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Australian Dairy Farmers Limited

Supplementary Submission to the

Senate Economics Reference Committee

Inquiry into

The impacts of supermarket price decisions

on the Dairy Industry

Wednesday 6 April 2011

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Executive Summary

Coles, a wholly-owned subsidiary of Wesfarmers, has undertaken a series of actions across various commodities that will ultimately damage the sustainability of producers, farmers, and the supply chains of those commodities.

Coles has instigated unsustainable price cuts on milk, butter and cream on the Australian dairy industry.

Fresh drinking milk is unique as an everyday dietary staple of our society which is also perishable. Coles has taken particular advantage of this, using fresh milk as a discount marketing agent at near or below cost. This has led to the devaluation of fresh drinking milk across the nation, as other supermarkets have dropped prices to protect market share and created a situation of market failure in the domestic fresh milk market. Dairy farmers cannot turn off supply or store their product like other suppliers can, and in many regions of Australia do not have alternative options for milk to be sold.

A key issue facing dairy farmers, processors and consumers with the current unsustainable price cuts by Coles is the power that Coles wields in the market place. Over the last decade the major supermarkets have more than doubled their market share of supermarket milk sales with their own supermarket store branded milk, as well as increasing their share of the 'route' trade.

In the same period the major supermarkets have continued to use their supermarket branded milk as a discount marketing agent to a point where currently the difference in the value of supermarket brand milk is on average significantly less per litre less then processor proprietary brands. This difference in value over all supermarket sales equates to more than $400 million being lost from the dairy industry supply chain per annum, which is not sustainable.

This market power is currently being used by Coles to drive out smaller competitors, for example corner stores and independent petrol stations, and to increase the market share of Coles' home brand milk and lure more customers through Coles' stores.

If left unchecked, Coles' actions will lead to a substantial lessening of competition in the market place, a substantial impact on the viability of branded dairy products and are likely to lead to less product variety on supermarket shelves.

This aggressive discounting has happened before in the United Kingdom and it is the Australian Dairy Farmers (ADF) belief that Coles' executives intent on replicating that model here in Australia. It ultimately leads to less choice for consumers, higher prices on products that are not staples and unsustainable pressure on farmers and others in the supply chain.

This unsustainable pressure severely impacts on the supply chain by causing higher prices several years after the savage discounting, due to farmers leaving the industry and a loss of production for supply.

ADF believes that an article in the Business Spectator on 7 February 2008, illustrates Mr McLeod and his team of British executives primary goal perfectly, that is 'creating operating environments in which to relieve customers of their disposable income.'

In addition, during Coles' marketing campaign to promote Coles discounted milk, Coles has presented a range of incorrect and misleading statements which ADF has addressed in this submission – refer Appendix 1.

ADF offers ten recommendations to address the current unsustainable price cuts by Coles as summarised below.

Recommendations 1-3	**That the relevant Federal Minister give direction to the ACCC to:** • Undertake an immediate investigation of Coles for a potential breach of section 46, of the Competition and Consumer Act 2010 in relation to predatory pricing; • Investigate the pricing of all major retailers for potential breaches of the Competition and Consumer Act 2010 in relation to the sale of 'loss leaders'; and undertake ongoing price, cost and marketing surveillance of the fresh milk supply chain; and • Investigate Coles advertising of their discounted store brand milk for potential breaches of the Competition and Consumer Act 2010, in relation to false and misleading advertising
Recommendations 4-8	**That amendments to the Competition and Consumer Act 2010 (the Act) are made as follows:** • a definition of unconscionable conduct be inserted into the Act; • an "effects" test be reintroduced • a statutory duty of good faith be enacted as part of the Act; and • a mandatory Drinking Milk Market Code of Conduct be developed in consultation with industry, under the Act, and that • the United Kingdom Competition Act 1998 is examined, section 18 in particular, with a view to amending the Act along similar lines.
Recommendation 9	That a fresh drinking milk market specific Ombudsman/Commissioner and/or a Supermarket Ombudsman be established.
Recommendation 10	That Government convene an ACCC authorised roundtable forum of the drinking milk market dairy industry supply chain.

