents on the applicant:

Mr A Gallacher
Branch Secretary
Transport Workers Union of Australia SA/NT Branch
PO Box 137
Welland
SA 5007

2. Contract, arrangement or understanding

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

Please see attachment

- (b) Description of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition:
(Refer to direction 4)

Please refer attachment

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Please refer attachment

- (d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The time limit of the authorisation is initially sought for a period of five years.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

1) National Foods Milk Limited

167 Cross Keys Road, Salisbury SA 5018

2) The Future Dairy Distribution Company who purchases

Dairy Farmers (Pauls Parmalat have a binding agreement to purchase Dairy Farmers)

154 Caulfield Avenue Clarence Gardens SA 5039

3) Such existing and future Milk Vendors (being members or non-members of the Union) who may elect to appoint the Union to negotiate on their behalf.

- (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)

Please refer to attached schedule

4. Public benefit claims

- (a) Arguments in support of authorisation:
(Refer to direction 6)

Please refer attachment

- (b) Facts and evidence relied upon in support of these claims:

Please refer attachment

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) 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):
(Refer to direction 7)

Please refer attachment

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

Please refer attachment

- (b) Facts and evidence relevant to these detriments:

Please refer attachment

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

No

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:
(Refer to direction 9)

Not applicable

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not applicable

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not applicable

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not Applicable

- (c) If so, by whom or on whose behalf are those other applications being made?

Not Applicable

9. Further information

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

Roger Prime

Transport Workers Union of Australia SA/NT


PO Box 137 Welland SA 5007

Tel (08) 8364 4177 Fax (08) 8364 8580 Mob 0408410517

E-Mail roger.prime@twusant.com.au

Dated.....

Signed by/on behalf of the applicant

.....

(Signature)

Alex Gallacher

(Full Name)

Branch Secretary

(Position in Organisation)

DIRECTIONS

1. In lodging this form, applicants must include all information, including supporting evidence that they wish the Commission to take into account in assessing the application for authorisation.

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. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that of any of the details have not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing.
5. Where 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 those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

**ATTACHMENT TO
APPLICATION FOR AUTHORISATION BY
THE TRANSPORT WORKERS UNION OF AUSTRALIA SA/NT BRANCH**

The Transport Workers Union of Australia SA/NT ("the Union") seeks authorisation under section 88 (1) of the Trade Practices Act 1974 (Cth):

- (a) To make a contract or arrangement or arrive at an understanding, a provision of which would have the purpose, or would have the effect, of substantially lessening competition within the meaning of Section 45 of the Act; and
- (b) To give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect of substantially lessening competition within the meaning of Section 45 of the Act

Authorisation is sought for the purpose of engaging in the following proposed conduct:

- (a) An arrangement between milk vendor members and non members (both present and future) of the Transport Workers Union of Australia SA/NT Branch for the Union to collectively bargain on their behalf with National Foods Milk Limited ("National Foods") and the future purchaser of Dairy Farmers (Pauls Parmalat) in South Australia in relation to the terms and conditions of distribution contracts between those parties, National Foods and the future purchaser of Dairy Farmers (Pauls Parmalat) in South Australia.
- (b) An arrangement between milk vendor members and non-members (both present and future) of the Transport Workers Union of Australia SA/NT branch to give effect to any contracts agreed by the Union with National Foods and the future purchaser of Dairy Farmers in South Australia.(Pauls Parmalat)
- (c) An arrangement between:
 - Milk Vendor Members and non members (both present and future) of the Transport Workers Union of Australia SA/NT Branch; and
 - National Foods Milk Limited; and
 - The future purchaser of Dairy Farmers in South Australia.(Pauls Parmalat)
- (d) Particular items which are proposed to negotiate include:
 - Milk margins paid to accredited vendors.
 - Delivery fees paid to accredited vendors.
 - Rationalisation of Distribution businesses.
 - Acceptable date codes on products.
 - Non supply of products.
 - On-site management of depots and cold chain compliance.
- (e) The Union and its milk vendor members are not seeking an authorisation for making a contract or arrangement for arriving at an understanding containing an exclusionary provision. The proposed negotiation process will be voluntary and each accredited vendor will independently need to make a decision regarding whether or not to participate in the process or to adopt any collective negotiated terms and conditions.
- (f) The likely collective bargaining process, should the authorisation be granted, is as follows,

- The Union will write to vendors (both members and non-members of the Union) to notify them of the authorisation and to advise the vendors that they may nominate the Union to negotiate contract terms and conditions on their behalf.
- Vendors may then nominate the Union to negotiate on their behalf.
- The Union will then notify the relevant processor (NFML or the future purchaser of Dairy Farmers (Pauls Parmalat)) that it has been authorised to negotiate on behalf of the relevant vendors.
- The Union will then engage in negotiations on behalf of those vendors with the relevant processor.
- The Union will then report back to the relevant vendors.
- There may be further negotiations with the relevant processor.
- Vendors will then make individual decisions as to whether or not to contract with the relevant processor.

1. INTRODUCTION

1.1. The Dairy Industry in South Australia

The dairy industry is a core industry in South Australia. Farmers, processors, distributors and retailers combine to produce and deliver to consumers such staple products as whole and modified milks, flavoured milks, cheeses and yoghurts.

An integral part of the Dairy Industry is the provision of Distribution services. All distribution services are provided by independent owner drivers contracted to the milk processing companies. Most accredited vendors operate small businesses, typically run by husband and wife, being set up as proprietary companies, a partnership or an unincorporated sole trader.

Prior to 1995 the industry was highly regulated but since January 1995 it has been progressively deregulated to open competition. This together with deregulation in other economic sectors such as retailing and service stations has impacted significantly on the dairy industry and dairy distribution.

Total deregulation in 2000 resulted in significant and ongoing restructuring (Which is still ongoing) as industry players seek to optimise returns in the economic environment. Farmers and, particularly, milk vendors have been forced to face significant adjustment costs. Milk processors and major retailers have, on the other hand, enjoyed increased profitability. These outcomes reflect the relative bargaining positions of the various industry players.

1.2 Products

Products in the industry include white whole milk and a large range of modified and specialty white milks. See appendix "A"

Other products include a wide range of flavoured milk.UHT, table spreads as well as regular and reduced fat cheeses and yoghurts. See appendix "B"

1.3 Turnover

Total milk production in South Australia in the financial year ending June 08 was 616.3 million litres per annum. Total retail milk sales during the same period were 205 million litres. The majority of the remaining product is exported overseas See appendices “C” and “D”

2. The Suppliers in the Dairy Industry

2.1 Primary Producers

Total deregulation was completed on the 1 July 2000 when the price the farmer was being paid for his milk was 31.5 cents per litre. Prior to deregulation on June 30 2000 there were 677 dairy farms in South Australia which has since fallen in 2008 to 332 farms. See appendices “E” and “F”

In recognition that Primary producers would suffer significant losses following deregulation the Federal Government introduced an 11c per litre levy on the retail price of all milk to provide adjustment funding. The levy was abolished on the 23 Feb 2009 but the full effect of cost savings was not enjoyed by consumers.

2.2 Processors

In South Australia there is only one processor National Foods Milk Ltd (“National Foods”) with Dairy Farmers being acquired by National Foods in November 2008 The Processor purchases bulk milk from the primary producer and process that milk into various products as described in 1.2. The products are then sold to accredited milk vendors who on sell to retailers and through the home delivery network.

In 2000, Pauls Parmalat, which process interstate entered the South Australian market. They have eight contracted vendors but their product distribution in this state is minimal, however they have entered into a binding sale agreement with National Foods for the purchase of Dairy Farmers fresh milk operations in South Australia.

National Foods is a multimillion dollar corporation with substantial market influence and overwhelming bargaining power against the suppliers (primary producers) and distributors (accredited vendors) They prepared the current distributor contracts with consultation with vendors and the Milk Vendors Association and conceded some changes to the contract only to insert compensating harsher clauses in other sections of the agreement.

National Foods continues to sell to supermarket chains and large buying groups which is known as “direct billing”

This system involves the processor assuming the role of supplier to the retailer “direct” with the accredited vendors providing an ordering, delivery and merchandising service in return for a delivery fee. Delivery fees which are set

by the processor are significantly less than the margin that the vendors receive from their own customers.

No consideration was ever paid for the transfer of customers from vendors to the processor. The processor reserves the right to vary or terminate these delivery arrangements.

One large supermarket chain has eliminated accredited vendors from the supply chain and purchase products directly from the processor and has their own distribution arrangements.

2.3 Accredited Vendors

Accredited Vendors, widely known as “milkies” are responsible for the distribution of milk and milk products to retail customers and to a much lesser extent private residents. They are required to be accredited pursuant to terms of the Primary Produce (Food Safety Scheme) Act 2004 There are 125 accredited vendors in South Australia – down approximately 225 (64%) since deregulation in 1995 many having to consolidate and buy out existing vendors to satisfy processor criteria to obtain a contract.

