

19 December 2016

Mr Mick Keogh  
ACCC Agricultural Commissioner

Via email: [dairynquiry@acc.gov.au](mailto:dairynquiry@acc.gov.au)

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Dear Mr Keogh,

**Submission by Australian Dairy Farmers (ADF) to the ACCC Inquiry into the Australian Dairy Industry.**

Australian Dairy Farmers (ADF) is the national advocacy body representing dairy farmers across the six dairying states. Our mission is to improve the profitability and sustainability of dairy farmers in Australia.

**Brief Industry Overview**

Australian dairy is a \$13 billion farm, manufacturing and export industry. Australia's 6,128 dairy farmers produce approximately 9.5 billion litres of milk a year.

More than 100,000 Australians rely on dairy for their livelihoods, including vets, scientists, mechanics, financial advisers and feed suppliers, while 39,000 Australians are directly employed on farms and in dairy processing.

Approximately 97% of Australian dairy farms are family-owned businesses.

Our dairy quality and safety processes are among the best in the world and Australian dairy makes a vital contribution to the national economy. With a farm gate value alone of \$4.7 billion, dairy enriches regional Australian communities across Australia.

We are the fourth largest exporter in the world, accounting for 7% of global trade. Around 65% of Australian dairy production is sold on the domestic market, with the remainder exported.

Australian dairy exports go to more than 100 countries and are worth around \$2.8 billion a year. More than 125 Australian companies export dairy products.

Major export markets include China, Japan, Singapore, Malaysia and Indonesia.

Dairy farmers have had a tough past season and it is pleasing to note that the outlook for dairy in the future appears more positive with a rebalancing of supply and demand fundamentals globally taking place.

Dairy farmers and processors have reason to believe that global market fundamentals are improving with recent data on global dairy prices showing positive trends that look as if they may continue. Although these increases are not sufficient at this stage to return to sustainable prices it is pleasing to see that prices appear to be on the rise and the global market may be improving in the long term.

Dairy farmers have a limited capacity to manage the market price and the industry understands the importance of focussing on what can be managed, remaining aware of industry risks and maintaining low-cost production systems so the industry is in a better position to weather any storms.

While the dairy industry has been under intense pressure, we are also an industry that has the know-how and resilience to overcome adversity and thrive in the long term.

## Introduction

Australian dairy farmers are among the most efficient in the world. They supply a unique perishable product, fresh drinking milk, that is an everyday staple of our society.

The Australian dairy industry needs to be viewed as an integrated supply chain. Milk is a perishable product, which must be processed before it can be sold commercially. As a result, dairy production is integrated across the supply chain: dairy farmers cannot operate without domestic processing capacity, nor can processors survive without domestic farm milk supply.

It takes a considerable amount of work, investment, planning and risk to produce, transport, process, distribute and deliver a perishable product, fresh milk, on a daily basis. Currently dairy farmers are bearing an unacceptably large share of the financial and risk burden.

The supermarket duopoly in Australia benefits from unprecedented market share and market power. The unique nature of milk, and demand from consumers, provides retailers with an effective means to grow their market share and power, however the consequences for the sustainability of the domestic fresh milk supply chain is significant.

Significant regional differences continue to characterise the Australian dairy industry – based on market and product mix, farmer confidence as well as current and future growth prospects. For most farmers in south-eastern Australia, international conditions determine prices and industry confidence.

In Queensland, Central and Northern New South Wales, and Western Australia, however, the industry is geared toward domestic fresh milk supply.

Ongoing intensity in retail competition, unsustainable pricing of milk at \$1 per litre, pricing impacts on other products (both private label and branded) such as cheese, yoghurts, butter etc., disruptions caused by changes in private label supply contracts and uncertainty surrounding processor milk requirements have undermined farmer confidence and supply stability.

These regional differences affect the food system within regions, and, ultimately, the sustainability of a local fresh milk supply.

A simple analysis at the national level fails to show this nuanced picture, particularly the de-linking of pricing in the 'drinking milk' states from international prices which is becoming apparent.

Prices in Southern states are set in global markets due to the large amount of product exported. Approximately 45% of milk production is exported from Victoria, Tasmania and South Australia. (approximately 35% of total Australian production is exported).

The domestic market is a mature market and any substantial growth in the Australian dairy industry is likely to come through the export market.

Domestic retail, processor, pricing, margins and competition issues have a significant impact on the Australian dairy industry, given the significant amount of production that is used domestically (currently approximately 65% of production).

The ACCC Inquiry into the Australian dairy industry provides an opportunity for transparency and accountability on key issues facing the industry. The concerns of farmers will be examined by the ACCC and potentially lead to policy recommendations and potential enforcement issues being identified. ADF anticipates that the market study will also identify positive aspects of the industry and what is working well.

A key outcome should be an analysis of margins and risk along the supply chain as farmers are bearing an unfair financial burden and share of the risk.

## Summary of Suggested Issues to be Considered and Investigated by the ACCC

### Margin

- Risk and financial costs are being transferred through the supply chain to those who actually produce the product, the dairy farmers, and they are bearing an unfair burden and share of the risk.
- A key outcome should be an analysis of margins (gross and net) and risk along the supply chain over the last ten years to provide historical context.
- The use of weighted average pricing by processors as an indicator of prices received by dairy farmers and the accuracy of this measure as an indicator.

### Retailers

- The market concentration of the major retailers must be considered in the wider context of their other activities and channels where dairy products such as milk are discounted and sold, e.g. service stations.
- The impact on the supply chain of private label products must be examined, not only in the context of the discounting of the products themselves but also the associated impact on branded products (i.e., price reductions to remain competitive) and loss of market share of branded products.
- Claims by Coles that the company continues to absorb the cost of the \$1 per litre milk marketing strategy.
- Investigation of Coles' use of the rise and fall clause in its contracts with processors, in particular how this clause is linked to global dairy prices and who benefits from this clause.
- Coles claim that \$1 per litre milk has increased milk consumption.
- Claims by retailers regarding direct farmer-supplied milk (e.g. Farmers Own), the number of farmers supplying these products, the milk volumes being sold through these products and whether some milk is being channelled through these products from other dairy farmers without appropriate recompense.
- Claims by retailers regarding direct farmer-supplied milk and potential benefits to farmers, e.g. higher prices or assistance to farmer or industry funds – are these claims correct and are all monies being paid.

### Processors

- The transfer of business and financial risk to dairy farmers.
- Has the transfer of business and financial risk to dairy farmers changed or been exacerbated as dairy farmer cooperatives have been corporatised.
- The complexity, transparency and timing of processor pricing and pricing announcements.
- The complexity, transparency and timing of processor payments to farmers.
- Inequities in the impact on suppliers from the processor price reductions in April/May 2016 depending on their calving pattern and milk supply arrangements.
- Whether processors are passing on any/all rises in price/margins to farmers when it is claimed they have.
- What efficiencies and savings are being achieved by processors through milk swaps and transport of milk.
- Are the above efficiencies and savings flowing through to farmers.
- Processor understanding of their supplier base/production systems and capacity and the associated link to products/margins.
- The efficiency, capacity and utilisation of processing factories.

### Processors cont.

- Is milk that is produced in the Southern States in a typical seasonal production curve and supplier agreement being used in liquid milk products, which are usually produced on a flat supply curve and paid at a higher rate under different contractual arrangements.
- The recent situation in Western Australia where farmers were encouraged to grow milk production through payment incentives then several farmers did not have their contracts renewed causing them to exit the industry.
- Processor refusal to negotiate with collective bargaining groups, the reasons why and potential solutions.
- Milk testing procedures by processors; standards, standardisation of tests, compliance and reliability.
- Milk testing by processors and the impact this has on farmers and their income.

