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Dear Dr Chadwick,

Thank you for the opportunity to provide a submission on the Collective Bargaining Notifications CB281 and CB282 lodged by Manning Valley dairy farmers.

ADF will firstly make some general comments on collective bargaining and the potential for direct contracting between dairy farmers and retailers and brokers and will then provide comment on the applications at hand.

ADF is strongly supportive of collective bargaining arrangements as a means to assist in balancing the market power of processors, although there are ways they could be improved.

In many cases individual dairy farmers are placed at a significant disadvantage in negotiations due to their limited bargaining power, negotiation skills and limited ability to utilise the information available to them as they do not have the resources or time to do so, particularly when compared to processors or retailers.

The fact that, through a successful and transparent collective bargaining process, both parties are better informed leads to better outcomes with significantly less scope for misunderstandings and greatly increases the chance of successful and satisfactory negotiations.

ADF notes the imbalance in market power is significantly greater when negotiating with major retailers rather than milk processors and this must be considered by the ACCC in its review of the application by the Manning Valley dairy farmers.

ADF has noted the recent media regarding the potential for direct contracting between Woolworths and a group of seven dairy farmers from NSW and the current applications for authorisation. ADF notes that reference has been made to the arrangements as a potential pilot.

If the collective bargaining applications are successful ADF will closely monitor the farmer/retailer/broker relationship and the long-term impact of direct contracting on farmers across Australia.

As Woolworths has made plain both publicly and privately, milk priced at \$1 per litre is unsustainable. Unfortunately direct farmer contracting by Woolworths does not address this key issue; milk priced at \$1 per litre. A long term solution to this problem is to price all drinking milk sustainably, so all farmers supplying the drinking milk market receive a fair price.

Direct contracting between retailers and dairy farmers takes place in the United Kingdom and it is fair to say the results have been mixed with some farmers benefiting from this approach and others not; unfortunately there is mounting evidence that it is the majority who don't.

In the United Kingdom direct contracting between retailers (known as dedicated supply chain arrangements) and dairy farmers has been conducted for over a decade so it is worthwhile making some comments based on the activities there:

- A UK Parliamentary Inquiry into *EU Proposals for the Dairy Sector and the Future of Dairy Industry* published figures in June 2011 which suggest that only approximately 10% of dairy farmers benefit from being in a dedicated supply chain (DSC) arrangement, creating a divided market between the “haves”, supplying milk directly to supermarkets, and “have nots”, supplying processed products into commodity markets.¹
- In June 2011, the highest farmgate prices (over 29 pence per litre, or 43 Australian cents) were paid to farmers with DSC arrangements, whilst the lowest farmgate prices (below 25 ppl, or 0.37 AUD) were paid to farmers in dairy co-operatives First Milk and Milk Link, which supply commodity cheese production or milk for supermarkets’ balancing pools.²
- Tesco was questioned during hearings by the UK Environment, Food and Rural Affairs Committee as to why the DSC model had not been extended to other products, such as home-brand cheese, which could allow more farmers to benefit. Tesco argued that trying to establish a DSC for other dairy products would be much more difficult. The Committee found their argument unconvincing, and believed a more likely explanation would be the costs incurred by paying above market price. Further, there is less incentive for retailers to set up DSCs for processed products, as these products can be sourced globally, as opposed to liquid milk, which can generally only be sourced locally.³
- Since 1999, when the first DSC agreements were established, there has been a slight increase in price, combined with increased productivity, which has resulted in a slight improvement in incomes for UK dairy farmers. However, there has been a significant decline in the number of dairy farmers since 1999.⁴ Further, it is not clear that prices per litre have increased in real terms since 1999, given that farms have, on average, increased in size during that time.
- The UK Groceries Market Investigation observed that the benefits of increases in the price of milk in the UK have generally been retained by retailers.⁵
- Prior to 1999, when many DSC arrangements were first established, UK dairy farmers would experience price fluctuations in line with seasonal milk production, meaning that for part of the year the farmgate price was below commodity price; however, this was balanced by a farmgate price higher than commodity price for the rest of the year.⁶
- Since the establishment of DSCs, these fluctuations have become more volatile, with fluctuations no longer mirroring seasonal milk production, and since 2007 (notably, when the Tesco Sustainable Dairy Group was established,⁷ which formalised Tesco’s existing DSC arrangements) there has been a larger separation between the farmgate price and the commodity price of milk.⁸

As you are aware the concentration of retail power is much greater in Australia than in the United Kingdom and is itself a cause for concern.

On collective bargaining more generally ADF notes that its own authorisation from the ACCC was renewed in August 2011 for a period of ten years until August 2021.

¹ UK Environment, Food, and Rural Affairs Committee, Eighth Report, *EU Proposals for the Dairy Sector and the Future of Dairy Industry*, section 2, paragraph 25, published 13 July 2011

² *ibid*

³ *ibid*, paragraph 26

⁴ UK Groceries Market Investigation, pp. 39-40, paragraph 107

⁵ UK Groceries Market Investigation, p. 40, paragraph 107

⁶ DairyCo Report, *Asymmetric Price Transmissions in the Dairy Supply Chain* p. 4

⁷ Tesco Milk website, “Why Drink Tesco Milk?”, <http://realfood.tesco.com/our-food/milk/why.html>, accessed 21 January 2013

⁸ DairyCo Report, *Asymmetric Price Transmissions in the Dairy Supply Chain* p. 4

ADF also notes that the current ADF authorisation only permits dairy farmers to collectively negotiate with processors – not retailers or other third parties such as Milk2Market. Thus this request for collective bargaining authorisation makes it even more imperative to have a mandatory supermarket code and strong ombudsman across the entire value chain.