Each accredited vendor signed a contract on a non exclusive basis “to promote, market sell and deliver the products to Customers in accordance with terms set out in this agreement.” However the vendor agrees “that it must not, whether jointly or separately, be engaged or interested, either directly or indirectly, as principal, agent employee or shareholder in any business (other than in accordance with this Agreement) involved the distribution or sale of products the same as or of a similar description to, or competitive with, the products during the term.”

Contract no longer list retail customers that the vendor has the right to supply and /or territories in which the vendor has the right to supply to domestic residences. They also no longer list “Direct Billed” customers, in respect of which the vendor is contracted, to provide delivery services. However processing companies still maintain comprehensive lists of vendor customers.

All customers are subject to variation under the contract at the processor’s direction.

Vendors have, traditionally, purchased product from the processor and resold it to retailers and consumers. They are independent businesses and as such are required to negotiate individually with the processor.

Accredited Vendors who are members of the Transport Workers Union of Australia SA/NT branch provide in excess of 60% of the total milk distributed in South Australia.

2.4 Retailers

Retailers include the major and independent supermarket chains such as Coles, Woolworths and Foodland, buying groups, the service station chains and various State government agencies and instrumentalities as well as the corner store “delis”.

The major supermarkets and buying groups possess substantial bargaining power due to deregulation of the Milk Industry, retail shopping hours and the packaging of Private label brands. In 1991, 8% of milk sales were through supermarkets and their share in 2007/2008 stabilised at 55%. See appendix “B” Private label brands account for 56% of the total supermarket milk volumes, up from 25% in 1999/00. Their average price is significantly less than branded products allowing supermarkets to set the retail price for both Private label brands and processor branded products, in effect having the power to manipulate the volumes and product sold.

3. Accredited Vendors

3.1 “Milkies” are required to be accredited under The Primary Produce (Food Safety Scheme) Act 2004 until 30 June 2009 when they will come under local government control.

3.2 Processor Contracts

Between 1993 and 2005 all vendors were required to have sole and exclusive supply contracts with one or other of the two processors. These contracts were plainly anti-competitive and in breach of various provisions of the Trade Practices Act 1974 (Cth) but allowed under notifications. In the late 1990’s Dairy Farmers introduced a franchise system while National Foods retained their contracts. In 2005 National Foods contract appointed vendors on a non-exclusive basis but allowed them to terminate contracts for many reasons.

Standard terms of National Foods current contract include the following provisions:

- The distributor releases and indemnifies National Foods against all claims prior to the commencement of this contract.
- Allowing the processor unilaterally to vary trading terms and conditions.
- Requiring the provision of detailed business plan.
- Requirement of a customer data base and access by National Foods.
- Entitling the processor to withdraw Listed Customers from the vendor without being liable for any loss, costs, expense or damage and without payment
- Entitling the processor to nominate an alternative licensed vendor to deliver or supply to direct or listed customers.
- Entitling the processor to vary the delivery fee paid to accredited milk vendors without cause or consultation.
- The processor does not guarantee the supply of products to the vendor.

- Effectively prohibiting vendors from selling or supplying any products whatsoever other than those of the processor.
- Requiring vendors to establish and maintain certain data bases, and to make those data bases available to the processor upon request.
- Exempting the processor from legal obligations toward the vendors such as the payment of superannuation and workers compensation insurance where that may otherwise have been applicable.

The contracts are clearly weighted in favour of the processors. Bearing in mind that accredited vendors operate as independent businesses, the standard contracts are excessively intrusive. They are uncommercial in that they restrict unnecessarily the extent to which vendors may utilise capital assets whilst at the same time, fail to guarantee product supply.

At the renewal of contracts in 2005 representations were made by the Milk Vendors' Association SA Inc (who held an approved Authorisation A90927) to the processors on behalf of accredited vendors in an attempt to negotiate some alterations or additions to the contract making it more favourable to accredited vendors without satisfaction. Vendors had little option but to sign these contracts, given their financial vulnerability and the relative bargaining positions of the processors who, are well resourced businesses with significant commercial and negotiating expertise, even though an Authorisation was held.

The processor contracts represent the effective regulation of the distribution market by the processor monopoly/duopoly.

The new contract that was issued in 2005 by National, and Dairy Farmers Franchise are standard form contracts and neither Company rely on notifications for their agreements.

The National Foods contract contained strict confidentiality provisions, including a provision that the vendor could not disclose contents of the contract to any adviser until such time as the adviser had executed a confidentially undertaking in a form specified, and that undertaking had been approved by National Foods.

3.3 Wholesale, Route and Home Delivery

The large wholesale customers continue to be assumed by the processors as direct customers. Vendors receive a delivery fee for delivering product to these customers at a 20% reduction in margin. Vendors receive no remuneration for any loss of customers, which traditionally, are tradable.

Entire rounds, Exclusive Customers of the Home Delivery Vendor and Specified Listed Customers of the Wholesale/Route vendor are traditionally sold in the same way that any business may buy and sell assets however customers assumed by processors are being treated cautiously. Because of the reduction in margin and the contract entitles the processor to nominate an alternative accredited vendor to supply a direct customer and the delivery fee can be varied without consultation these direct customers are being valued at considerably less than vendors own invoiced customers.

3.4 Direct Billing

Direct billing has been prevalent since the introduction of solus processor contracts in 1993 and continues to be so under the current contract. Under this system, the processors contract directly with major customers and pay delivery fees to accredited vendors, who deliver product on their behalf.

The major supermarkets and buying groups (which include various State Government agencies and instrumentalities) have sufficient bargaining power to consult on an even footing with processors and negotiate favourable direct Billing and Home Brand agreements. Consequently, vendor delivery fees have only increased from 10c in 1995 to currently an average of 11.5c, an increase of 15%. Flavoured milk margins have reduced from 41.6 to an average currently of 33.1c. In the same period, profit margins of processors and supermarkets have increased.

3.5 Bargaining Power

Until 2008 there were two significant processors in South Australia and with the sale of Dairy Farmers to National Foods, the net result being a processor monopoly until the sale of Dairy Farmers at a later date. National Foods is a multimillion dollar corporation and on the other hand vendors are typically self-employed small business persons. Given these relative economic strengths, solus contracts, being offered on a “take it or leave it” basis, the net effect is that the distribution of dairy products via the accredited vendor network is now regulated by the processor.

3.6 Entry and Exit

Vendor contracts with their processor are tradable, subject to the consent of the relative processor. Most sales, until mid 2008, had been brokered by The Milk Vendors’ Association SA Inc who retained a substantial database. The Milk Vendors’ Association SA Inc membership and database have been transferred to the Transport Workers Union SA/NT Branch who continues to provide the sales service. Sales values have not appreciated since the initial phase of deregulation in 1995 and we currently see sales values declining as the time remaining on the current contract fall below two years. This means that vendors who have paid hundreds of thousands of dollars for their businesses and wish to sell over the next two years will sustain major capital losses which can be directly attributed to the result of deregulation of the processor dominated industry.

4 Role of the Transport Workers Union SA/NT Branch

“Milkie’s” have traditionally been serviced by the Milk Vendors’ Association SA Inc whose origin can be traced back to the formation of the Adelaide and Suburban Milk Distributors and Dairymans’ Association in 1931. The name of the Association being changed to The Master Retail Milk Vendors Association Inc in 1944 and finally in 1992 to The Milk Vendors’ Association SA Inc. In 1932 there was also another Vendor Association formed, with both Associations working side by side until 1946/47 when they amalgamated.

The Association concerned itself with all matters affecting the Dairy Industry in South Australia and the interest of vendors in particular. The Association’s assets were not large, but it traded successfully in excess of sixty years for the benefit of its members.

The Association represented and was financially supported by accredited milk vendors within the state and maintained strong communication with Government and all Industry bodies over the past six decades.

It maintained records and data bases for all accredited vendors and provided a community service in answering daily enquiries and requests.

At the signing of a new contract in 2005 National Foods instituted rationalisation policy, and advised vendors that if they did distribute 600,000 litres of milk per year, or greater, they would not be given a new contract. They would have to sell to existing vendors who required extra literage to gain a new contract. Twenty five vendors had to sell their businesses.

It was recognised at this time by the Association’s committee that the loss of vendors would have a detrimental effect on the Association resulting in the loss of members and financial support.

The Association approached and was welcomed by the Transport Workers Union SA/NT branch that provides all the services and maintain all the data bases mentioned above. The former EO of the Association, Roger Prime, has continued with the Union to maintain continuity for vendors.

The Transport Workers Union is a principal industry body whose proud history can be traced back in excess of 100 years It was the Port Adelaide carters and drivers in 1887 who got the Union started, rapidly becoming successful and spreading the union far and wide. Today the Union is a modern union representing workers in long distance, general transport, owner drivers, logistics, concrete, armoured vehicle, refuse, airline industry, gas, passenger vehicle and now milk. The TWU has always adapted to change and its collective strength across so many industries makes the union a modern organisation that is dedicated to representing ordinary working Australians.