### Farmers

- Farmer margins (gross and net) over the last ten years.
- Farmer understanding of processor supplier agreements and contracts, pricing and payments.
- Farmer payments to processors, e.g. milk collection etc., the cost of these payments to farmers and the impact on margin of such payments.
- Australian dairy farm production efficiency.
- Investigate the reasons why farm milk production in Queensland is now below drinking milk consumption for much of the year and the long-term impacts of this.

Further detail is provided on the majority of the above issues in this submission but ADF would appreciate the opportunity to discuss these issues with the ACCC in detail.

## Background and Context

### Retail Market Concentration

It is worthwhile highlighting the unique retailer market concentration in Australia.

- “The level of concentrated market power in the Australian grocery retail industry is unprecedented: Coles and Woolworths now collectively control 74% of market share.”
- “Australia has the most concentrated supermarket sector in the world with Coles and Woolworths collectively controlling 74% of the grocery retail share. In most other developed countries, the market is usually shared between five to 10 retail players.”\*

\*Page 49, Australian Farm Institute, Farm Policy Journal, Vol. 10, No.1 Autumn Quarter 2013

- “With 80% of Australians regularly shopping in Coles or Woolworths stores, it is the shoppers who have given the supermarkets their power.”\*

\*Page 52, Australian Farm Institute, Farm Policy Journal, Vol. 10, No.1 Autumn Quarter 2013

- 12.2 “Supplied approximately 30-35% of the grocery products supplied for retail sale to customers in Australia; and”
- 12.3 “together with Woolworths, supplied approximately 60-70% of the grocery products supplied for retail to customers in Australia.”\*

\*Statement of Claim – Federal Court of Australia (Victoria) – ACCC v Coles Supermarket – page 6 (12.2) & (12.3) –

- “The supermarket channel’s share of Australian drinking milk sales has been relatively steady over the last five years at around 53-54%.”\*

\*Dairy Australia, Australian Dairy Industry In Focus 2016, page 23

- Of supermarket regular whole milk sales, a significant 68.6% (437 million litres) are private label compared to 31.4% (200 million litres) of branded regular whole milk sales\*.

\*Dairy Australia, Australian Dairy Industry In Focus 2016, page 43

- Of total supermarket milk sales almost 55% (745 million litres) are private label, compared to 45.2% (614 million litres) of branded sales.\*

\*Dairy Australia, Australian Dairy Industry In Focus 2016, page 43

ADF understands that for stores over 2,500 metres the market concentration of the retail sector is even more extreme with Woolworths and Coles having 87% of these stores.

This extreme market concentration places processors in a ‘catch 22’ position. The major retailers are not only the largest sales avenue to consumers for the sale of processor’s own branded products but the supermarket ‘home brand’ milk products and associated tenders are now a major component of the overall domestic drinking milk market, particularly when other products such as cheese, yoghurt etc. are considered.

This means that processors are understandably cautious about pushing back on the major retailers due to their market power. It also means there are significant impacts down the supply chain with farmers bearing the brunt of risk and reduced value in the supply chain and changes in contract supply requirements in different regions.

## Milk Utilisation by State

There are significant differences in the use of Australian milk by state, for example in Queensland, almost 100% of milk produced is used as drinking milk. In Victoria, about 10% of the milk is used as drinking milk with the rest being manufactured into products for local consumption and export.

The table below shows the use of Australian milk by state and highlights the regional differences in the way the milk is used.

These regional differences lead to varying competitive tensions. For example, there is substantial competition for milk supply between processors in the southern states, whereas, broadly speaking there is significantly less competition for supply in Queensland, Western Australia and northern New South Wales, with two major processors competing for supply in each of these regions.

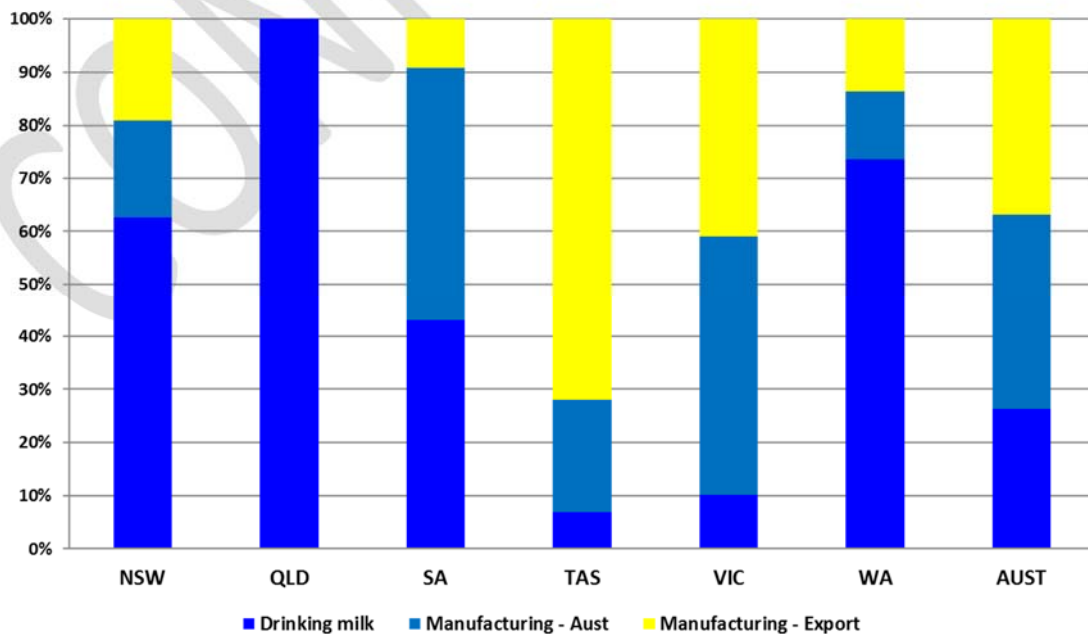
In Queensland, Western Australia and Northern New South Wales milk is mainly produced in a flat supply curve. Producing the same volume of milk every day throughout the year is more expensive for dairy farmers as there are increased costs, for example higher feed and labour costs.

In these regions, there are also usually different contracting arrangements to the southern states, with farmers and processors contracting in the more traditional sense – with a fixed timeframe and price.

In the southern states the majority of dairy farms follow a seasonal production curve, with associated lower costs and contract arrangements through supplier agreements with no fixed price or timeframe.

ADF will elaborate on the different production, payment systems and contracting arrangements in further discussions with the ACCC. ADF is also happy to provide examples of supplier agreements and contracts in discussions with the ACCC.

### **Dairy product mix by state – drinking milk vs manufacturing milk**



Use of Australian milk by State – 2015/16							
	NSW	QLD	SA	TAS	VIC	WA	AUST
Drinking milk	63%	100%	43%	7%	10%	74%	26%
Manufacturing – Australia	28%	0%	48%	21%	49%	13%	37%
Manufacturing – Export	19%	0%	9%	72%	41%	14%	37%

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## Impact on processors

The major retailers are not only the largest sales avenue to consumers for the sale of processors own branded products but also the supermarket 'home brand' or private label milk contracts are now the major component of the overall domestic drinking milk market.

- Of total supermarket milk sales, almost 55% (745 million litres) are private label, compared to 45.2% (614 million litres) of branded sales.\*

\*Dairy Australia, Australian Dairy Industry In Focus 2016, page 43

This means that processors are understandably cautious about pushing back on the major retailers due to their market power.

ADF has included below comments from processors to the media, and extracts from submissions to the *Senate Economics References Committee Inquiry into The impacts of supermarket price decisions on the Dairy Industry* and financial results reporting.

ADF's reason for doing this is to highlight the views of a range of processors on the impact on farmers and the value chain from \$1 per litre milk at the time.

It is important to note that the comments below apply not only to private label milk products but equally to other private label dairy products such as cheese, yoghurt etc.

### Lion Dairy and Drinks spokeswoman A Current Affair – 17 August 2011

"It's our view that the current pricing seen in the marketplace, if maintained, cannot deliver a fair return to any of the players in the supply chain..."