Key Issues and Challenges

Fresh Milk is Unique

As human food, fresh cow's milk is unique in nature due to its freshness. Whilst being a high quality nutritious, dietary staple of our community, fresh cow's milk is also an everyday highly inflexible consumable product without natural peer.

Fresh milk is a foundation staple of our population's daily dietary needs and the vast majority of Australian's take for granted that they are able to purchase fresh milk from any shop in Australia with a refrigeration unit. Public outcry due to the shortage of fresh milk during the floods in Queensland, highlight that expectation of consumers.

Australians each drink some 102 litres of fresh milk per year and as a result this collectively equates to the consumption of **2.33 billion litres per year**, which in turn consists of close to 25 percent of the Australian dairy industry annual milk production. As such, milk is one of the most frequently and widely purchased items by consumers.

Challenges of Supplying Fresh Milk

As a perishable product, the production, transport, processing, distribution and retailing of fresh milk entails a significant number of challenges and a relatively high level of investment and risks compared to other dietary staples and grocery products.

Compared to milk other beverages such as water, soft drink and beer do not require the same amount of supply chain investment as they are not perishable in the short term and do not require refrigerated storage. In addition, the production of milk is generated from a live farming system and simply cannot be turned 'on or off' or held in storage, as other manufactured drink products can be, including manufactured milk substitutes such as soy beverage.

The considerable amount of investment, planning and risk required to produce, transport, process, distribute and deliver fresh milk on a daily basis is not reflected in the current discount price of milk by major retailers at $1 per litre.

These attributes of fresh milk (perishable, inelastic and constant supply, and highly desirable to Australian consumers) have seen major supermarkets use fresh milk as a discount marketing agent, including as a:

1. 'Door opener' to attract consumers away from their competitors to increase their own market share;
2. Sales 'multiplier' to entice consumers to purchase other products whilst purchasing milk which is known to be an everyday staple item;
3. Location to draw customers past more discretionary items on their way to the refrigerated dairy milk cabinets typically located at the back of the store
4. Means to grow their own supermarket brand market share at the expense of the market share held by processor proprietary brands; and
5. De-facto wholesaler to sell discounted milk to milk ingredient users such as coffee shops and or small retailers.

The supermarket duopoly in Australia benefits from unprecedented market share and market power. The major supermarkets have more than doubled their market share of their own supermarket milk brands over the last decade to where they now control a major share of the fresh milk market, as well as being the largest avenue for the sale of milk to Australian consumers for both supermarket and proprietary branded fresh milk.

The Coles price cuts have seen these tactics taken to the extreme, at the expense of the very people, farmers, whom produce the product.

The unique nature of milk 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 to a point where if left unchecked it will result in undermining the viability of the supply chain and effects the future supply, cost and choice to consumers.

Recommendations

Predatory Pricing

All of Coles' major competitors have stated, both publicly and privately, that these price cuts are unsustainable for the whole supply chain, including retailers.

It is the presence of a clear anti-competitive purpose in which price cutting by a company with substantial market power or market share may be regarded as predatory pricing. Once competitors are damaged or eliminated, the likely results are that the company can raise its prices and exploit consumers. We believe there is a strong *prima facie* case under section 46, including 46 (1AA) of the Competition and Consumer Act 2010 that Coles' actions constitute predatory pricing. Within the dairy industry's domestic supply chain, milk processors compete in a national fresh milk retail market whereas major supermarket chains now operate national uniform pricing policies. These policies do not take account of regional differences in costs to producers and suppliers or different transport and storage costs to deliver products to more isolated markets from where the product is processed.

As such, in the Queensland domestic market the cost of milk to processors is higher than New South Wales and Victoria, yet retailers such as Coles are applying a national discounted price of $1 per litre. When this is combined with evidence about margins presented by a Coles representative to the Senate Economic References Committee's inquiry into the Australian dairy industry in February 2010), we strongly believe there is a prima facie case where the Competition and Consumer Act 2010 has been breached.