5. Disputes

Since the introduction of the 2005 contract the level of disputation involving vendors is increasing. The 2005 contract covers disputes as:

“...the parties agree that, in event of a dispute arising between them under this agreement **they** will use their best efforts to resolve the dispute promptly.”

There is discontent and a lack of vendor confidence in this existing arrangement because the vendor (**they**) is not included in the consultative process. Too often the result of a disputation is that the vendor is advised that he has had the customer taken from him.

Vendors are particularly concerned about the role of the processors (via their sales/marketing staff) in dealing with vendors' customers and imposing those customer wishes on vendors.

6. Grounds for Grant of Authorisation

Vendors in most other states other than South Australia received adjustment packages to assist in the process of structural change which followed deregulation. The South Australian State Government declined to provide any such assistance or to facilitate an industry self funded rationalisation package.

One of the conditions National Foods placed on vendors during negotiations of the 2005 contract was that vendors who wished to sign had to be distributing 600,000 litres per year or greater to continue as a NF vendor. This processor rationalisation of the distribution network had a significant effect on the vendor system as it forced twenty five vendors who either did not want to get bigger or lacked the capital to enlarge their businesses, to sell at “bargain basement” prices. Those vendors who were forced to sell their businesses suffered significant financial losses.

Vendors were able to collective negotiate on a more equal footing with processors via the collective bargaining arrangement A90927, however National Foods made concessions in some areas of the contract only to insert harsher and more restrictive clauses in other sections of the agreement. The collective negotiations allowed vendors to negotiate on a more equal basis and the range of distribution services has been maintained and the quality preserved. The only adverse effect on consumer prices in the increased profits enjoyed by processors, major supermarkets and buying groups.

In general terms, the authorisation sought would result in the continued benefit the public of South Australia enjoy which outweighs any detriment constituted by any lessening of competition. Such authorisation would have the specific benefits enumerated below.

6.1 Fairness in the Negotiating Process

As alluded to above, the relative bargaining strengths of the processors, retailers and vendors are such that the vendors are, in effect, still obliged to accept whatever terms are offered to them. This is reflected in the decline in numbers and profitability of milk rounds since deregulation, as vendors have been forced to accept oppressive contractual terms which strongly favour the processors. Processors and major retailers (which enjoy relative parity of bargaining power) have, on the other hand, enjoyed buoyant profitability over the same period.

Distribution contract have been offered by the processor monopoly/duopoly on a “take it or leave it” basis. The proposed arrangement would help to continue to redress the disparity (as did CBA A90927) in relative bargaining positions and provide vendors with some competitive equivalence in contract negotiations with the processors. This will result in greater vendor input into the contract terms which will, in turn, continue to improve services and other public benefits.

6.2 Compliance with Statutory Requirements

The process of collective negotiation has already resulted in contracts providing standards that ensure both processors and vendors comply with statutory requirements as to safety, roadworthiness, environmental protection, pollution control and cold chain compliance. Without a collective bargaining arrangement in place, it may just provide either party a clear incentive to “cut corners.”

6.3 Efficiency of Operation

Structural changes which have occurred in the Industry since 1995 and the processor rationalisation of the distribution network have resulted in the sharp decline in the number of accredited vendors. The processor monopoly/duopoly strengthened by the Notifications, has enforced onerous contractual terms.

Collective negotiations (A90927) allowed the consolidation and the increase in the average size of rounds. This in turn had the effect of reducing transport costs and the total cost to vendors. Processors wish to negate the home delivery network and consumers who rely on such services at an affordable price do so because of collective bargaining. Increases in vendor margins and delivery fees have been absorbed by processor price increases.

6.4 Continued Viability of Independent Distribution Sector

As a result of the various factors referred to above most vendor businesses are viable. However with the processor aggressive trend to “direct billing” and further forced rationalisation at the next contract negotiation together with increased supermarket home branding and market share, means that vendor’s margins will further decline, resulting in the closure of a significant number of those businesses. This will, in turn, result in the loss of employment and major

financial losses to vendors who are forced to sell, a similar scenario that occurred in the 2005 contract negotiations.

6.5 Reduction in Transaction Costs

Prior to the 2005 contract negotiation processors were required to negotiate individually with each vendor. This resulted in a substantial waste of resources. Processors were required to replicate the negotiation process with numerous vendors, whereas vendors attempted to negotiate as individuals against the resources of multimillion dollar corporations. Very few concessions were made by the processors.

All vendors were required to sign off on a declaration to the effect that they had the opportunity to have legal, accounting and business advice. A reasonable estimate of the total transaction costs incurred by vendors was in excess of \$200,000 (\$2500 per vendor) while processor costs exceeding \$500,000.

Collective bargaining contract negotiation costs for vendors in relation to the 2005 contract was estimated at \$350 per vendor and only increased to that level because the processing companies opposed the collective bargaining arrangement every step of the way.

6.6 Better Information

Vendors will be advised in the process of collective negotiation by Roger Prime, of the Transport Workers Union SA/NT Branch, which will also provide secretarial services. The Transport Workers Union SA/NT Branch maintains all the substantial records and databases in relation to the dairy industry transferred from the Milk Vendors' Association SA Inc. It has access to further such material through connections with interstate vendor organisations as well as Dairy Australia. The Transport Workers Union will be able to negotiate on the basis of more comprehensive and accurate market information.

The Union will have in place a mechanism to ensure that information obtained in one bargaining group is not provided to another bargaining group.

6.7 Improvement in Health and Safety

Vendors are required to meet all safety and delivery standards. However there seems little requirement by the processors to meet their requirements. The changing environment has resulted in vendors working longer hours, placing increasing demands on his time and that of his employees, if in fact he is able to afford to employ additional help. As a result stress and fatigue levels have increased significantly.

Through the rationalisation process, consolidation of rounds have had the effect of reducing delivery distances and time, however the change in loading

structure by processors have vendors working longer hours, seven days a week which in turn compromises the safety of themselves, their employees and with those with whom they share the workplace and road.

6.8 Dispute Resolution

Disputes within the Industry are categorised into three distinct areas:

6.8.1 Vendor/Processor disputes. Typically, these disputes are increasing and involve such matters as

- Failure to supply product
- The supply of low coded product
- The supply of damaged stock
- Rationalisation
- Failure to allow a vendor to “split his round” for sale purposes
- Failure to mediate when a dispute arises between vendor/customer
- Allocation of customers by processors
- Transfer by the processor of vendor customers to direct billing
- Allocation of times and days for loading
- Temperature of product supplied.

6.8.2 Vendor/Customer disputes. These disputes include such matters as:

- Merchandising
- Non supply of, or low coded product
- Supply of damaged or out of date product
- Frequency of supply
- Temperature of product supplied.

6.8.3 Vendor/Vendor disputes. These disputes occur very infrequently and tend to relate to the allocation of customers.

Due to the dominant position of the processors most disputes result in the unilateral imposition of resolutions by the processors in all categories of disputes.

For the avoidance of doubt, the Union seeks authorisation to represent any vendor or group of vendors in any dispute which may arise between any vendor or vendors and National Foods Milk Ltd or the future purchaser of Dairy Farmers in South Australia only.

6.9 Opt out Clause

It is proposed that all vendors (both members and non members of the Union) will retain the right to negotiate individually with the relevant processor should they choose to do so. Participation by vendors in any collective negotiation structure will be entirely voluntary.

6.10 No Boycotts

For the avoidance of doubt, no authorisation is sought in respect of any collective boycott activity.

7. Market Assessment

The union acknowledges that the statutory test requires that the Commission assess and weigh the likely public benefits and detriments flowing from the proposed collective bargaining arrangements. This process requires some clarification of the markets which will be affected by those proposed arrangements. The Union submits that, in the circumstances described in Sections 2 and 3 above, it is not necessary for the Commission comprehensively to define the relevant markets. The Union submits that it is clear that there are two relevant areas of competition, namely:

- The supply of distribution services to the processor monopoly/duopoly. In this area, vendors compete with each other to acquire distribution contracts from the processors; and
- The supply of milk and other dairy products to retailers and consumers. In this area, the vendors hypothetically compete with each other to supply retailers and with retailers to supply products to consumers.

All such competition occurs within the geographic area of the state of South Australia. Individual vendor contracts are highly localised and limited to customers and territories within a particular metropolitan or regional area.

7.1 Supply of Distribution services to Processors

Theoretically, distributors compete for contracts to provide distribution services to one or other of the processors. Contracted vendors also compete amongst themselves in the actual provision of distribution services.

However, the level of actual competition is, at most negligible. All existing contracted vendors have the right to negotiate a renewal. Vendors numbers have declined substantially since 1995, as described above. As new retail outlets open, these are allocated to existing vendors.

7.2 Supply of Dairy Products to Retailers and Consumers

Competition amongst vendors is similarly limited by the time it takes for distribution to customers in a specific geographical area and, a contract that prevents vendors from seeking to supply an existing customer of another vendor who is contracted to the same processor.