### Adelaide Advertiser – 6 August 2011 – Page 73

"Lion's white milk volumes fell 10.9%, largely driven by the private label contract losses, compounded by deep discounting with consumers switching from branded products to private label."

### Fonterra Submission – Senate Economics References Committee Inquiry into the impacts of supermarket price decisions on the Dairy Industry, 3 March 2011

"The recent reductions in the price of house brand fresh milk by supermarket retailers has fundamentally changed the dynamics of the fresh milk market and this is something all players in the market will have to grapple with – including retailers, milk vendors, processors, farmers and their communities."

"The shift from branded milk to lower priced house brands means lower returns to processors and farmers. It is well recognised in the industry that house brand milk contracts are a cost recovery exercise for processors rather than a profit making venture and for these contracts to be viable processors must balance them with branded milk contracts so that a reasonable return can be achieved once the price is averaged across the entire milk volume."

"The value that is being taken out of the value supply chain will inevitably impact farmers. The level of impact will depend on whether the supermarkets continue to absorb the price reductions, but one has to expect that a new low benchmark price is being set for fresh milk which will change the dynamic of that market for the long term."

### Parmalat Submission – Senate Economics References Committee Inquiry into the impacts of supermarket price decisions on the Dairy Industry, 10 March 2011

"In conclusion Parmalat Australia believes that heavy price discounting:

- is placing enormous pressure on processor margins through loss of branded sales;
- has negatively impacted smaller retailers by channel shift to the already dominant major grocers;



- has the potential to destroy the Queensland and Northern NSW dairy industries; and
- will put at risk future investment plans of both processors and farmers.”

National Foods submission – Senate Economics References Committee Inquiry into the impacts of supermarket price decisions on the Dairy Industry, 7 March 2011

“The decision to reduce the price of house brand milk to \$1 per litre will have significant and detrimental implications for the sustainability of the Australian dairy industry.”

“The price reduction will not generate increased sales of fresh white milk and will not inject any additional revenues into the dairy industry.”

“Since the price reduction will not generate increased sales of fresh white milk, or inject additional revenues into the dairy industry, it will not benefit any part of the dairy industry. It will not mean that dairy farmers will be able to sell more milk.”

“Any increase in sales of house brand milk by the supermarkets will only be associated with corresponding decreases in sales of branded fresh white milk - in supermarkets and in the non-grocery sector.”

“EBIT (earnings before interest and tax) margin on fresh white milk of less than 2%. This is anticipated to deteriorate further as the discounting of house brand milk reduces National Foods’ sales of branded fresh white milk.”

National Foods stipulated that the planned EBIT margin on its fresh white milk “includes the recent price increase that National Foods secured from Coles to produce its house brand milk.” “The price increase reduced National Foods’ anticipated EBIT losses from its house brand milk business from loss making to marginally profitable under current distribution arrangements.”

National Foods – evidence to the Senate Economics References Committee Inquiry into the impacts of supermarket price decisions on the Dairy Industry – 9 March 2011

“Just to be clear, that is why I was able to say that generic for us principally is zero. It was loss-making prior to that.”

Lion (formerly National Foods) H1 Trading Update – 5 August 2011

“As previously communicated, conditions in both the dairy and juice sectors remain very difficult for farmers and processors alike.

Lion has quality dairy and drinks brands that require investment to reach their full potential and remains committed to patient investment in its core strategic assets – its people, brands and production assets – to deliver sustainable growth over the long term. Lion’s dairy and drinks business is still a long way from achieving an acceptable return on invested capital and continues to face significant margin pressures in both dairy and juice.

The dairy and drinks division delivered operating earnings before interest and tax (EBIT) of \$68.3 million, a decline of 43.2%. Revenue declined 9.4% to \$1.4 billion, driven by the loss of key private label contracts and a decrease in export sales due to the impact of the strong Australian dollar.

Lion’s white milk volumes declined 10.9%, largely driven by the private label contract losses, however this was compounded as deep discounting saw which consumers’ switch from branded products to private label and from convenience stores to grocery – diluting the profit pool available to all players in the supply chain.”

ADF makes the, not unreasonable, assumption that the above played a large part in Lion’s move from being a primarily domestic-focussed dairy-product to exploring export opportunities further.

## The United Kingdom Situation

ADF has included the following summary information on the experience of the United Kingdom for two reasons. A significant number of the senior executives and buyers at Coles and increasingly Woolworths are from the United Kingdom and the United Kingdom has already experienced the type of discounting, and major supermarket tactics and strategies, experienced in Australia since 2011 and the ensuing impacts on farmers and processors.

This led them to develop measures to bring about more fairness and transparency in the market.

The United Kingdom Competition Commission (CC) has found that one of the features that adversely affected competition in the market was the exercise of buyer power by certain grocery retailers with respect to their suppliers of groceries, through the adoption of supply chain practices that transfer excessive risks and unexpected costs to those suppliers.

The CC found that there was a detrimental effect on customers resulting from the adverse effect on competition and published its final report on 30 April 2008. In the report the CC considered that a package of remedies consisting of the following key elements would be effective and proportionate in remedying the various features of the market identified as having an adverse effect on competition:

- (a) the establishment of a Groceries Supply Code of Practice (GSCOP); and
- (b) the establishment of a GSCOP Ombudsman (or Adjudicator) to monitor and enforce compliance with the GSCOP.

A major issue the report raised was that some practices by big supermarkets were still having an anti-competitive effect, harming the long-term interests of consumers.

The UK Code of Practice (the Groceries Code) was designed to improve the relationship between big retailers and their suppliers by preventing certain practices from occurring.

The Groceries Code came into force on 4 February 2010 and applied to all retailers with an annual turnover of more than £1 billion in groceries in the UK (there are ten such retailers in the UK). It must be incorporated into contracts with suppliers.

In the United Kingdom's Groceries Code Adjudicator (GCA) Annual Report and Accounts 2014-2015\* there is a summary of the GCA's annual survey.

Given the parallels between the discounting experienced in Australia and the transfer of risk and costs to suppliers it is worth noting several key points of the survey.

### Key findings:

- 8 out of 10 suppliers stated they had experienced issues that could be breaches of the Code in the previous 12 months;
- Only 38% of direct suppliers said they would consider raising an issue with the GCA; and
- When asked why they would not raise an issue with the GCA 58% stated they feared retribution should the retailer establish who they were and 41% thought the GCA would not act on their evidence.

Unfortunately, a similar situation exists in Australia with suppliers fearful of raising issues with the processors, the retailers or regulatory authorities due to potential retribution.

\*Groceries Code Adjudicator Annual Report and Accounts 2014-15, pages 17 & 18

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/446470/Final\\_-\\_10364-TSO-GCA-Annual\\_Report\\_2015-ACCESSIBLE-01.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446470/Final_-_10364-TSO-GCA-Annual_Report_2015-ACCESSIBLE-01.pdf) 11

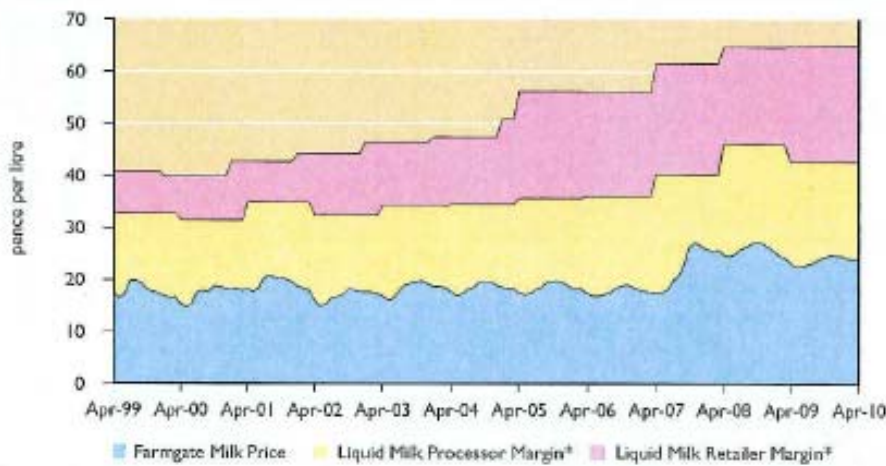
DairyCo – Dairy Supply Chain Margins 2010/11

The table and graph below show that as retail prices and margins have increased in the United Kingdom over the last fifteen years, farm gate prices paid to UK farmers have not increased. In a less concentrated market than Australia retailers have reaped the benefits of the discounting cycle and subsequent price increases.