More recent evidence presented at the current Senate Economics References Committee hearing suggests that Coles has applied misleading formulas in order to calculate gross cost to checkout which do not adequately take into account the full costs of selling milk such as energy, building lease and fitout, staff overheads and marketing costs.

We believe there is a case to answer is in relation to Coles selling milk as a 'loss leader' in a predatory manner to gain market share from competitors.

It is our belief that Coles' actions have the specific purpose and likely effect of damaging their competitors, such as other major retailers, corner stores, independent petrol stations and other small retailers of milk, and will lead to a substantial lessening of competition in the market place over time.

For local markets in a number of rural communities where a major retailer is the only trader of grocery products and is also the ‘defined market’, such discounting practices as currently practised by Coles would be anti-competitive. This is effectively undermining competition of other milk suppliers within the store by undercutting proprietary brands. As such, consumers are left with no other option within the ‘defined market’ other than to purchase their groceries.

> **Recommendation**: That the relevant Federal Minister give direction to the ACCC to undertake an immediate investigation of Coles for a potential breach of section 46, of the Competition and Consumer Act 2010 in relation to predatory pricing.

Loss Leaders

Given the high concentration of the retail and processing sector, price matching seems an inevitable consequence of the need to maintain price competitiveness; however this may actually be driving ‘loss-leading’ behaviour across the retails sector. Following Coles discounting of their home brand milk to $1 per litre on 26 January 2011, Woolworths matched the price of their home brand milk to Coles’ and other stores followed suit with some, such as Aldi, cutting the price even further to $1.99 for 2 litres and $2.89 for 3 litres (96.33 cents per litre). In stating so the ACCC should investigate potential breaches of the Act and carry out ongoing monitoring of the sector.

> **Recommendation**: That the relevant Federal Minister gives direction to the ACCC to:
>
> i) Investigate the pricing of all major retailers for potential breaches of the Competition and Consumer Act 2010 in relation to the sale of ‘loss leaders’; and
>
> ii) Undertake ongoing price, cost and marketing surveillance of the fresh milk supply chain.

Misleading and Deceptive Conduct

Coles publicly promotes that it ‘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 media release 26 January 2011). This is tantamount to misleading and deceptive conduct, in that it is seeking to promote to consumers that if they buy Coles brand milk at these dramatically discounted prices, it will not have a negative impact on the dairy farmers who supply Coles, which is clearly not the case.

Coles and Wesfarmers executives have stated that farm gate prices for dairy farmers have increased in the last year. However milk prices to many dairy farmers have actually fallen, for example, by approximately 12-18 percent in Queensland and 10 percent in New South Wales within the last 12 months. This includes farmers who supply milk for Coles’ home brand milk.

In addition, dairy farmers who have their farm gate price linked directly to processor branded sales have seen their milk cheque drop in March as a result of the Coles cut-throat discount campaign.. The market share of Coles’ branded milk has increased at the expense of the market share of other brands, including processor brands.

Coles print advertising also prominently states that the two litre price of milk has been reduced by 47 cents to $2.00 for full cream milk and by 99 cents to $2.00 for reduced fat milk. This messaging includes no qualifiers such as ‘up to’ and has been consistent since 26 January in full page advertisements and billboards.

Coles’ Managing Director, Ian McLeod, and the Coles submission to the 2011 Senate hearing, subsequently stated that the actual price drop was 4.5 cents per litre or 9 cents for two litres. In evidence to the hearing it emerged that the vast majority of the cuts in price were for the smaller margin of 4.5 cents per litre rather than the larger margin of 23.5 cents per litre. The advertising thus implied that Coles’ price cuts were over five times the actual saving to the customer for the vast majority of the product sold.

The advertising marketed by Coles has also used the slogan ‘staying down’. Coles has indicated at the recent Senate hearing that the price cut will be in effect for at least for six months. Any reasonable person would understand the slogan ‘staying down’ as a permanent cut in price and the ADF believes Coles has intended to intentionally mislead consumers to lure them into their stores, as well as seeking to change consumer purchasing patterns from purchasing processor proprietary brands to Coles supermarket brands..

