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Our ref: IM-70485  
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17 December 2019

Dear Interested Party

**Re: Request for submissions: China Mengniu Dairy Company Limited's proposed acquisition of Lion-Dairy & Drinks Pty Ltd**

The Australian Competition and Consumer Commission (**ACCC**) is seeking your views on the proposed acquisition of Lion-Dairy & Drinks Pty Ltd (**Lion D&D**) by China Mengniu Dairy Company Limited (**Mengniu**) (the **proposed acquisition**).

A subsidiary of Mengniu owns a 43.35% minority interest in Inner Mongolia Fuyuan International Industrial (Group) Co., Ltd, which in turns owns 51.35% of Burra Foods Pty Ltd (**Burra**).

Lion D&D and Burra both operate dairy processing plants in the Gippsland region of Victoria and overlap in the acquisition of raw milk from dairy farmers in Gippsland.

Further details regarding the acquisition can be found at **Attachment A**.

The ACCC's investigation is focused on the impact on competition. In particular, we are seeking your views on:

- the impact on prices or terms of supply farmers in Gippsland receive for their raw milk
- any other competition concerns

Further issues you may wish to address are set out in **Attachment B**.

This matter is public and you can forward this letter to anybody who may be interested.

The legal test which the ACCC applies in considering the proposed acquisition is in section 50 of the *Competition and Consumer Act 2010* (the **Act**). Section 50 prohibits acquisitions that are likely to have the effect of substantially lessening competition in a market.

The Foreign Investment Review Board (**FIRB**) is responsible for examining proposals by foreign persons or businesses to undertake investment in Australia, to ensure they are not

contrary to the national interest. Ultimately, FIRB will advise the Treasurer, who is responsible for making decisions on whether or not foreign investment proposals should be allowed to proceed. The ACCC can only look at the effect of a merger on competition. It cannot take the nationality of the buyer into account.

Please provide your response by no later than **5pm on Monday, 20 January 2020**. Responses may be emailed to [mergers@acc.gov.au](mailto:mergers@acc.gov.au) with the title: *Submission re: Mengniu/Lion D&D- attention Annelise Caplan/Nigel Vise*. If you would like to arrange a time to discuss the matter with ACCC officers, or have any questions about this letter, please contact Annelise Caplan on (03) 9910 9451 or Nigel Vise on (03) 9290 1468.

Updates regarding the ACCC's investigation will be available on the ACCC's Public Mergers Register at ([ACCC mergers register](#)).

#### ***Confidentiality of submissions***

The ACCC will not publish submissions regarding the proposed acquisition. We will not disclose submissions to third parties (except our advisors/consultants) unless compelled by law (for example, under freedom of information legislation or during court proceedings) or in accordance with s155AAA of the *Competition and Consumer Act 2010*. Where the ACCC is required to disclose confidential information, the ACCC will notify you in advance where possible so that you may have an opportunity to be heard. Therefore, if the information provided to the ACCC is of a confidential nature, please indicate as such. Our [Informal Merger Review Process Guidelines](#) contain more information on confidentiality.

Yours sincerely



Tom Leuner  
General Manager  
Merger Investigations

## Attachment A

### Mengniu

Mengniu is a Chinese dairy company listed on the Hong Kong Stock Exchange.

Mengniu holds an indirect interest in the Australian dairy ingredients processor, Burra, via its 100% ownership of Inner Mongolia Mengniu Dairy (Group) Co., Ltd (**IMMD**). IMMD is the largest shareholder of Inner Mongolia Fuyuan International Industrial (Group) Co., Ltd (**Fuyuan**), with 43.35% ownership of Fuyuan. Fuyuan acquired a 51.35% stake in Burra in 2016.

Burra is an Australian producer and wholesale distributor of dairy products. It has one milk processing facility located in Korumburra, Victoria.

Burra processes, manufactures and distributes a variety of dairy ingredients, including:

- milk powders, including cream powder, instant milk powder and skim milk powder
- nutritional milk powders
- food preparation products (for example, cream cheese, frozen cheese, concentrated milk preparations, frozen milk concentrate, skim cheese and milk protein and fat blends) which are supplied primarily in a frozen 'bag in box' format to domestic and international customers
- bulk liquids including fresh milk, cream and milk concentrates.

Burra also owns a single retail brand, 'Pure Source Milk' fresh milk, which it launched in July 2018. The brand has been developed for customers in East Asia.

### Lion D&D

Lion D&D is part of a food and beverage business owned by Kirin that sells products including beer, wine and dairy under a range of retail brands in Australia.

Lion D&D processes, manufactures and distributes various dairy products and drinks in Australia under a range of retail brands, including Pura, Big M, Dare, Farmers Union, Yoplait and Dairy Farmers. It also produces a range of juice products. It manufactures products for sale under its own retail brands, and also contract manufactures fresh drinking milk and some ice cream and cheeses which are sold under third party brands. Its product range includes:

- white drinking milk
- flavoured milk
- custard, sour cream, fresh cream, thickened cream and buttermilk
- dairy desserts
- yoghurts
- iced coffees
- plant milks
- juices.

Lion D&D procures raw milk from Australian dairy farmers.

### The proposed acquisition

Mengniu proposes to acquire Lion D&D, comprising 9 dairy processing plants, and other assets in Australia (two plants located in Tasmania are being sold separately by Kirin Australia to Saputo, and are not included in the transaction).

Accordingly, through Mengniu's limited interest in Burra, the two parties overlap in the acquisition of raw milk in the region of Gippsland.

## **Attachment B**

1. Please provide a brief description of your business or organisation.
2. Please outline the reasons for your interest in the proposed acquisition, including any commercial relationship/s with either of Mengniu or Burra, or Lion D&D.

### **Farmers**

3. Please describe your farm. The ACCC would appreciate receiving information about the processor/s that you currently supply, the number of cattle you milk, the volume of milk supplied per annum and your calving pattern (i.e. seasonal or flat).
4. Please identify all processors that you consider are viable competitors for your raw milk and whether you have switched between processors in the past. If you decide to exclude any particular Gippsland processors from this list, please provide reasons why.
5. What impact do you think Mengniu acquiring Lion D&D will have on your business? Will it reduce the number of competitors for your raw milk?
6. If you are located in Gippsland, could you supply to a processor that does not have a factory in Gippsland?

### **Dairy processors**

7. Please describe your organisation's supply of dairy products. The ACCC would appreciate receiving information about the specific types of products and volumes you supply.
8. Please outline how much raw milk, on average, your dairy processing plant in Gippsland acquires per annum from dairy farmers.
9. Who do you consider are currently your closest competitors in acquiring raw milk in the Gippsland region? If there is a particular processor/s in the Gippsland region that you do not consider you compete strongly with, please provide details as to why.
10. Please identify whether there is unused capacity available at your dairy processing plant, and if so, outline how much capacity you have available to acquire additional raw milk.
11. Are you aware of any recent / potential dairy processors entering the Gippsland region and acquiring raw milk from dairy farmers?
12. Please provide details and data on how frequently dairy farmers have switched between your business and other dairy processors in the Gippsland region. It would assist the ACCC if you could provide a spreadsheet listing contact details for all farmers gained and lost, and if known the farmers' reasons for switching.
13. Please comment on whether you think the proposed acquisition will have an effect on competition for the acquisition of raw milk in Gippsland.

### **Other information or competition issues**

14. Please provide any additional information or comments, or identify other competition issues, that you consider relevant to the ACCC's consideration of the proposed acquisition under section 50 of the Act.