ADF understands the below is the latest data available for liquid milk as publication of the data down to farmer level ceased following the 2010/11 DairyCo Dairy Supply Chain Margins report.

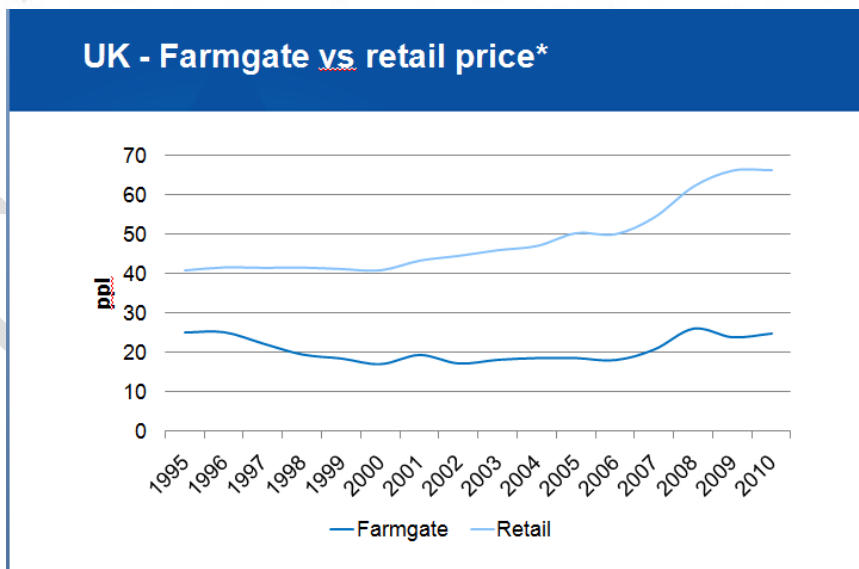
[https://dairy.ahdb.org.uk/resources-library/market-information/dairy-supply-chain-reports/#.WD9\\_9za7q71](https://dairy.ahdb.org.uk/resources-library/market-information/dairy-supply-chain-reports/#.WD9_9za7q71)

**Fig 3 Prices and margins for liquid milk**



Source DairyCo

\*The gross margin equals the difference between the selling price and buying price for milk



Source: DairyCo datum, retail prices estimated from index

It may well be worthwhile for the ACCC to examine, if possible, farmer, processor and retailer margins in the United Kingdom since the above data was published to see if over time farmer and processor have remained relatively low compared to the growth in retailer margin.

It would also be worthwhile examining how the above compares to margins in the European Union.

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## Major Retailers – Recent ACCC/Federal Court Proceedings – Background

ADF includes this section and information to highlight the culture of the major retailers, their use of 'spin' and the treatment of their suppliers.

Coles has continually tried to claim that farmers are not being impacted by the pricing of milk at an unsustainable \$1 per litre. This is simply not true. Dairy farmers in the key drinking milk markets are being affected.

A key claim of Coles' is that they were "fully absorbing the price cut", i.e., the cost of the discounting of milk to \$1 per litre.

### **Coles Video and Cartoon – contravention of Australian Competition Law**

In early April 2014, the ACCC found that the 'Our Coles Brand Milk Story' video and cartoon are likely to have contravened Section 18 of the Australian Competition Law which contradicts Coles' key claim of "fully absorbing the price cut."

Section 18 prohibits misleading or deceptive conduct, and Coles admitted it is likely to have contravened this part of the act.

The 'Our Coles Brand Milk Story' video and cartoon were a cynical exercise by Coles to convince consumers that farm gate prices had increased for dairy farmers when they had actually decreased.

The ACCC's investigation followed complaints from dairy farmer organisations, including ADF and the Queensland Dairyfarmers' Organisations (QDO), about the misleading nature of the video and cartoon; which was published on social media. Coles has also claimed that their own margins decreased on Coles-brand milk – something that the ACCC has said could not be substantiated.

The ACCC found that Coles had, in the video and cartoon, represented the farm-gate milk price increasing from 86 cents per two litre bottle of Coles-branded milk in 2010-11 to around 90 cents in 2011-12, when in fact this was an estimate with the final industry figures showing the 2011-12 farm-gate milk price actually decreasing to 84 cents per two litre bottle.

The ACCC's 2014 ruling is an indictment of Coles and their key claim that they have absorbed the cost of \$1 per litre milk. Pleasingly, the ACCC recognised this and compelled Coles to take action, including via social media, to correct the record and to avoid making misleading or deceptive claims around the retail price of milk in future.

As Coles themselves stated in their 'Corrective Notice on our Milk Story – Coles' video on YouTube: "We made representations about facts that were actually only estimates or opinions". In the corrective notice Coles also admitted that it has now only funded the "majority of the price cuts".

ADF has, since January 2011, consistently said that milk priced at \$1 per litre is simply unsustainable and does not give a fair return for dairy farmers and others in the supply chain.

Another case of interest was the announcement of ACCC Federal Court proceedings against Coles and the subsequent Federal Court decision on 22 December 2014.

### **ACCC Federal Court proceedings, decision and action against Coles**

The ACCC announced on 5 May 2014 that it would take Federal Court action against Coles for alleged unconscionable conduct towards 200 of its smaller suppliers.

The ACCC said that Coles' alleged behaviour towards suppliers includes providing misleading information and taking advantage of their superior bargaining position.

On 22 December 2014 the Federal Court handed down its judgement in the case. The Federal Court made declarations in two proceedings instituted by the ACCC that Coles Supermarkets Australia Pty Ltd engaged in unconscionable conduct in 2011 in its dealings with certain suppliers.

The Court ordered Coles pay combined pecuniary penalties of \$10 million and costs. Coles also had to enter a court enforceable undertaking to the ACCC to establish a formal process to provide options for redress for over 200 suppliers referred to in the proceedings. In her judgment, Justice Gordon said:

“Coles’ misconduct was serious, deliberate and repeated. Coles misused its bargaining power. Its conduct was ‘not done in good conscience’. It was contrary to conscience. Coles treated its suppliers in a manner not consistent with acceptable business and social standards which apply to commercial dealings. Coles demanded payments from suppliers to which it was not entitled by threatening harm to the suppliers that did not comply with the demand. Coles withheld money from suppliers it had no right to withhold.”

“Coles’ practices, demands and threats were deliberate, orchestrated and relentless.”

### **ACCC Federal Court proceedings against Woolworths**

On 10 December 2015 the ACCC instituted proceedings in the Federal Court against Woolworths Limited, alleging it engaged in unconscionable conduct in dealings with a large number of its supermarket suppliers, in contravention of the Australian Consumer Law.

Text from the ACCC media release dated 10 December 2015:

The ACCC alleges that in December 2014, Woolworths developed a strategy, approved by senior management, to urgently reduce Woolworths’ expected significant half year gross profit shortfall by 31 December 2014.

It is alleged that one of the ways Woolworths sought to reduce its expected profit shortfall was to design a scheme, referred to as “Mind the Gap”. It is alleged that under the scheme, Woolworths systematically sought to obtain payments from a group of 821 “Tier B” suppliers to its supermarket business.

The ACCC alleges that, in accordance with the Mind the Gap scheme, Woolworths’ category managers and buyers contacted a large number of the Tier B suppliers and asked for Mind the Gap payments from those suppliers for amounts which included payments that ranged from \$4,291 to \$1.4 million, to “support” Woolworths. Not agreeing to a payment would be seen as not “supporting” Woolworths.