ADF will now comment on the two applications before the ACCC (CB281 and CB282) relating to the Manning Valley dairy farmers.

ADF notes the proposal at item 3(g)(vi)(v) that each supply agreement will require the parties to attempt to resolve the dispute by negotiation or mediation before legal proceedings can be commenced. ADF considers that a further step requiring arbitration by a qualified and experienced person or authority would assist in making the authorisation fairer and more balanced.

ADF notes at item 4 (Market Definitions) that the applicant “does not consider that the market is geographically limited to that region as dairies in the region can, and do, supply raw milk to processors which are located outside the region, and the prices received for milk in the region do not differ markedly from prices obtained in the broader New South Wales region.”

ADF agrees with this statement but urges the ACCC to consider potential impacts on dairy farmers. This is particularly relevant in the case of smaller dairy farming regions across Australia, if further authorisations are sought to contract directly with retailers with potentially extremely large milk requirements.

At item 5 (Public detriments) ADF notes that the applicant states the “notified conduct will have no material impact on farmgate prices of raw milk in the market or the prices of drinking milk and manufactured dairy products in the affected market for the following reasons:”

ADF notes that under this section the volume of raw milk expected to be supplied by the participants annually is small relative to the total volume of raw milk supplied from NSW which is cited as approximately 1 billion litres annually.

As the raw milk to be supplied is to be used for drinking milk ADF notes that drinking milk sales for NSW in 2011/12 were 729 million litres – this figure is based on provisional data from Dairy Australia’s publication *Australian Dairy Industry in Focus 2012*.

Whilst ADF acknowledges that this notification has been couched in the media as a trial and is seeking collective bargaining authorisation for a small number of farmers it needs to be acknowledged that there is the potential for subsequent authorisations to include more dairy farmers and greater milk supply volumes with other retailers.

It also needs to be acknowledged that Woolworths has publicly stated its wish to increase the market share of its private label products, including drinking milk, in the process continuing to reduce the value of drinking milk.

Hence ADF’s call above for the ACCC to consider potential impacts on dairy farmers across Australia if further authorisations are sought to contract directly with retailers.

Under item 5(b) ADF notes the proposal to have a single individual represent farmers and negotiate with Milk2Market Pty Ltd.

ADF has some concerns with this proposal, given the individual currently also holds another role as the representative of the Mid-Coast Collective Bargaining Group in negotiations with processors (which is acknowledged in the application for authorisation).

ADF believes that systems must be set up to ensure that existing members of the Mid-Coast Collective Bargaining Group are not disadvantaged in any way by this dual role. There must be clear demarcation points and boundaries established by the Mid-Coast Collective Bargaining Group and the proposed Manning Valley collective bargaining group to avoid any perceived or potential conflict of interest.

On a related matter, Condition 1 of the current ADF collective bargaining authorisation states:

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 who represents or has represented another collective bargaining group in negotiations with a processor in the previous 2 years.

ADF assumes there will be a similar condition if the current application is authorised and would like to note that it is its understanding that Condition 1 does not prevent relevant industry associations from providing general advice, training and assistance to dairy farmer members.

ADF also notes that Condition 1 does not prevent collective bargaining groups from obtaining legal or other professional advice. ADF further notes that lawyers are subject to their own professional obligations which limit the sharing of confidential information.

As previously mentioned in the consultations around the ADF authorisation ADF believes that to provide greater clarification, security and comfort to collective bargaining groups that it is worthwhile amending Condition 1 further to explicitly exempt registered legal practitioners who have their own professional standards that restrict the sharing of information between collective bargaining groups.

ADF also notes at item 3(g)(vi)(vi) the proposed length of contract term to be three to five years and hopes there will be appropriate rise and fall mechanisms in the contracts to ensure dairy farmers aren't disadvantaged.

More generally ADF notes that contracts being offered to farmers are significantly different from what they were in the past with more complexity and less transparency. As a result, farmers need more expertise and stronger negotiating skills, to allow them to deal with professional negotiators who have a strong bargaining position. They also need legal assistance to help them understand contractual terms.

It would be beneficial for farmers to be provided with general advice, training and negotiation skills to assist them in collective bargaining negotiations. Alternatively dairy farmers could be assisted with accessing professional negotiation advice and assistance in negotiations to help ensure a reasonable balance.

ADF also notes that since the original ADF authorisation there has been considerable consolidation of the processing and with the proposed entry of the supermarkets into the collective bargaining process it is necessary to review the shared community interest provisions.

There is a valid argument that it is necessary to amend the 'shared community interest' provisions in condition 2 of the ADF authorisation (below) to increase the potential size of collective bargaining groups to counter the market power of processors and the supermarket duopoly in regions where the shared community of interest has a limited number of processors servicing it and also given the market power of the supermarket duopoly.

Collective bargaining groups can only be formed by dairy farmers who have a 'shared community interest'.

Dairy farmers will have a shared community interest where they each have a reasonable expectation of supplying the same plant of a dairy processor and are within the economic delivery zone of that plant and demonstrate one of the following:

- a. they have similar supply patterns; or*
- b. they supply a specialty raw milk product.*

Condition 7 requires groups to provide the ADF and the affected processor(s) with details of how this condition is satisfied.

ADF is happy to discuss any aspect of this submission and would be pleased to meet with the ACCC or other interested parties on this matter.

Collective bargaining is important to dairy farmers and thus it is important that we get it right.

If you require further information on this matter please do not hesitate to contact David Losberg on (03) 8621 4200.

Yours sincerely,

A handwritten signature in black ink that reads "Noel Campbell". The signature is written in a cursive, flowing style.

Noel Campbell
ADF President