Recommendation: That the relevant Federal Minister give direction to the ACCC to investigate Coles advertising of their discounted store brand milk for potential breaches of the Competition and Consumer Act 2010, in relation to false and misleading and deceptive conduct.

Amendments to the Competition and Consumer Act 2010

Misuse of Market Power (section 46)

Section 46 of the Competition and Consumer Act 2010 prevents corporations with a substantial degree of market power from taking advantage of that power for the purposes of eliminating or substantially damaging a competitor. Thus preventing the entry of a person into that (or any other market), or deterring or preventing a person from engaging in competitive conduct in that or any other market.

Predatory Pricing (subsection 46 (1AA))

Subsection 46(1AA) prohibits businesses with a substantial market share (having regard to the number and size of its competitors in the market) from selling goods or services for a sustained period at a price below their relevant cost of supply for an anti-competitive purpose.

Coles’ action in selling its home brand milk at $1 per litre, a price which was last seen almost 20 years ago in 1992, is designed to achieve three goals:

1. Increase sales of Coles’ home brand milk and drive more consumers into their stores;
2. Impact its smaller competitors (corner stores etc.) as they rely heavily on branded milk sales to get customers through their doors and potentially drive the smaller competitors out of business; and
3. Take market share away from its main large retail competitor Woolworths. (It should be noted that Woolworths has stated publicly that the milk price cuts are unsustainable).

To put it as succinctly as possible, as Coles’ sales of its home brand milk increase, processors are impacted due to the lower margins on home brand milk and smaller retailers are placed at a significant competitive disadvantage because of the higher prices they pay for branded milk.

In ADF's view it seems evident that Coles is selling their home brand milk below the relevant total cost at checkout, for an anti-competitive purpose through both misuse of market power and predatory pricing as outlined above, and for predatory pricing this is particularly the case in regional and remote areas of Australia.

Associate Professor Frank Zumbo of the School of Business Law and Taxation at the University of New South Wales, in his submission to the Senate Economics References Committee Inquiry into the impacts of supermarket price decisions on the dairy industry, outlined several international precedents that deal with anti-competitive price discrimination. These included the United States *Robinson-Patman Act of 1936* and the *United Kingdom Competition Act 1998 (section 18)*.

Recommendation: That the Senate Inquiry and the Government examine the United Kingdom Competition Act 1998 (section 18) in particular, as follows with a view to amending the Competition and Consumer Act along similar lines:

- "Subject to section 19, any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market, is prohibited if it may affect trade within the United Kingdom";
- Conduct may, in particular, constitute such an abuse if it consists of:
  - Directly or indirectly imposing unfair purchase or selling price of other unfair trading conditions;
  - Applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage.

Unconscionable Conduct (section 51)

Unconscionable conduct is unfair or unreasonable conduct in business transactions that goes against good conscience. This can occur in transactions between businesses or within transactions between businesses and consumers.

The exact meaning of 'unconscionable conduct' is not defined in the Act. The Act lists several factors that the court considers when deciding if a party has acted unconscionably. However, the court is able to consider any other matters it believes are relevant.

Associate Professor Zumbo in his submission to the inquiry recommends inserting a definition of the word 'unconscionable' into Section 51AC of the Act. Section 51AC of the Act was introduced in 1998 to address the problem of small businesses facing power imbalances while dealing with larger commercial entities.

He believes this would be an 'obvious way to provide clear statutory guidance as to what is meant by the term as used in Section 51' and 'would send a clear parliamentary signal to the Courts that the concept is not only broader than the equitable concept, but that s51AC is intended to promote ethical business conduct.'

Associate Professor Zumbo believes the courts are currently defining the term and 'are taking such an onerous view of what constitutes 'unconscionable' that there is a growing danger that s51AC will fall into disuse.'

ADF believes that Coles' recent actions are certainly unconscionable, particularly when the intent of the actions is taken as a whole. Coles clearly means to damage other competitors and also put pressure on the dairy (and other commodity sectors) value chain.