Thus the terms of the distribution contracts preclude any competition amongst vendors for the supply of products to retailers or consumers.

Vendors compete with retailers for the supply of dairy products to consumers which is mainly via supermarkets.

Price competition between vendors is extremely limited, given that their margins have increased spartanly since deregulation as a result of factors referred to in 3.5 above. Where vendors have been able to negotiate price increases as a result of collective bargaining, competitive pressures in the retail market limit the capacity of those increases. It is anticipated that the

proposed arrangements will result in an increase in non-price competition amongst vendors.

8. The future With or Without

The Union acknowledges that, in determining this application, the Commission is required to make a reasonable forecast as to how the market will react in the event that the Authorisation is, or is not granted. The Union submits that, because vendors had an Authorisation in place, it has already been established that, the public benefits generated by its implementation has far outweighed any related anti competitive detriment and represents a significant improvement over the existing outcomes.

8.1 The Future Without the proposed Arrangement

Prior to 2005 vendors had no significant input into processor distribution contracts. In 2005 vendors had a collective bargaining arrangement in place through the Milk Vendors' Association SA Inc.

In the absence of this proposed collective bargaining arrangement, it is most likely that South Australian milk vendors' would have no option but accept the standard form processor contracts and to comply with processor requirements in relation to the operation of their businesses.

It is most likely that, without the proposed arrangement, the decline of the independent distribution network would continue to the point of extinction. This would result in a decline in the range of available services and a reduction in consumer choices which have been maintained under the current collective bargaining arrangement.

8.2 The Future situation With the proposed Arrangements

Under the proposed arrangements, the Union would be able to play a far more extensive role in contract negotiations similar to the Milk Vendors' Association in 2005. This is likely to result in a greater degree of vendor influence in relation to the terms of the distributor contracts and fairer and more consistent outcomes to disputes.

The Union would be in a position to collate vendor concerns and draw on its extensive databases of industry information in conducting negotiations and/or addressing disputes.

The range of services available to consumers would be maintained, efficiency would increase, the ability of the processors and of the major retail chains to extract monopoly profits would be restricted and competitive forces would influence retail prices..

Dated 23.6.2009

Signed by/on behalf of the applicant.....



Alex Gallacher
Branch Secretary

APPENDIX "A"

DAIRY AUSTRALIA

MILK SALES BY STATE & TYPE

30 JUNE 2008

MONTHLY STATISTICS

JULY 2008 - APRIL 2009

PACKAGED MILK SALES VOLUME
08/09 by State
(million litres)



	New South Wales (incl ACT)			Victoria			Queensland			South Australia (incl NT)			Western Australia			Tasmania			Australia		
	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%
July	58.6	59.6	1.6%	45.5	46.2	1.6%	42.8	44.5	3.9%	17.5	17.8	2.1%	20.1	21.1	5.2%	4.7	4.8	1.7%	189.2	194.1	2.6%
YTD	58.6	59.6	1.6%	45.5	46.2	1.6%	42.8	44.5	3.9%	17.5	17.8	2.1%	20.1	21.1	5.2%	4.7	4.8	1.7%	189.2	194.1	2.6%
August	59.2	59.3	0.1%	44.6	46.5	4.2%	42.6	43.5	2.0%	17.6	18.1	2.6%	19.8	21.9	10.2%	4.6	4.7	3.0%	188.6	194.0	2.9%
YTD	117.8	118.8	0.8%	90.1	92.7	2.9%	85.5	88.0	3.0%	35.1	35.9	2.4%	39.9	43.0	7.7%	9.3	9.5	2.3%	377.7	388.0	2.7%
September	56.6	56.6	0.0%	42.8	42.1	-1.6%	40.1	41.3	2.9%	16.8	17.0	0.7%	18.9	19.0	0.7%	4.5	4.5	-0.6%	179.7	180.4	0.4%
YTD	174.4	175.4	0.6%	132.9	134.9	1.5%	125.6	129.3	3.0%	51.9	52.9	1.8%	58.8	62.0	5.4%	13.8	14.0	1.4%	557.5	568.5	2.0%
October	57.0	58.3	2.4%	44.6	46.1	3.4%	41.9	43.3	3.3%	17.8	17.5	-1.9%	19.7	21.7	10.2%	4.6	4.7	2.9%	185.7	191.7	3.3%
YTD	231.4	233.7	1.0%	177.6	181.0	1.9%	167.6	172.7	3.0%	69.8	70.4	0.9%	78.5	83.7	6.6%	18.4	18.7	1.8%	743.1	760.2	2.3%
November	55.9	56.9	1.8%	43.1	43.0	-0.2%	40.8	41.6	2.0%	16.7	17.8	6.2%	19.4	20.3	4.7%	4.5	4.6	1.4%	180.4	184.1	2.1%
YTD	287.3	290.6	1.2%	220.7	224.0	1.5%	208.3	214.2	2.8%	86.5	88.2	1.9%	97.9	104.0	6.2%	22.9	23.3	1.7%	923.5	944.3	2.3%
December	54.8	56.3	2.7%	42.3	43.5	2.8%	40.2	40.5	0.8%	16.6	16.4	-1.3%	19.6	19.4	-1.0%	4.5	4.7	4.5%	178.0	180.7	1.6%
YTD	342.0	346.9	1.4%	263.0	267.5	1.7%	248.5	254.7	2.5%	103.1	104.6	1.4%	117.5	123.4	5.0%	27.4	28.0	2.2%	1,101.5	1,125.1	2.1%
January	55.7	58.1	4.4%	41.9	43.7	4.2%	41.4	43.3	4.6%	16.5	17.0	2.6%	19.6	19.4	-1.0%	4.6	4.7	3.5%	179.8	186.2	3.6%
YTD	397.7	405.0	1.8%	304.9	311.2	2.1%	289.9	298.0	2.8%	119.7	121.5	1.6%	137.1	142.8	4.2%	31.9	32.7	2.4%	1,281.3	1,311.3	2.3%
February	53.5	54.0	0.8%	42.4	41.1	-3.1%	39.6	39.2	-1.0%	16.4	15.2	-7.8%	19.1	18.2	-4.8%	4.6	4.3	-5.7%	175.6	171.9	-2.1%
YTD	451.2	459.0	1.7%	347.3	352.3	1.4%	329.5	337.2	2.3%	136.1	136.7	0.5%	156.2	161.0	3.1%	36.5	37.0	1.3%	1,456.9	1,483.2	1.8%
March	57.8	60.0	3.8%	44.5	46.5	4.6%	42.5	44.4	4.6%	17.2	18.5	7.6%	20.4	20.9	2.3%	4.6	5.1	10.0%	187.1	195.5	4.5%
YTD	509.1	519.0	1.9%	391.8	398.8	1.8%	372.0	381.7	2.6%	153.3	155.2	1.3%	176.6	181.9	3.0%	41.2	42.1	2.3%	1,644.0	1,678.7	2.1%
April	56.3	57.5	2.1%	43.8	44.2	0.9%	41.7	41.7	0.0%	16.9	17.5	3.7%	19.2	19.7	2.5%	4.7	4.8	0.9%	182.7	185.4	1.5%
YTD	565.3	576.5	2.0%	435.6	443.0	1.7%	413.8	423.4	2.3%	170.2	172.8	1.5%	195.9	201.6	2.9%	45.9	46.9	2.2%	1,826.7	1,864.1	2.1%
May	59.6			46.9			43.4			18.0			21.1			4.8			193.8		
YTD	624.9			482.5			457.2			188.2			217.0			50.7			2,020.5		
June	57.1			44.1			41.6			16.8			20.1			4.5			184.2		
YTD	682.1			526.6			498.7			205.0			237.1			55.2			2,204.7		
Year Total	682.1			526.6			498.7			205.0			237.1			55.2			2,204.7		
% Share	30.9%			23.9%			22.6%			9.3%			10.8%			2.5%			100.0%		