The ACCC also alleges that these requests were made in circumstances where Woolworths was in a substantially stronger bargaining position than the suppliers, did not have a pre-existing contractual entitlement to seek the payments, and either knew it did not have or was indifferent to whether it had a legitimate basis for requesting a Mind the Gap payment from every targeted Tier B supplier.

The ACCC alleges that Woolworths sought approximately \$60.2 million in Mind the Gap payments from the Tier B suppliers, expecting that while many suppliers would refuse to make a payment, some suppliers would agree. It is alleged that Woolworths ultimately captured approximately \$18.1 million from these suppliers.

“The ACCC alleges that Woolworths’ conduct in requesting the Mind the Gap payments was unconscionable in all the circumstances,” ACCC Chairman Rod Sims said.

“A common concern raised by suppliers relates to arbitrary claims for payments outside of trading terms by major supermarket retailers. It is difficult for suppliers to plan and budget for the operation of their businesses if they are subject to such ad hoc requests.”

ADF is surprised and disappointed that the ACCC proceedings against Woolworths were dismissed by the Federal Court on 8 December 2016.

ADF notes that:

“The ACCC took this action because we considered that Woolworths’ behaviour went well beyond hard commercial bargaining and is not consistent with business and community values. If you’re a supplier subject to arbitrary demands, it’s very hard to make future investment decisions in the face of financial uncertainty,” ACCC Chairman Rod Sims said.

“The ACCC will carefully consider the judgment. Pursuing unconscionable conduct remains an important area for the ACCC and we will continue to take enforcement action where appropriate, particularly in relation to supply chain issues,” Mr Sims said.

ADF is supportive of the ACCC’s continuing efforts and actions in this area and believe there are still considerable supply chain issues that need to be resolved.

### **Conclusion**

The ACCC’s actions in the above cases are an important vindication of the concerns raised by ADF about the excessive market power of the major retailers and the ways in which they have exercised this power.

As mentioned previously it is worth noting that a lack of complaints against the major retailers does not mean there is an absence of market failure but instead represents evidence of significant market failure as suppliers are extremely reluctant to take action or give evidence due to fear of retribution as was the case in the United Kingdom too.

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## Milk Consumption - Per capita \$1 per litre milk

Analysis by Dairy Australia shows that the per capita consumption of fresh white milk is now lower than it was prior to the introduction of \$1 per litre milk.

This data clearly demonstrates that \$1 per litre milk has failed to deliver on Coles' claim that their marketing strategy has increased dairy consumption.

The marketing strategy relating to \$1 per litre milk has failed to increase milk consumption, has seen millions of dollars taken out of the value chain and has severely impacted many dairy farmers.

**Table 1: Per capita milk consumption – litres, 1990 to YTD June 2016**

YR. TO JUNE	FULL CREAM	REDUCED FAT	LOW FAT	FLAVOURED	UHT	OTHER	MILK TOTAL		FRESH WHITE		FLAVOURED		UHT	
1990	73.9	14.4	4.6	6.6	2.4	0.3	102.2	CAGR%	93.2	CAGR%	6.6	CAGR %	2.4	CAGR%
1991	72.0	16.2	4.7	6.6	2.8	0.3	102.5		93.2		6.6		2.8	
1992	70.3	17.7	5.2	6.6	3.1	0.3	103.2		93.6		6.6		3.1	
1993	68.6	18.6	5.5	7.0	2.8	0.5	103.1		93.3		7.0		2.8	
1994	68.1	18.6	5.9	7.6	3.4	0.7	104.1		93.2		7.6		3.4	
1995	68.0	18.5	6.2	8.0	4.3	0.8	105.9		93.6		8.0		4.3	
1996	66.0	18.5	6.3	8.1	5.2	1.1	105.1		91.8		8.1		5.2	
1997	63.5	19.2	6.6	8.7	5.7	1.1	104.7		90.3		8.7		5.7	
1998	60.8	19.4	7.0	8.8	6.6	1.0	103.7		88.2		8.8		6.6	
1999	59.4	19.1	7.5	9.0	7.0	1.1	103.2		87.2		9.0		7.0	
2000	58.1	18.7	7.6	9.1	8.7	0.0	102.2	0.00%	84.4	<0.95%>	9.1	3.91%	8.7	26.77%
2001	57.1	21.7	5.0	8.6	8.6		101.0		83.8		8.6		8.6	
2002	55.4	22.4	5.4	8.8	7.2		99.3		83.3		8.8		7.2	
2003	53.8	22.3	6.2	8.9	7.8		99.0		82.4		8.9		7.8	
2004	53.3	23.0	6.3	9.6	7.7		99.9		82.5		9.6		7.7	
2005	53.0	24.2	6.1	9.9	7.7		101.0		83.4		9.9		7.7	
2006	53.8	24.0	6.1	9.9	7.7		101.5		83.9		9.9		7.7	
2007	53.7	25.7	6.0	10.4	8.8		104.5		85.4		10.4		8.8	
2008	53.2	26.3	5.8	10.1	8.7		104.1		85.3		10.1		8.7	
2009	52.9	26.6	5.5	9.8	9.1		103.8		84.9		9.8		9.1	
2010	51.8	27.1	5.4	9.9	9.7		103.8	0.16%	84.3	<0.02%>	9.9	0.79%	9.7	1.17%
2011	51.4	28.5	4.9	10.3	9.4		104.5		84.8		10.3		9.4	
2012	51.6	30.1	4.6	10.5	9.2		106.0		86.3		10.5		9.2	
2013	51.2	30.1	4.4	10.4	10.6		106.7		85.7		10.4		10.6	
2014	51.2	29.6	4.0	10.3	10.7		105.9		84.9		10.3		10.7	
2015	52.6	27.9	3.7	10.2	10.9		105.3	0.29%	84.2	<0.01%>	10.2	0.66%	10.9	
2016	54.6	26.0	3.1	10.3	11.1		105.1		83.7					

[YTD June16 trends]

CAGR = Compound annual growth rate

Source: IRI - Aztec, Dairy Australia Analysis



## Consumer Research - \$1 per litre milk

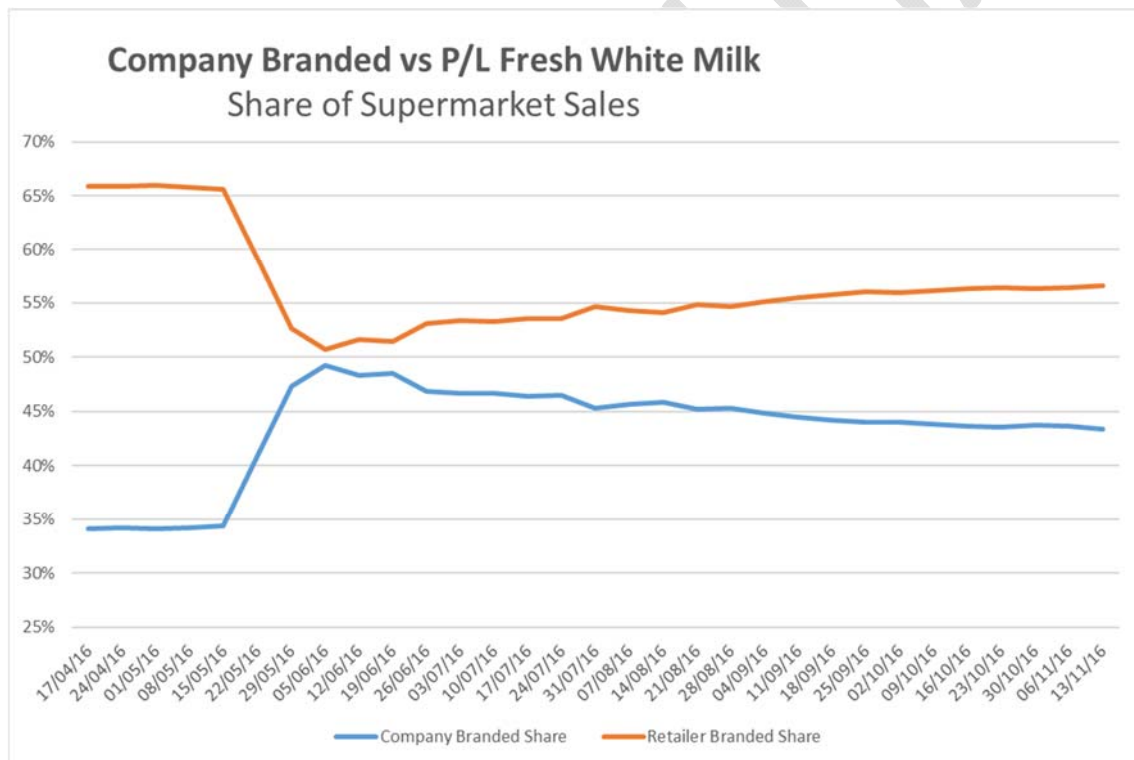
Research commissioned by Dairy Australia in June 2016, confirms that consumers share concerns about the fairness of liquid milk prices and the inherent value of milk.