It is ADF's contention that Coles' recent actions are unconscionable, particularly when the intent of the actions is taken as a whole. Coles' discount tactics are already causing damage to other competitors and lowering returns to the dairy (and other commodity sectors) supply chain.

ADF is of the view that anything that provides clarity for the courts and reduces the limitations of the current Act is worth pursuing.

Recommendation: That a definition of unconscionable conduct below provided by Associate Professor Frank Zumbo in his submission to the inquiry, or a similar definition with the same intent, is inserted into the Act.

Enacting a Statutory Duty of Good Faith

ADF is of the view that Coles has not conducted its recent price cuts in good faith with dairy farmers – even though Coles does not contract directly with dairy farmers. There are several reasons for this view:

- Coles has consistently quoted misleading figures in the media to make it appear that dairy farmers in milk production areas are doing better financially than is the reality;
- Coles has consistently and repeatedly quoted misleading figures in the media to present the perception to consumers that the Coles discounting will not harm dairy farmers. These misleading statements have included but are not limited to;
    - Coles has repeatedly refused to rule out dropping prices for processors and farmers in future contracts;
    - Coles has refused to acknowledge the almost immediate impact of its actions on some dairy farmers in Queensland due to reduced sales of branded milk; and
    - Coles' strategy will ultimately lead to a fundamentally unsustainable re-pricing of drinking milk as a commodity.

In situations where a company with significant market power and vast resources uses its 'muscle' to damage an industry then it cannot be said to be acting in good faith. ADF believes the enacting of a statutory duty of good faith will assist in controlling such behaviour.

Associate Professor Zumbo highlights the fact that Courts are giving growing attention and support to an implied duty of good faith in commercial contracts.

'Clearly the concept of good faith has not only received strong judicial support, but now has reached the point in Australia where its nature and scope is being defined with an increasing degree of precision. Consequently, there is a ready body of law on which a statutory duty of good faith could quite readily and usefully draw upon in seeking to promote ethical business conduct.'

It should also be noted that ADF is of the firm opinion that the ACCC must take a longer term view of market issues than it currently does. It must not only look at the impact of issues on the current market but examine potential future impacts – this is particularly the case for misuse of market power issues. The former Section 49 included an 'effects' test – does the conduct in question have the effect or the likely effect of bringing about a substantial lessening of compensation. ADF believes it is worth reinstating this to assist the ACCC in taking a longer term view of issues.

Recommendation: That an 'effects' test be reintroduced into the Act.

Recommendation: That a statutory duty of good faith be enacted as part of the Act as soon as possible to provide an appropriate and accepted benchmark of standards of ethical conduct within the Australian dairy industry.

Drinking Milk Market Code of Conduct

Over the last decade the major supermarket chains have procured significant market share and with that, market power.

This market power combined with the lack of transparency through the domestic dairy industry supply chain has created significant problems for the dairy farming sector which has been amplified by the latest discounting campaign instigated by Coles.

As previously presented processors are in a 'catch 22' position with major supermarkets chains as they are the largest sales avenue to consumers for the sale of their own proprietary branded products. Whilst the supermarket 'store brand' milk tenders are now a major component of the overall domestic drinking milk market.

Between the various sectors of the supply chain, being from farm to processor and then to retailer, there are major difficulties with the timing, time period of, and complexity of supply contracting arrangements.

At the farm sector, dairy farmers currently carry the highest investment risk and lowest returns in the supply chain per litre of milk. As such, dairy farmers require higher returns and longer term contracts to be able to successfully manage the ever-increasing cost base and risk of farming.

However at the retail sector, major supermarkets offer a one to two year contract to processors of different geographic sizes.

While for dairy farmers Collective Bargaining provisions have been made available under the Act, dairy farmers do not currently have the ability to directly address the issues created by the major supermarket chains. To address this unsustainable situation, dairy farmers must have the ability to enact a process to address any negative behaviour of retailers and or processors.

