

8 July 2011

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

Dear Dr Chadwick,

Re: Australian Dairy Farmers Ltd - Revocation & Substitution - A91263

The NSW Farmers' Association Dairy Section welcomes the opportunity to comment on the draft determination of the Australian Dairy Farmers Ltd (ADF) application for revocation and substitution of their collective bargaining authorization.

The Dairy Section are generally supportive of the comments provided in the draft determination. The clarification contained in the draft that, "the condition does not prevent collective bargaining groups from obtaining legal or other professional advice" is welcomed and will support capacity building activities of collective bargaining groups. Allowing this will enable groups to build their skills and capacities to improve the negotiation process and facilitate a more amicable agreement.

The Section does note that the proposed amendment to condition 1 still restricts third parties from representing collective bargaining groups. While recognising that there are possible competition aspects of third parties representing more than one group, the Dairy Section does foresee that the condition could possibly limit the ability for groups to access services and restrict the competition of service providers in providing the services. This point is further emphasised by recent information from the Law and Justice Foundation of NSW illustrating that there are only 6 percent of the state's legal professionals located in rural areas.

The Section's concerns focus solely on legal representative services at this stage. Currently individual farmers engaged in negotiations could seek legal advice and representation from any legal firm regardless of whether they represent other farmers. The internal and professional requirements of legal firms prevent information sharing between clients, and as is noted in the draft determination, "professionals such as legal advisors are subject to their own professional obligations (including the obligation to maintain client confidentiality) which limit the sharing of confidential information."

The interpretation of representation raises some questions. While the clarification in the draft does support the provision of advice, the question remains as to when this may extend to representation. For example, it may be the case that a legal firm could provide advice on what clauses to include in a contract however it may be classified as representation if that legal firm were to write to the processor on behalf of the group requesting that those clauses be considered in the contract. As with many contractual negotiations, inclusion of clauses often results in correspondence being traded between legal representatives of either party.

The Section suggests that a possible exemption from the condition be granted to professional legal firms who have their own professional standards that restrict the sharing of any information between groups. For example:

Collective bargaining groups may be represented in negotiations with a processor by a member (or members) of the collective bargaining group or by (one or more) third parties. However, a collective bargaining group must not be represented in negotiations with a processor by a third party (excluding registered legal practices) who represents or has represented another collective bargaining group in negotiations with a processor in the previous 2 years

In proposing this exemption the Section recognises the value and necessity for farmers to be involved and take the lead in negotiations. The function of these groups is heavily reliant on local involvement and the Dairy Section does not foresee that the Association would be active in a representative role for groups.

If you have any further questions please feel free to contact me on 8251 1876.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Angus Gidley-Baird', written over a horizontal line.

Angus Gidley-Baird
Policy Manager, Livestock