Produced by Trade and Strategy, Dairy Australia Limited
Source: Milk processors

**PACKAGED MILK SALES VOLUME
08/09 by Type - National Summary
(million litres)**



	Full Cream			Reduced Fat			No Fat			Fresh Flavoured			UHT			Total		
	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%
July	96.8	100.2	3.5%	46.7	48.6	4.2%	10.9	10.3	-6.1%	17.5	16.7	-4.8%	17.2	18.2	6.0%	189.2	194.1	2.6%
YTD	96.8	100.2	3.5%	46.7	48.6	4.2%	10.9	10.3	-6.1%	17.5	16.7	-4.8%	17.2	18.2	6.0%	189.2	194.1	2.6%
August	95.4	100.0	4.8%	46.1	49.4	7.2%	10.8	10.2	-5.4%	19.1	17.8	-6.8%	17.2	16.6	-3.5%	188.6	194.0	2.9%
YTD	192.3	200.2	4.1%	92.8	98.0	5.7%	21.8	20.5	-5.7%	36.6	34.5	-5.9%	34.3	34.8	1.3%	377.7	388.0	2.7%
September	91.6	92.9	1.5%	44.5	45.8	2.9%	10.4	9.7	-6.7%	17.3	16.9	-2.7%	16.0	15.2	-4.6%	179.7	180.4	0.4%
YTD	283.8	293.1	3.3%	137.2	143.8	4.8%	32.1	30.2	-6.0%	54.0	51.4	-4.8%	50.3	50.0	-0.6%	557.5	568.5	2.0%
October	93.9	97.1	3.4%	46.3	48.2	4.1%	10.6	10.1	-5.4%	18.7	18.0	-3.6%	16.2	18.4	13.5%	185.7	191.7	3.3%
YTD	377.7	390.2	3.3%	183.5	192.0	4.6%	42.8	40.3	-5.9%	72.6	69.4	-4.5%	66.5	68.3	2.8%	743.1	760.2	2.3%
November	90.7	92.9	2.5%	44.9	46.8	4.3%	10.3	9.7	-5.3%	18.3	17.3	-5.7%	16.2	17.3	7.3%	180.4	184.1	2.1%
YTD	468.4	483.1	3.1%	228.4	238.9	4.6%	53.0	50.0	-5.8%	91.0	86.7	-4.7%	82.6	85.7	3.7%	923.5	944.3	2.3%
December	91.8	93.0	1.3%	44.6	46.3	3.7%	10.0	9.4	-5.6%	17.6	17.5	-0.9%	14.0	14.6	4.6%	178.0	180.7	1.6%
YTD	560.2	576.1	2.8%	273.0	285.1	4.4%	63.0	59.4	-5.8%	108.6	104.1	-4.1%	96.6	100.3	3.8%	1,101.5	1,125.1	2.1%
January	92.7	94.5	1.9%	45.8	47.6	4.0%	10.1	9.6	-5.1%	17.3	17.8	3.0%	13.9	16.8	20.9%	179.8	186.2	3.6%
YTD	652.9	670.6	2.7%	318.8	332.7	4.4%	73.2	69.0	-5.7%	125.9	121.9	-3.1%	110.5	117.1	6.0%	1,281.3	1,311.3	2.3%
February	88.7	86.7	-2.2%	44.3	44.2	-0.3%	9.9	9.1	-8.0%	17.5	16.9	-3.4%	15.3	15.1	-1.4%	175.6	171.9	-2.1%
YTD	741.6	757.3	2.1%	363.1	376.9	3.8%	83.1	78.1	-5.9%	143.4	138.8	-3.2%	125.8	132.1	5.1%	1,456.9	1,483.2	1.8%
March	95.2	96.8	1.7%	47.2	49.2	4.3%	10.4	10.2	-1.6%	18.3	19.1	4.8%	16.1	20.2	25.3%	187.1	195.5	4.5%
YTD	836.7	854.0	2.1%	410.4	426.1	3.8%	93.5	88.4	-5.5%	161.6	157.9	-2.3%	141.8	152.3	7.4%	1,644.0	1,678.7	2.1%
April	94.2	93.8	-0.5%	46.4	47.4	2.1%	10.2	9.8	-4.1%	17.3	17.5	1.3%	14.6	17.0	16.3%	182.7	185.4	1.5%
YTD	930.9	947.8	1.8%	456.7	473.5	3.7%	103.7	98.1	-5.3%	178.9	175.4	-1.9%	156.4	169.3	8.2%	1,826.7	1,864.1	2.1%
May	99.1			48.6			10.5			17.9			17.7			193.8		
YTD	1,030.0			505.4			114.1			196.8			174.2			2,020.5		
June	95.9			46.4			9.9			16.3			15.8			184.2		
YTD	1,125.9			551.7			124.0			213.1			190.0			2,204.7		
Year Total	1,125.9			551.7			124.0			213.1			190.0			2,204.7		
% Share	51.1%			25.0%			5.6%			9.7%			8.6%			100.0%		

Produced by Trade and Strategy, Dairy Australia Limited
Source: Milk processors

Drinking Milk Sales

Regular or whole milk is standardised to a milkfat content of around 3.8 per cent. Modified, reduced and low-fat milks are standardised to other specifications, with varying milkfat and solids non-fat levels. The cream removed during standardisation can be bottled as table cream or manufactured into butter or other dairy products.

Drinking milk sales by state (million litres)

	NSW	ACT	VIC	QLD	SA	WA	TAS	AUST
1979/80	531		437	249	127	119	41	1,504
1989/90	552	30	449	316	150	164	47	1,730
1994/95	579	34	452	368	167	188	52	1,894
1995/96	574	33	454	372	163	187	50	1,905
1996/97	576	33	452	376	173	193	50	1,920
1997/98	575	33	442	377	182	198	49	1,919
1998/99	578	32	442	382	185	192	49	1,931
1999/00	586	30	440	383	185	190	48	1,933
2000/01	633		456	393	201	201	50	1,934
2001/02	626		460	403	185	200	50	1,924
2002/03	620		474	404	183	208	52	1,941
2003/04	627		476	418	196	212	52	1,981
2004/05	641		486	429	200	215	53	2,024
2005/06	656		495	445	198	218	53	2,065
2006/07	684		509	475	207	230	55	2,160
*2007/08 (p)	682		527	489	205	237	55	2,205

*New Series: State figures exclude interstate-traded milk prior to 2001 NSW includes ACT after June 2000

Source: Milk processors and State Milk Authorities

Australian milk consumption has been steadily shifting from regular milk to modified milk types, such as reduced and low-fat milks, over a number of years. However, this trend slowed in 2007/08, as consumers responded to rapidly increasing retail prices by switching to the relatively lower-priced regular full cream milks. Similarly, sales of flavoured milks were also affected by a combination of increasing dairy and petrol prices, as flavoured milk is an impulse purchase for many consumers, bought in the petrol and convenience retail sales channel. UHT milk volumes continued to show the same marginal growth pattern of recent years.

Drinking milk sales by type (million litres)

	Regular	Reduced	Low Fat	Flavoured	UHT	Total
1989/90	1,257	244	79	111	40	1,730
1994/95	1,231	332	111	143	77	1,894
1995/96	1,215	336	113	146	94	1,905
1996/97	1,184	352	120	160	104	1,920
1997/98	1,144	359	130	163	122	1,919
1998/99	1,131	358	141	169	131	1,931
1999/00	1,090	354	144	173	164	1,933
2000/01	1,098	386	119	165	165	1,934
2001/02	1,088	400	126	172	138	1,924
2002/03	1,079	406	134	178	143	1,941
2003/04 (n)	1,067	433	140	191	150	1,981
2004/05 (n)	1,078	457	138	200	152	2,024
2005/06 (n)	1,088	478	140	204	156	2,065
2006/07 (p)	1,111	511	147	216	175	2,160
*new series	Full Cream	Reduced	Low Fat	Flavoured	UHT	Total
2007/08 (p)	1,129	560	118	213	185	2,205

Source: Milk processors and State Milk Authorities

APPENDIX "B"

DAIRY AUSTRALIA

MILK SUPERMARKET SALES SUMMARY

30 JUNE 2008

Appendix 4 – Supermarket sales

Milk

Table A5

Supermarket milk sales by state (million litres)

	NSW	VIC	QLD	SA	WA	TAS	AUST
2005/06 (r)	348	298	260	114	105	26	1,151
2006/07 (r)	352	306	273	115	115	27	1,189
2007/08	361	307	288	114	121	28	1,219

Source: AC Nielsen

Table A6

Supermarket milk sales by type (million litres)

	Regular	Reduced fat	Low fat	Flavoured	UHT	AUST
2005/06 (r)	566	336	73	56	120	1,151
2006/07 (r)	563	361	75	64	125	1,189
2007/08	585	368	73	67	127	1,219

Source: AC Nielsen

Table A7

Supermarket milk sales – branded vs private label

	2005/06 (r)		2006/07 (r)		2007/08	
	Million Litres	Price/Litre	Million Litres	Price/Litre	Million Litres	Price/Litre
Branded milk						
Regular whole	138	\$1.53	140	\$1.57	145	\$1.74
Reduced fat	180	\$1.75	187	\$1.78	177	\$1.99
Low fat	69	\$1.81	70	\$1.86	68	\$2.09
Flavoured	53	\$2.88	60	\$2.97	63	\$3.31
UHT	66	\$1.83	77	\$1.82	81	\$1.96
Total branded milk	506	\$1.83	535	\$1.88	535	\$2.09
Private label						
Regular whole	428	\$1.11	423	\$1.13	439	\$1.16
Reduced fat	156	\$1.27	174	\$1.28	191	\$1.34
Low fat	4	\$1.59	4	\$1.63	4	\$1.65
Flavoured	4	\$1.88	4	\$1.90	4	\$1.95
UHT	54	\$1.11	49	\$1.15	46	\$1.18
Total private label milk	646	\$1.16	654	\$1.18	684	\$1.22
Total milk	1,151	\$1.45	1,189	\$1.49	1,219	\$1.60