The current environment within the domestic dairy supply chain needs to be modified to:

- Prevent the misuse of market power;
- provide greater transparency through the supply chain;
- provide dairy farmers in collective bargaining groups with improved legal resources and training to strengthen their bargaining position in relation to processors and retailers;
- ensure that supermarket brand milk tendering and contracts and proprietary brand supply arrangements do not undermine margins in a way that affects the sustainability and viability of the dairy industry supply chain; and
- provide a more effective means of resolving disputes in a timely and cost effective manner.

ADF believes that a Code of Conduct for the drinking milk market could provide distinct benefits for the industry and dairy farmers, if the entire value chain is covered, including dairy farmers, processors and retailers.

Benefits would include;

- Greater transparency through the industry supply chain;
- better understanding amongst all industry value chain sectors of the issues and needs of each sector;
- provision of much clearer information for dairy farmers to be able to make more informed business decisions;
- discouraging unconscionable and anti-competitive conduct;
- provision of timely and cost effective dispute resolution processes, including both mediation and penalty options; and
- protection of the sustainability of the industry supply chain, whilst not hindering competition.

In relation to the Produce and Grocery Industry Code (PAGIC) and the Produce and Grocery Ombudsman, dairy farmers cannot take action through the Ombudsman directly with retailers as they do not contract directly with them but rather with processors.

With regard to the Horticultural Code of Conduct it does not directly relate to the issues being faced by the domestic dairy industry, but has a number of elements which should be considered including;

- Setting general terms and conditions of trade;
- Minimum contractual standards;
- Provision of a dispute resolution mechanism.

Additionally, further investigation needs to be undertaken of the potential initiatives which have been introduced by the United Kingdom by the Competition Commission including the Grocery Supply Code of Practice.

Recommendation: That a mandatory Drinking Milk Market Code of Conduct be developed in consultation with industry, under the Act dealing with the relationship between dairy farmers, processors, distributors/vendors and retailers.

In addition Associate Professor Frank Zumbo recommended that;

- civil monetary penalties for breaches of mandatory industry codes of conduct be imposed under the *Competition and Consumer Act*, and
- that the Australian Consumer Law framework dealing with unfair contract terms be extended to cover business to business agreements involving small businesses and farmers.

These options should also be explored with the proviso that they must not impose any further administrative burden on dairy farmers.

Establishment of a Drinking Milk Market Ombudsman/Commissioner

Any Ombudsman/Commissioner – be it a dairy specific Ombudsman/Commissioner or an expanded Produce and Grocery Ombudsman must be able to investigate complaints from a whole of value chain perspective. The Ombudsman/Commissioner would be responsible for oversight of the Drinking Milk Market code of conduct. The current Coles milk price cut is the perfect example of why this is necessary if the Ombudsman is to have any chance of being effective. The processors lack market power against an entity as big as Coles and as such, any price impacts inevitably flow on to the dairy farmers at the bottom of the value chain.

Farmers must have the power to complain about the behaviour of retailers (and processors).

Over the last decade major supermarket chains in Australian have significantly increased their market share and power. As this has occurred, the processing sector has been left with less market power and fewer options to sell fresh milk and other dairy products.

A situation has been allowed to develop by Government and regulators in which major supermarket chains have used their purchasing power to place considerable pressure on suppliers, especially for the supply of supermarket branded products. This increasing demand on suppliers has over time led to downward price pressure on the supply chain and which inevitably flow on to the dairy farmers at the bottom of the supply chain.

Processors are understandably cautious about pushing back on large retail pressure in relation to 'store brand' tenders as the major supermarket chains now provide the largest retail avenue to consumers in Australia for processor branded product sales. This is in addition to 'store brand' tenders now accounting for some 25% of all fresh milk sales nationally.

The discounting of milk by Coles and as followed by other retailers will inevitably force down farm gate prices for milk, which has been supported by public statements from Woolworths and other retailers stating that the reduction in price is unsustainable.

While for dairy farmers, Collective Bargaining provisions have been made available under the Act, dairy farmers do not currently have the ability to directly address the issues created by the major supermarket chains in sacrificing the value of fresh drinking milk to use it as an advertising and sales leverage agent for other grocery product sales.