Some key themes to emerge were:

1. The price of milk is too low (Around 70% agree that milk should cost more than \$1 a litre, and that it should cost more than a bottle of water);
2. Farmers are struggling and the future of the industry is uncertain (Around 90% agreed that farmers are struggling because of low prices); and
3. Farmers aren't being treated fairly, particularly by supermarkets (74% felt that supermarkets were not treating farmers fairly).

These consumer attitudes have also been borne out by the very sudden and large shift in consumer behaviour following the price step down in April 2016, with consumers switching to branded milk in favour of private label milk, as shown below.

This impact appears to be slowly tapering off but shows the support from consumers for dairy farmers and a fair and sustainable price for milk and other dairy products.



## Coles' Claims re Absorbing Cost of \$1 Per Litre Milk

Below is an extract from the media release on Australia Day 2011 announcing the price reduction to \$1 per litre.

It notes twice that Coles is funding/absorbing the price cut.

- *'Because we all buy milk' Coles cuts the price to help shoppers save* - Coles media release – 26 January 2011
- “Confirming that Coles is funding this price cut, Mr Durkan added: “In the same way that Coles is absorbing the higher costs of hormone growth promotant free beef, Coles is not reducing the price it pays to its milk processors either so this move will not impact them or the dairy farmers who supply them. In fact, both farm gate milk prices and contract prices with processors recently increased. Coles is fully absorbing the price cut, bringing great value to customers whilst supporting Australian dairy farmers.”

The extract below from the recent Senate Committee hearing into the Australian dairy industry confirms that Coles continues to claim that it is absorbing the cost of the price cut.

- Hansard extract - Senate Economics References Committee – Inquiry into the Australian Dairy Industry, Hearing Tuesday 15 November 2016, Page 53, Mr Alister Jordan, Director Coles
- *Senator KAKOSCHKE-MOORE*: When the \$1-per-litre-milk price war began back in 2011, I saw a number of media stories that said at the time that Coles and also Woolworths said they were absorbing the cost of that cut. Is that still the case now?

*Mr Jordan*: Yes, that remains the case today.

As the peak advocacy and policy body for Australia's dairy farmers ADF talks to farmers across the country and it is evident that dairy farmers do not believe that Coles is absorbing the cost of \$1 per litre milk.

On their behalf ADF requests that the ACCC investigate Coles' ongoing claim of absorbing the cost.

The view of dairy farmers is certainly that the question must be asked 'who is absorbing the cost, Coles' customers or those at the start of the chain – dairy farmers?'

- ABS data\* from soon after the price drop for milk, analysing average prices for 51 goods show more than half are up when compared with a year ago. The basket of goods includes food, household supplies and alcohol.

\*Australian Bureau of Statistics. Average retail prices of selected items, eight capital cities June quarter 2010 and June quarter 2011.

ADF understands that the above ABS report has been discontinued and that cited above was the last one available which is unfortunate as it was one of few independent and transparent measures publicly available.

## Rise and Fall Mechanism

The outline below of Coles' rise and fall clause mechanism was provided on 18 April 2011 as part of Coles formal responses to Questions on Notice arising from the Senate Standing Committee on Economics Inquiry into Supermarket Pricing Decisions Impacts on the Dairy Industry (Page 21).

As part of the rise and fall mechanism Coles reviews the farmgate price, if farmgate prices are lower, ADF understands this enables Coles then to lower the contract price, further reducing processor profitability, creating a downward spiral that benefits only Coles and ultimately impacts farmers.

ADF understands that the wording below supplied to the Senate Economics Committee by Coles is a very general overview of the actual rise and fall mechanism and does not include much of the actual detail in the clause supplied to processors.

ADF is advised there is a clause in the detailed rise and fall mechanism document that links farm gate prices to world market prices.

As ADF has not seen the full detail of the rise and fall mechanism it is difficult to comment but this may prove effective for processors in the export-oriented states of Victoria and Tasmania but is increasingly losing relevance to the drinking milk market states of Queensland, Western Australia and northern NSW.

ADF requests that the ACCC investigate Coles use of the rise and fall clause in its contracts with processors, in particular how it is linked to global dairy prices.

The extract provided below by Coles lacks transparency and is difficult to understand without the full details of the rise and fall mechanism.

*Coles will carry out a review of the milk price on 30 June each calendar year for the remainder of the contract term.*

*The milk price which will apply from January 2011 until the first price review date shall be calculated as follows:*

- 1. Base Milk Price = x cents per litre*
- 2. Resin Price = y cents per litre*
- 3. Suppliers Costs = z cents per litre*

*a. Coles will compare the base milk price for the previous period, against the actual milk price for the previous period.*

*b. Coles will compare the resin price for the previous period with the actual resin price; and*

*c. Coles will set the milk price which is to apply on and from the price review date and for the 12 month period immediately following thereafter by adding the base milk price, the resin price and the supplier's cost as at the relevant price review date.*

## Murray Goulburn Milk Price Step Down

Murray Goulburn (MG) has recently revised its milk price for the 2016 Financial Year.

### **Trading halt**

On Friday, 22 April, the company announced a trading halt for two days “while MGC undertakes a review of the impact of market conditions on its FY16 (financial year ending June, 30 2016) outlook.”

### **Revised Farmgate Milk Price**

On Wednesday, 27 April, the company announced that it had revised its financial outlook and that the FY16 Farmgate Milk Price (FMP) of \$5.60 per (kilogram of milk solids) kgms provided on 29 February 2016 was no longer achievable.

The revised FY16 FMP was between \$4.75 to \$5.00 per kgms, which included a reduction in the actual milk price paid to suppliers for the balance of FY16.

As part of the announcement, MG introduced a Milk Supply Support Package which would see farmers receive payments during FY16 equivalent to \$5.47 per kgms.

To recover the package and its cash funding cost, MG proposed to deduct a fixed amount from future milk payments over the next three financial years. At the time, it was announced it was understood the deductions would include the cost to MG of additional interest incurred through funding the package.

All MG suppliers in FY16 would receive the package through the current milk pricing arrangements (known as the \$5.47 equivalent) rather than the revised lower forecast.

The above arrangements were subsequently revised through a series of announcements and farmer meetings that caused ongoing concern and confusion among farmers right up to the MG Annual General Meeting at the end of October 2016.