Source: AC Nielsen

Cheese

Table A8

Supermarket cheese sales by type (tonnes)

	2005/06 (r)	2006/07 (r)	2007/08
Cheddar			
Natural cheddar	67,392	67,822	66,570
Processed cheddar	20,422	19,948	19,037
Total cheddar	87,814	87,770	85,607
Non-cheddar			
Eye	3,733	3,619	3,551
Shredding	6,809	7,227	7,658
Hard grating	3,833	4,087	4,152
Fresh	18,757	19,069	18,376
Mould ripened	4,547	4,585	4,700
Other non-cheddar	643	829	824
Total non-cheddar	38,322	39,416	39,261
Total cheese	126,136	127,186	124,868

Source: AC Nielsen

Table A9

Supermarket cheese sales by pack size

	2005/06 (r)		2006/07 (r)		2007/08	
	Tonnes	Price/kg	Tonnes	Price/kg	Tonnes	Price/kg
250 gram	23,972	\$12.82	24,000	\$13.29	25,194	\$14.66
500 gram	40,219	\$8.86	39,921	\$9.16	37,481	\$10.17
1 kilogram	20,147	\$6.81	18,945	\$7.22	16,255	\$8.17
Other sizes	41,798	\$14.39	44,319	\$14.88	45,938	\$15.88
Total cheese	126,136	\$11.12	127,185	\$11.65	124,868	\$12.92

Source: AC Nielsen

Table A10

Supermarket cheese sales by form

	2005/06 (r)		2006/07 (r)		2007/08	
	Tonnes	Price/kg	Tonnes	Price/kg	Tonnes	Price/kg
Blocks	54,263	\$11.14	54,372	\$12.03	51,907	\$13.77
Bulk deli	8,708	\$14.17	6,966	\$13.46	5,365	\$14.37
Shredded/grated	21,643	\$10.36	22,715	\$10.94	23,396	\$11.84
Slices	25,482	\$9.68	26,317	\$10.10	25,933	\$11.32
Tubs/jars	12,714	\$10.87	13,104	\$11.33	12,683	\$12.29
Others	3,248	\$19.74	3,652	\$19.02	4,872	\$16.57
Total cheese	126,136	\$11.12	127,186	\$11.65	124,868	\$12.92

Source: AC Nielsen

Tablespreads

Table A11

Supermarket tablespreads sales by type

	2005/06 (r)		2006/07 (r)		2007/08	
	Tonnes	Price/kg	Tonnes	Price/kg	Tonnes	Price/kg
Dairy						
Butter	16,627	\$5.91	16,599	\$6.60	17,436	\$7.44
Blends	20,212	\$6.15	19,866	\$6.73	19,717	\$7.32
Ghee	44	\$10.06	40	\$10.89	36	\$12.31
Total dairy spreads	36,883	\$6.05	36,505	\$6.68	37,189	\$7.38

Source: AC Nielsen

Table A12

Supermarket dairy spreads sales by pack size

	2005/06 (r)		2006/07 (r)		2007/08	
	Tonnes	Price/kg	Tonnes	Price/kg	Tonnes	Price/kg
250 gram	7,781	\$5.63	7,540	\$6.65	7,578	\$7.65
375 gram	6,544	\$7.68	6,300	\$8.46	6,134	\$9.54
500 gram	22,215	\$5.65	22,284	\$6.10	22,090	\$6.63
Other sizes	342	\$10.10	380	\$11.59	855	\$10.61
Total dairy spreads	36,882	\$6.05	36,504	\$6.68	36,657	\$7.38

Source: AC Nielsen

Table A13

Supermarket dairy spreads sales by form

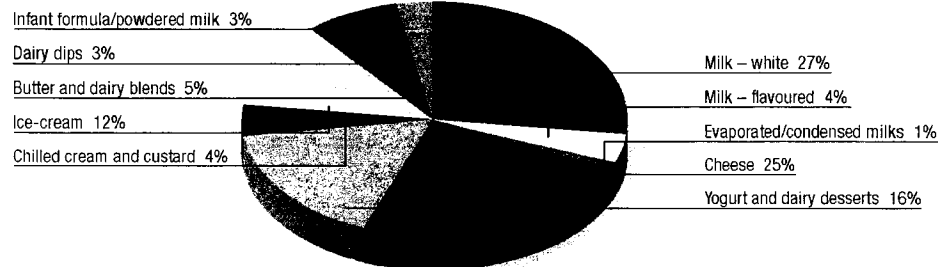
	2005/06 (r)		2006/07 (r)		2007/08	
	Tonnes	Price/kg	Tonnes	Price/kg	Tonnes	Price/kg
Pats	13,176	\$5.10	13,022	\$5.72	12,897	\$6.48
Tubs	23,494	\$6.56	23,253	\$7.19	23,531	\$7.90
Others	212	\$8.23	230	\$9.39	230	\$10.83
Total dairy spreads	36,882	\$6.05	36,505	\$6.68	36,658	\$7.38

Source: AC Nielsen

Total dairy category

Figure A3

Supermarket dairy category sales – 12 months to December 2007



Source: AC Nielsen

APPENDIX "C"

DAIRY AUSTRALIA

SA MILK PRODUCTION

30 JUNE 2008

MONTHLY STATISTICS

JULY 2008 - MARCH 2009

**Australian Milk Production
08/09 by State
(million litres)**



	New South Wales			Victoria			Queensland			South Australia			Western Australia *			Tasmania			Australia		
	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%	07/08	08/09	Var%
July	82.8	84.2	1.7%	381.2	411.8	8.0%	39.5	40.8	3.4%	43.2	45.8	6.1%	27.9	27.6	-1.0%	19.6	22.8	16.0%	594.2	633.1	6.5%
YTD	82.8	84.2	1.7%	381.2	411.8	8.0%	39.5	40.8	3.4%	43.2	45.8	6.1%	27.9	27.6	-1.0%	19.6	22.8	16.0%	594.2	633.1	6.5%
August	89.9	91.3	1.5%	506.3	509.7	0.7%	41.1	42.8	4.1%	46.0	47.6	3.5%	28.5	27.3	-4.4%	33.1	37.7	14.0%	744.9	756.4	1.5%
YTD	172.7	175.5	1.6%	887.5	921.5	3.8%	80.6	83.6	3.7%	89.2	93.4	4.7%	56.4	54.9	-2.7%	52.7	60.5	14.7%	1,339.2	1,389.5	3.8%
September	102.1	95.4	-6.5%	669.4	654.9	-2.2%	44.8	44.5	-0.6%	55.8	56.0	0.4%	29.3	30.9	5.4%	66.0	69.7	5.5%	967.2	951.2	-1.7%
YTD	274.8	270.9	-1.4%	1,556.8	1,576.4	1.3%	125.4	128.1	2.2%	144.9	149.4	3.1%	85.7	85.8	0.1%	118.8	130.2	9.6%	2,306.4	2,340.7	1.5%
October	102.7	102.3	-0.4%	749.3	756.8	1.0%	46.0	47.5	3.4%	62.9	65.5	4.2%	32.1	35.6	11.1%	87.0	92.0	5.7%	1,079.9	1,099.8	1.8%
YTD	377.5	373.2	-1.1%	2,306.1	2,333.2	1.2%	171.4	175.6	2.5%	207.8	214.9	3.4%	117.8	121.4	3.1%	205.8	222.2	8.0%	3,386.3	3,440.5	1.6%
November	95.2	98.1	3.0%	686.7	694.6	1.2%	43.5	44.6	2.5%	60.3	61.6	2.1%	29.8	32.9	10.5%	86.5	90.6	4.7%	1,001.9	1,022.4	2.0%
YTD	472.7	471.3	-0.3%	2,992.8	3,027.9	1.2%	214.9	220.2	2.5%	268.1	276.5	3.1%	147.6	154.3	4.6%	292.3	312.8	7.0%	4,388.3	4,462.9	1.7%
December	96.4	95.6	-0.8%	617.9	658.4	6.6%	44.4	46.3	4.4%	56.4	59.4	5.4%	26.7	31.1	16.6%	77.3	85.0	9.9%	919.0	975.8	6.2%
YTD	569.1	566.9	-0.4%	3,610.7	3,686.2	2.1%	259.3	266.6	2.8%	324.5	335.9	3.5%	174.2	185.4	6.4%	369.6	397.7	7.6%	5,307.3	5,438.8	2.5%
January	85.6	88.4	3.3%	538.5	575.6	6.9%	41.9	45.5	8.6%	51.5	54.7	6.2%	24.5	27.9	13.7%	68.6	75.0	9.4%	810.5	867.0	7.0%
YTD	654.7	655.2	0.1%	4,149.2	4,261.8	2.7%	301.2	312.1	3.6%	375.9	390.6	3.9%	198.7	213.3	7.3%	438.1	472.8	7.9%	6,117.8	6,305.8	3.1%
February	77.3	75.6	-2.1%	438.1	405.4	-7.5%	36.5	38.5	5.4%	45.0	45.4	0.9%	21.4	23.9	11.5%	53.3	56.8	6.5%	671.7	645.7	-3.9%
YTD	731.9	730.9	-0.1%	4,587.3	4,667.2	1.7%	337.7	350.6	3.8%	421.0	436.0	3.6%	220.1	237.1	7.7%	491.5	529.6	7.8%	6,789.5	6,951.5	2.4%
March	81.1	87.2	7.6%	397.4	381.3	-4.0%	37.6	41.3	9.9%	46.8	49.7	6.0%	23.2	25.9	11.7%	50.1	54.6	8.9%	636.2	639.9	0.6%
YTD	813.0	818.0	0.6%	4,984.7	5,048.5	1.3%	375.3	391.9	4.4%	467.8	485.7	3.8%	243.4	263.1	8.1%	541.6	584.2	7.9%	7,425.7	7,591.4	2.2%
April	73.3			358.0			35.5			45.1			23.1			44.9			579.8		
YTD	886.2			5,342.7			410.7			512.9			266.5			586.5			8,005.5		
May	80.3			375.0			37.1			47.3			26.4			44.2			610.2		
YTD	966.5			5,717.7			447.8			560.2			292.8			630.7			8,615.7		
June	82.0			384.3			37.6			46.0			26.4			30.8			607.2		
YTD	1,048.5			6,102.0			485.4			606.3			319.2			661.5			9,222.9		
Year Total	1,048.5			6,102.0			485.4			606.3			319.2			661.5			9,222.9		
% Share	11.4%			66.2%			5.3%			6.6%			3.5%			7.2%			100.0%		