To address this unsustainable situation, dairy farmers must have the ability enact a process to address the behaviour of retailers and equally processors.

The Ombudsman or Commissioner must be empowered to direct parties in dispute to behave in a way that promotes ethical business conduct.

ADF notes that the consumer organisation Choice has recommended the establishment of an Australian Supermarket Ombudsman 'to tackle competition and fairness across the grocery sector.'

Choice explains that the Supermarket Ombudsman would be dedicated to the task of promoting and protecting competition in the supermarket industry through the better enforcement of existing legislation. They advise that the UK Government is currently implementing a 'Groceries Code Adjudicator' under its Office of Fair Trading.

Associate Professor Frank Zumbo in his submission to the Senate Inquiry recommends "the establishment of a new Federal Government agency to be called the Australian Small Business and

Farming Commissioner would ensure that there was a suitably qualified and independent person with specific responsibility for;

1. researching and identifying existing and emerging areas of disputation with a view to identifying strategies, mechanisms or legal options for minimising such disputes; and
2. assisting industry participants to resolve disputes.

Associate Professor Frank Zumbo further stated that, "While the ACCC should be concerned with identifying and prosecuting breaches of the Competition and Consumer Act, there will clearly be instances where the viability of industry participants is the central issue and resolution of that issue needs a business assessment by an independent party such as the proposed Commissioner rather than a legal assessment by the ACCC."

Recommendation: That a fresh drinking milk market specific Ombudsman / Commissioner and or a Supermarket Ombudsman is established.

Industry Roundtable – *A pathway to a better future*

An immediate way of addressing the current problems facing the domestic dairy industry stakeholders is for all sectors of the supply chain to collectively discuss their issues and constructively seek resolutions.

To achieve this, the Australian Government would need to authorise and take part in these discussions to ensure that stakeholders are not held potentially liable for a breach of the Act.

It is envisaged that the goal of the discussions would be to improve the sustainability of the supply chain through an open dialogue, with industry stakeholders regarding the true costs of production, margins and business practices within the industry.

Terms of Reference:

- Examine the dairy industry value chain from farmgate to retail outlet (including major retailers, route trade and small retailers of milk);
- Analyse the different markets and average margins across Australia, with a particular emphasis on drinking milk production in Queensland, Western Australia, Northern New South Wales and South Australia;
- Review past farm gate, processor and retail prices and compare them to the current price of drinking milk – both branded and home brand; and
- Provide data and recommendations to the ACCC, Senate Economics References Committee, the Minister for Agriculture, Fisheries and Forestry and the Treasurer for actions to ensure a sustainable industry for all.

National Food Policy

It should be noted that the Drinking Milk Market Code of Conduct, the dairy Ombudsman/ Commissioner and the Industry Roundtable would all be closely linked and also reference the National Food Policy.

ADF believes a National Food Policy must ensure that the importance of dairy and other agricultural industries to our nation are recognised at the highest levels of Government and by agencies, that report to Government, such as the ACCC.

A National Food Policy must also ensure sustainable returns for Australian dairy farmers who compete against farmers in other countries who are often heavily subsidised through tariffs or other means.

Australia's food security is dependent on farmers and their produce. A National Food Policy must recognise the importance of food security and ensure that all stakeholders in the sector work with each other to maintain a viable agricultural sector.

A National Food Policy that provides clear and consistent direction on agricultural issues and which assists with domestic sustainability issues, international competitiveness and ensures access to natural resources is welcomed.

Steps in the process:

- Convene the roundtable within 30 days of the report of the Senate Economics References Committee;
- Roundtable to sit for two or three days (program developed by stakeholders across industry);
- Proceedings and report from Roundtable to be provided within 10 days to government and industry simultaneously;
- Government to action report's recommendations within 100 days.

Recommendation: Government to convene and participate in, an ACCC-authorised roundtable forum of the drinking milk market dairy industry supply chain, from farmers to retailers, to constructively discuss solutions for ensuring a sustainable drinking milk market with fair returns