### **Issues**

As the ACCC is aware, key issues regarding the MG announcement and actions were:

- The fact that actions taken were unprecedented for a processor in Australia, in both magnitude of impact and timing;
- The timing of the announcement so late in the season, leaving farmers no time to adjust, budget or plan their production systems, calving, feed or water purchases;
- The fact that only a week and a half previously the then MG Managing Director gave a much higher pricing signal (\$6.00 per kgms) in a public forum;
- The complexity of announcements and a lack of transparency and confusion regarding the price to be paid to farmers and the Milk Supply Support Package;
- Inequities in the impact on MG suppliers depending on their calving pattern and milk supply arrangements (e.g. autumn calvers produce the majority of their milk in May/June whilst some farmers would have their cows dried off in this period and experience no drop in income);
- The fact farmers would have been impacted for three years under the original Milk Supply Support Package arrangements; and
- All the risk and financial impact appeared to have been transferred to MG's farmer base when there appeared to be other options that would not have damaged farmer's livelihoods and confidence so dramatically.

ADF has discussed these issues with the ACCC previously but would appreciate the opportunity to meet again and further discuss the above impacts.

### Fonterra Price Step Down

On 5 May 2016, Fonterra Australia announced a revised farmgate milk price.

The full 2015/16 season price was reduced from \$5.60 per kgMS to \$5.00 per kgMS.

Fonterra also announced the Fonterra Australia Support Loan, an optional loan of up to 60c per kgMS that is repayable from FY18 onwards.

Fonterra indicated the loan would give suppliers an equivalent of \$5.60 per kgMS for the 2015/16 season and is repayable (principal and interest) over three years from the start of FY18.

Suppliers who take out the loan will need to continue to supply Fonterra for the next four years.

If farmers decide to stop supplying Fonterra, the loan will become repayable in full on the date of cessation.

### **Issues**

Once again, the ACCC is well aware of key issues regarding the Fonterra announcement and actions.

In addition to those outlined for MG, the majority of which apply to the Fonterra announcement, it is worthwhile mentioning:

- The Fonterra average May and June 2016 farmgate price per kgms was \$1.91 (cost of production varies between \$5.00-\$5.50 per kgms);
- Lack of transparency in loan and interest repayments (all payments are bundled up in the milk price);
- Apparent inequalities in loan repayments. For example, not all Fonterra suppliers took up the offer of the loan but it appears all Fonterra suppliers are being charged the cost of the loan.

Again, ADF has discussed these issues with the ACCC previously but would appreciate the opportunity to meet again and further discuss the above impacts.

ADF is happy to supply further information and discuss specific farmer issues with the ACCC in detail.

## Summary of UDV Milk Pricing Discussion Paper (paper at attachment 1)

### **Background**

In May 2014 the United Dairyfarmers of Victoria (UDV) published a discussion paper on milk pricing.

*Milk Pricing Discussion Paper: A Comparison of Complex Milk Price Structures and Suggested Components of a Better Milk Pricing System.*

The paper followed a meeting of industry farm consultant to analyse and discuss concerns regarding:

- Transparency and complexity in milk price structures and supplier agreements;
- The complexity of the current milk price structure impacting the ability of some farms to operate profitably; and
- Current pricing structures and supplier agreements leading to distorted pricing signals to farmers.

The paper identified over thirty different payment signals or incentives to farmers and included some suggestions for improvements to the payment systems on offer.

### **The main farm profit driver**

There is a strong correlation between direct grazed home grown dry matter and operating profit.

There is no correlation between farm milk flow seasonality of supply and operating cost and operating profit, despite increased milk prices being paid to farmers for off peak milk production. Some farms lend themselves to autumn/winter production from direct grazed pastures.

### **Alignment of payment systems and farm profitability**

For any given farm system and location there is a strong correlation between the opportunity for directly grazed home grown feed and farm profit. This opportunity does however vary markedly from farm to farm and region to region. The opportunity and seasonality of pasture growth depends very much on factors such as the supply and reliability of rainfall and the availability and cost of irrigation.

The incentives for unseasonal milk production have been developed on the basis of historical norms for milk supply seasonality. The traditional shortfall in winter milk continues to be rewarded with very high price incentives. Similarly, Off Peak incentives mostly apply a one size fits all approach.

### **Milk payment systems have been developed as a result of a competitive environment for milk rather than a true reflection of the market returns**

At an industry level, natural increases or organic growth in milk supply has not been a feature of the industry, other than increases in milk supply due to seasonal variation.

Processors wanting to increase factory efficiency by volume opted to attract the milk supply from the market via competitive pricing that has strongly contributed to the current milk payment systems.

New milk pricing products appeared that appealed to individual farmers by offering them increased payments for milk solids, processors justified these payments to existing suppliers using efficiency gains and stronger payments for the industry through increased competition for milk.

Growth incentives and start up conversion milk pricing defies the laws of economics (law of diminishing returns) for individual dairy farmers. This encourages farmers to produce milk that

has a lower margin and that generally carries a higher risk. When farmers 'chase' milk production they will inevitably move out of their lowest cost of production to a higher cost of production. In these cases, the last kilogram of milk solids out of the system takes the most effort, carries the highest risk and generally costs the most to produce.

### **Complexity and lack of industry understanding**

Many farmers do not understand the payment systems being offered to them. The linkage of each month's production and potential growth become very confusing when unplanned production changes occur due to many difficult to predict, factors on the farm, such as seasonal variation, cow health issues, unplanned changes to calving pattern, etc.

This added complexity, combined with a lack of understanding, adds significant difficulty to planning and decision making and often results in farmers opting out of activities that are precursors to business growth.

### **Suggested Components of a Better Milk Pricing System**

Four main areas that can be retained or changed were identified. The change motivators are for farmers to receive simple commercial market signals from processors in milk prices rather than competitive signals.

This is based on a need to concentrate the dairy industries profit at the farm and processor level to maintain its competitive advantage on the world market.

Suggested components for a better milk pricing system going forward were as follows:

#### **Retain 'Fat + Protein – Vol = Base Price' system**

This is seen as an essential part of a milk pricing system. It is based on the value of components and the cost of removing water from those components. It has worked very well in the past and will continue to do so in the future.

#### **Develop Seasonal payments that reflect market returns**

The current seasonal payments (payment differences above the base spring milk prices) should reflect the value of processor product mixes and commodity prices. Very high monthly prices and crude payment constructs such as Off Peak Milk % send the wrong signal to farmers about monthly milk value and create inequities in income opportunity.

Seasonal pricing has been elevated through competitive activity in the industry to the point where it is no longer a representation of the value of milk.

#### **Quality payments that reflect the true value of milk quality in the market place**

Milk quality payments should represent the true value of high quality milk. The payment should be determined by market returns and may need to be reviewed.

### **Conclusion**

The paper concludes by stating:

- the current milk pricing structure creates the perfect storm: an industry that has an increased cost of production and risk profile with a limit to the funds available to pay for milk; and
- that unless market signals change as a result of different milk pricing systems, and farmers reduce cost of production, the industry is set to consolidate to a domestic market focus.

## Draft Code of Practice for Contractual Arrangements between Dairy Farmers and Processors in Australia

ADF, together with our state members, is continuing to work for farmers. Even though we won't be able to solve all of the issues farmers are facing, we are working to relieve some of the pressures to create change to ensure that an unfair share of the risk in the value chain is not taken by the farmer and that recent events in the industry don't happen again.

ADF believes that the dairy industry needs:

- Improved contracting arrangements between farmers and processors;
- Greater transparency through earlier and clearer pricing signals for farmers; and
- More balance in risk along the supply chain.

We are working closely with the Australian Dairy Industry Council (ADIC) to constructively and cooperatively resolve issues across the value chain, and where possible, presenting solutions to Government and regulators.

ADF and the ADIC hope to achieve implementation of mutually acceptable and beneficial contract clauses through negotiations between farmers and processors and be able to provide the Inquiry and Government with industry developed and shared solutions.

With this approach in mind, as the ACCC is aware, ADF convened a meeting between dairy farmers and processors on 27 September 2016 to begin the process of improving the contractual arrangements with farmers and balance risk along the supply chain.