New data series from 1/7/2006

* Data provided by accounting periods is adjusted to calendar months using average daily volumes.

All figures used are quoted in mass/volume measurements.

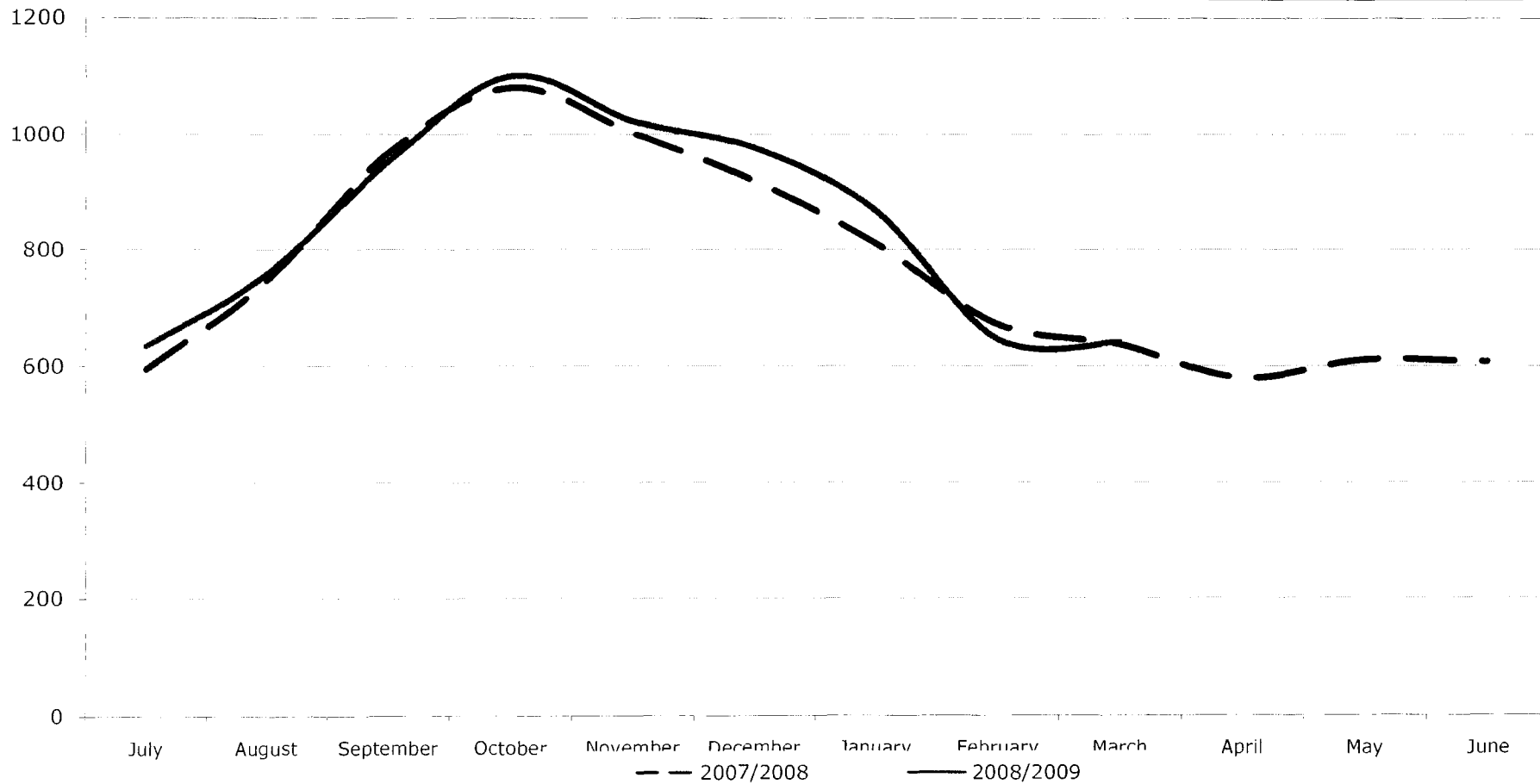
Produced by Trade and Strategy, Dairy Australia Limited

Source: Dairy Manufacturers

Australian Milk Production - National Total 2007/08 & 2008/09



Million Litres





Milk Production Report (Litres '000s) NATIONAL

		NSW	VIC	QLD	SA	WA	TAS	AUSTRALIA
Month	March-08	81,062	397,374	37,574	46,829	23,232	50,111	636,182
	March-09	87,184	381,293	41,306	49,654	25,940	54,573	639,950
% change 08 & 09		7.6%	-4.0%	9.9%	6.0%	11.7%	8.9%	0.6%
Region Share	March-08	12.7%	62.5%	5.9%	7.4%	3.7%	7.9%	100.0%
	March-09	13.6%	59.6%	6.5%	7.8%	4.1%	8.5%	100.0%

		NSW	VIC	QLD	SA	WA	TAS	AUSTRALIA
Year To Date	2007/2008	812,982	4,984,695	375,264	467,799	243,358	541,594	7,425,692
	2008/2009	818,046	5,048,534	391,898	485,697	263,079	584,170	7,591,424
% change 08/09 & 07/08		0.6%	1.3%	4.4%	3.8%	8.1%	7.9%	2.2%
Region Share	2007/2008	10.9%	67.1%	5.1%	6.3%	3.3%	7.3%	100.0%
	2008/2009	10.8%	66.5%	5.2%	6.4%	3.5%	7.7%	100.0%

		NSW	VIC	QLD	SA	WA	TAS	AUSTRALIA
Total	2007/2008	1,048,543	6,101,975	485,448	606,275	319,195	661,495	9,222,930
	Region Share	11.4%	66.2%	5.3%	6.6%	3.5%	7.2%	100.0%

Average Milkfat & Protein (%)

		NSW	VIC	QLD	SA	WA	TAS	AUSTRALIA
Milkfat	March-07	3.96%	4.48%	4.01%	4.10%	4.11%	4.58%	4.35%
	March-08	4.08%	4.59%	4.08%	4.09%	4.16%	4.55%	4.44%
	March-09	3.99%	4.67%	3.98%	4.16%	4.20%	4.63%	4.47%
	% change 08 & 09	-2.3%	1.8%	-2.6%	1.8%	0.9%	1.7%	0.7%

		NSW	VIC	QLD	SA	WA	TAS	AUSTRALIA
Protein	March-07	3.21%	3.40%	3.22%	3.26%	3.21%	3.41%	3.35%
	March-08	3.26%	3.45%	3.32%	3.28%	3.23%	3.48%	3.40%
	March-09	3.28%	3.47%	3.34%	3.32%	3.26%	3.51%	3.42%
	% change 08 & 09	0.7%	0.8%	0.5%	1.1%	1.0%	0.7%	0.7%

New data series from 1/7/2006

APPENDIX "D"

DAIRY AUSTRALIA

EXPORTS

COMPARISON

JUL - APRIL 2008 - JUL - APRIL 2009



Tonnes	2007/08		% Change
	Jul - Apr	2008/09 Jul - Apr	
Butter	31,732	36,784	15.9%
Butter Oil	15,109	15,076	-0.2%
Cheddar **	71,893	54,483	-24.2%
Other Cheese **	101,020	62,889	-37.7%
Milk	60,122	57,700	-4.0%
SMP/BMP	106,878	147,573	38.1%
WMP	105,778	135,983	28.6%
Whey Products	36,920	54,315	47.1%
Mixtures	19,328	41,289	113.6%
Other Dairy Products	46,638	34,942	-25.1%
Total	595,420	641,034	7.7%