The workshop followed the Deputy Prime Minister and Minister for Agriculture and Water Resources, Barnaby Joyce's August 2016 Dairy Symposium, where key industry stakeholders committed to working cooperatively to find solutions to issues faced by dairy farmers, processors and the industry generally.

The industry has long recognised that it is important that farmers and processors work together collaboratively to address both domestic and international challenges to the profitability of the industry.

The workshop was a constructive first step for dairy farmers and processors working together on contract and transparency issues and ADF appreciates the attendance of the ACCC at the workshop to explain and clarify many key issues.

Dairy farmers and processors discussed an ADF draft discussion paper outlining a set of principles which industry could consider in working together to develop a Code of Best Practice on Contractual Relationships.

Processors and dairy farmers engaged in a constructive discussion of the points raised in the draft discussion paper whilst being mindful of the specific needs of different industry players and regional differences.

The discussion took place in the context of four overarching principles acknowledging:

1. The changing nature of the dairy industry, e.g. increasing global volatility;
2. The different Australian operating environments, e.g. domestic vs export;
3. The need for fair and reasonable negotiation to take place between farmers and processors on contracts and supply agreements and the need to assist farmers to negotiate; and
4. The importance of transparency in both market signals, pricing and forecasts and supplier agreements and contracts.



Two key outcomes from the workshop were:

- Agreed importance of transparency and prescribing the mechanisms for pricing in the proposed draft Code and importance of allowing flexibility.
- Agreed no retrospectivity regarding pricing and pricing mechanisms.

The two outcomes above are a small selection of the outcomes from what was a very constructive workshop.

Attachment 2 is a summary and outcomes of the farmer and processor workshop held on 27 September 2016.

Dairy farmers and processors agreed to form a small working party of processor and farmer nominees to further progress the issues raised with a view to developing a draft code of conduct for further consideration by the wider group.

A meeting of the Working Group of processor and farmer nominees (ADIC Board and Bega, Parmalat and Fonterra representatives) took place on Friday 18 November.

The Working Group reviewed the draft Code of Practice for Contractual Arrangements and suggested changes that were in line with discussions at the workshop on 27 September.

The key issue where agreement could not be reached was contract alignment. This was considered a commercial matter but it was acknowledged that it would be to the benefit of both farmers and processors to mutually agree to facilitate transition arrangements from one processor to another to minimise the risk to a farmer from being out of contract where contract periods do not align.

At the request of the Working Group the draft Code was re-written to be more concise and user-friendly.

The revised draft Code (attachment 3) was then circulated to the Working Group for comment on Tuesday 22 November.

It is hoped to have the draft Code finalised by the end of 2016.

## ACCC Collective Bargaining Authorisation

### **Background**

ADF has held a collective bargaining authorisation through the ACCC since 2002, with a second authorisation granted in 2006.

In February 2011 ADF applied to the ACCC to continue the authorisation for collective bargaining by dairy farmers with dairy processors for a further five-year period.

On 16 June 2011, the ACCC issued a draft decision proposing to allow dairy farmers to continue to collectively bargain with processors.

The key points from the ACCC decision were:

- to grant authorisation for a further 10 years (previous authorisations had been for 5 years);
- amending condition 1 slightly to provide clarification around the use of representatives in negotiations, "to make it clear that third parties can provide legal or general advice, training and assistance to bargaining groups."; and
- an interim authorisation was granted at the time due to the current authorisation expiring on 30 June 2011.

On 4 August 2011, the ACCC issued its final determination granting re-authorisation to ADF for ten years.

The determination came into force on 26 August 2011.

### **Issues Regarding Collective Bargaining**

There is an obvious market power imbalance between farmers and processors and retailers that is recognised by the approval for farmers to collectively bargain.

Issues that have arisen over the period of the ACCC ADF authorisation can be broadly described as:

- Refusal of some processors to collectively bargain with farmers at all;
- Processors ceasing negotiations when the negotiations get 'difficult';
- A divide and conquer approach to some collective bargaining groups; and
- The fact that in some cases, neither parties approach the process with a flexible and open attitude to negotiation.

### **ADF Recommendations to the Harper Review**

The dairy industry seeks to improve the collective bargaining and boycott regimes through the following outcomes:

- a) relaxation of the 'public interest' test for boycott approvals, to consider the unique nature of agricultural markets;
- b) increase the ability for peak bodies to commence and progress collective bargaining and boycott applications, on behalf of their members;
- c) examining policy options for expanding the 'shared community interest' provision in the current ADF authorisation;
- d) broadening the scope of buyers in the market place able to negotiate with Collective Bargaining Groups so it is not just limited to processors, to include all buyers of milk e.g. brokers, wholesalers, retailers as well as other dairy farmers:

ADF would like to take this opportunity to acknowledge the ACCC's work in relation to collective bargaining under the constraints of the current legislation.

Together with Dairy Australia, ADF developed a Collective Bargaining Guide for Dairy Farmers. The guide can be accessed at the link below:

<http://www.dairyaustralia.com.au/Standard-Items/Media-Releases/2014-Media-Release-Archive/November/11-19-Collective-Bargaining-Guide-for-dairy-farmers.aspx>

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## Western Australia

ADF believes it is worthwhile briefly outlining the recent situation in Western Australia to highlight how easily, and detrimentally, farmers can be impacted by the actions of processors who encourage milk production and have short-term planning goals or targets to achieve.

Milk production across Australia can be highly variable due to several factors including weather conditions, feed availability and price, global milk prices, supply and demand and volatility generally.

Western Australia is certainly not immune to this production variability and due to the relatively small size of the industry and distance from other milk production regions can experience significant variability in supply and demand from time to time.

The decision by two processors in Western Australia to end contracts with nine farmers and the lack of ongoing contracts with any processor at all for four of these farmers, and subsequent exit from the industry, is a matter of significant concern for ADF and the dairy industry generally.

A decision not to support farmers in the production of milk shows a lack of understanding of the variability of milk production, a lack of planning and is short-sighted in the extreme – it is highly likely the milk will be needed in Western Australia as soon as this summer.

The farms in question are of an ideal size for milk production and in a good location to service both processors and the market.

It is unprecedented in Australia for such farms to be refused a contract and not have their milk picked up by a processor.

These decisions were compounded by the fact that for the last three years most farmers in Western Australia have been encouraged to increase milk production through financial incentives from their processor.

ADF believes in the future of our industry and sees strong potential for the Western Australian dairy industry in particular given its proximity to key markets in South-East Asia.

ADF would appreciate the opportunity to discuss this issues in further detail with the ACCC.

## Conclusion

We operate in a global environment that is increasingly volatile. The dairy industry is examining ways to help manage this volatility.

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It is important to acknowledge that whilst the Australian dairy industry is an industry that has been under intense pressure, it is also an industry that has the know-how and resilience to overcome adversity and thrive in the long term.

Collaboration is the key to get us where we need to be. Our industry relies on all the elements to operate effectively. Farmers need processors and vice versa – so the solutions require all stakeholders to come together to ensure a positive future.

The recent farmer and processor workshop and the subsequent actions and changes that will flow from that meeting are the first step in ensuring a fairer, mutually beneficial and more transparent system for all.

ADF, together with our state members, are continuing to fight for farmers. Even though we won't be able to solve all of the issues farmers are facing, we are working to relieve some of the pressures to create change to ensure that an unfair share of the risk in the value chain is not taken by the farmer and that recent events in the industry don't happen again.

While we work towards for solutions to these issues we must remember that we are a resilient industry with a long, sustainable future ahead and our profitability depends greatly on cooperation across the value chain and the continued support of the Australian public, which we are always thankful for.

ADF thanks the ACCC for their assistance in many areas but would particularly like to highlight unfair contracts and collective bargaining.

ADF looks forward to working with the ACCC throughout the Inquiry into the Australian Dairy Industry.

If you require any further information or wish to discuss these matters, please do not hesitate to contact me on (03) 8621 4200.

Yours sincerely,



**John McQueen**  
Interim ADF Chief Executive Officer