Value (AUD)	2006/07		% Change
	Jul - Apr	2007/08 Jul - Apr	
Butter	108,363,206	129,905,698	19.9%
Butter Oil	55,351,449	66,267,130	19.7%
Cheddar	352,254,640	325,240,516	-7.7%
Other Cheese	452,475,001	345,197,617	-23.7%
Milk	77,507,347	86,815,787	12.0%
SMP/BMP	480,873,116	517,569,912	7.6%
WMP	516,867,076	623,710,837	20.7%
Whey Products	87,744,068	99,866,521	13.8%
Mixtures	79,717,323	178,204,792	123.5%
Other Dairy Products	190,155,541	175,641,675	-7.6%
Total	2,401,308,767	2,548,420,485	6.1%

Milk includes buttermilk

SMP/BMP includes milk protein concentrates

WMP includes infant powders

Whey products include whey protein concentrates

Other dairy products include casein, lactose, condensed milk, ice cream and yogurt

** Due to classification changes Processed Cheddar is now included with Cheddar, and Other Processed Cheeses are included under Other Cheese

Produced by Trade and Strategy, Dairy Australia Limited

Source: Australian Bureau of Statistics

APPENDIX "E"

DAIRY AUSTRALIA

FARMGATE PRICES

30 JUNE 2008

Farmgate Prices

Unlike many countries around the world, there is no legislative control over the price milk processing companies pay farmers for their milk. Farmgate prices can vary between manufacturers, with individual company returns being affected by factors such as product and market mix, marketing strategies and processing efficiencies.

Most milk prices are based on both the milkfat and protein content of the milk. Payments from processors to individual farmers can also vary marginally, as firms operate a range of incentive/penalty payments related to milk quality, productivity and off-peak supplies. There are also volume incentives in place to encourage milk supply to particular processing plants to improve operating efficiencies.

Typical factory paid prices

		2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08 (p)
NSW	cents/litre	32.5	32.8	30.9	32.9	34.3	36.7	48.8
	\$/kg milk solids	4.58	4.64	4.29	4.62	4.80	5.02	6.73
VIC	cents/litre	33.3	24.8	26.7	31.5	32.9	32.8	50.0
	\$/kg milk solids	4.45	3.35	3.57	4.23	4.44	4.32	6.68
QLD	cents/litre	34.5	34.8	33.8	35.9	38.6	38.8	51.8
	\$/kg milk solids	4.88	4.94	4.72	4.84	4.99	5.38	7.14
SA	cents/litre	31.5	30.3	28.2	28.1	32.0	32.8	48.8
	\$/kg milk solids	4.38	4.22	3.90	4.19	4.49	4.57	6.75
WA	cents/litre	28.8	28.2	27.4	27.2	28.0	32.0	41.5
	\$/kg milk solids	4.11	4.04	3.91	3.89	4.09	4.49	5.79
TAS	cents/litre	32.7	25.9	27.2	30.8	33.8	38.5	50.2
	\$/kg milk solids	4.33	3.43	3.54	4.05	4.39	4.79	6.63
AUST	cents/litre	33.0	27.1	27.9	31.5	33.1	38.2	48.6
	\$/kg milk solids	4.47	3.71	3.76	4.28	4.50	4.51	6.69

Source: Dairy manufacturers

APPENDIX "F"

DAIRY AUSTRALIA

COWS & FARMS

30 JUNE 2008

Cows and Farms

Owner-operated farms dominate the Australian dairy industry, corporate farms make up just 2% of the total, with share farmers involved in 18% of local farms in 2007/08. The number of dairy farms has more than halved over the past 25 years, from 22,000 in 1980 to 7,950 in 2008.

Number of registered dairy farms

	NSW	VIC	QLD	SA	WA	TAS	AUST
1979/80	3,601	11,467	3,052	1,730	622	1,522	21,994
1989/90	2,220	8,840	1,970	969	496	901	15,396
1994/95	1,911	8,379	1,746	819	479	832	14,166
1995/96	1,853	8,275	1,693	791	457	819	13,888
1996/97	1,851	8,203	1,680	768	450	801	13,753
1997/98	1,817	8,084	1,642	749	440	746	13,478
1998/99	1,771	7,926	1,589	714	423	733	13,156
1999/00	1,725	7,806	1,545	667	419	734	12,896
2000/01	1,391	7,559	1,305	587	358	638	11,830
2001/02	1,323	7,079	1,152	538	344	612	11,048
2002/03	1,290	6,801	1,125	516	325	597	10,654
2003/04	1,096	6,242	967	458	305*	543	9,611
2004/05	1,063	6,108	885	402	278	507	9,243
2005/06	1,024	5,892	802	383	245	498	8,844
2006/07	924	5,346	734	354	222	475	8,055
2007/08 (p)	886	5,422	664	332	180	463	7,953

* Estimate Source State Milk Authorities

This reflects a long-term trend observed in agriculture around the world, as reduced price support and changing business practices have encouraged a shift to larger, more efficient operating systems.

The trends in farm numbers have meant that the average herd size has increased from 85 cows in 1980 to 215 in 2007/08. The 2008 National Dairy Farmer Survey indicated that 8% of dairy farms had herd sizes of more than 500 cows and produced 25% of the total milk produced in Australia. At the other end of the spectrum, 48% of farms had fewer than 200 cows and produced 24% of the milk.

The dominant breed in Australia is the Holstein Friesian, accounting for approximately 67% of all dairy cattle, followed by the Jersey at more than 10% and then the Holstein/Jersey cross. More than 85% of dairy farmers use artificial insemination and access some of the best genetic material in the world.

Number of dairy cows (000 head)

	NSW	VIC	QLD*	SA	WA	TAS	AUST
At March 31							
1979/80	311	1,047	247	103	71	103	1,880
1989/90	238	968	201	89	64	92	1,654
1994/95	230	1,113	189	97	73	119	1,882
1995/96	235	1,161	189	97	71	130	1,884
1996/97	244	1,229	195	101	71	137	1,977
1997/98	266	1,268	203	107	73	143	2,060
1998/99	282	1,340	197	117	65	154	2,155
1999/00	289	1,377	195	105	65	139	2,171
At June 30							
2000/01**	268	1,377	186	124	72	148	2,178
2001/02	264	1,363	174	110	75	134	2,123
2002/03	250	1,303	159	117	77	142	2,050
2003/04	248	1,297	171	116	74	133	2,038
2004/05 (e)	245	1,295	150	115	70	135	2,010
New Series***							
2005/06	222	1,217	127	104	67	143	1,880
2006/07 (a)	213	1,157	122	105	54	133	1,786
2007/08 (a)	200	1,100	105	102	53	140	1,700

* For 1999 and 2000, Old state figure included Northern Territory cow numbers

** From 2001 census date is June 30 and NT and ACT numbers are included in the national total

*** Change in ABS data collection Source: ABS and Dairy Australia



**Australian
Competition &
Consumer
Commission**

GPO Box 3131
Canberra ACT 2601

23 Marcus Clarke Street
Canberra ACT 2601

tel: (02) 6243 1111
fax: (02) 6243 1199

www.accc.gov.au

Contact Officer: Monica Bourke
Contact Phone: 02 6243 1351

5 June 2009

Mr Alex Gallacher
Branch Secretary
Transport Workers Union SA/NT Branch
PO Box 137
Welland SA 5007

By email: roger.prime@twusant.com.au

Dear Mr Gallacher

Fee waiver request

I refer to your letters received on 11 and 29 May 2009 to the Australian Competition and Consumer Commission (ACCC) in respect of a proposed application for authorisation. In your letter you have requested that the ACCC grant a fee waiver in respect of the proposed arrangements.

In particular, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by Transport Workers Union SA/NT Branch (TWU) be waived in whole.

In support of your request, among other things, you submit that:

- the TWU is a not-for-profit organisation
- the authorisation will apply to 50-60 small business milk vendors. The payment by these members of the application fee and subsequent legal fees incurred as a result of the application will result in financial hardship to them.
- the TWU is seeking authorisation as a result of the transfer of the Milk Vendor's Association to the TWU. This will enable the milk vendors to continue to give effect to the collective bargaining arrangements previously authorised by the ACCC until May 2010.
- the milk vendors contributed to the fees incurred as a result of the previous authorisation.

Having regard to the above, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I wish to advise that the application fee to be paid by the TWU has been waived in full.

This decision will remain in force for a period of three months. The three month period will expire on 7 September 2009.

A copy of this letter should accompany the application for authorisation to be lodged by the TWU. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by the TWU after 7 September 2009, a full application fee of \$7500 will apply, unless a subsequent request for a fee waiver is made and ultimately approved by the ACCC.

Should you have any queries in relation to this matter, please do not hesitate to contact Monica Bourke on (02) 6243 1351.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R. Chadwick', with a long horizontal stroke extending to the right.

Dr Richard Chadwick
General Manager
Adjudication Branch