

Senate Economics References Committee

ANSWERS TO QUESTIONS ON NOTICE

Australian dairy industry

Department/Agency: Australian Competition and Consumer Commission

Question: SEC26OCT16

Topic: Enforcement action and authorisations for collective bargaining

Reference: 26 October 2016

Senators: Senator Lambie and Senator Ketter (Committee Chair)

Questions:

1. [Pages 33-34]: Enforcement action in the dairy industry

Senator LAMBIE: Have you in the last 15 years found any illegal activity in the milk industry at all?

Mr Gregson: We have taken enforcement action on a few fronts. Most recently we have taken on consumer law concerns with respect to the way in which Coles promoted \$1 milk—and I am happy to pass those onto your office.

Senator LAMBIE: That would be great if you could take that on notice.

Answer:

On 7 April 2014 the ACCC accepted a court enforceable undertaking from Coles Supermarkets Australia Pty Ltd (Coles) following an investigation into a video and cartoon '*Our Coles Brand Milk Story*', which was published on social media.

The video and cartoon ran from 7 February 2013 to 5 May 2013 on a variety of platforms including YouTube, Coles' website and Facebook page, and was promoted in links from Twitter and other social media.

The ACCC's investigation followed complaints from dairy farmer organisations about representations in the cartoon and video about the impact of Coles' 26 January 2011 retail milk price reduction (Coles' milk price cut) on the average price paid to dairy farmers for supplying milk to processors (the farmgate price).

Coles represented that the farmgate milk price increased from 86 cents per two litre bottle of Coles-brand milk in 2010-11 to around 90 cents in 2011-12, when in fact this was an estimate and final industry figures showed the 2011-12 farmgate milk price actually decreased to 84 cents.

Coles admitted that its making of these representations would likely have contravened section 18 of the Australian Consumer Law, which prohibits misleading or deceptive conduct.

In addition to the representation about the farmgate price, Coles represented that:

- it was a "fact" that on average Coles' margin on Coles-brand 2 litre milk decreased from 55 cents in 2010-11 to 10 cents in 2011-12 and that processors received around \$1 per 2 litres of Coles-brand milk in each of 2010-11 and 2011-12. In fact, these figures were estimates that were unable to be substantiated, and
- Coles' price cut resulted in increased consumption of drinking milk and subsequently increased Australian dairy industry production, when in fact any implied connection between lower retail milk prices and increased production of milk was only an opinion, which ignored the impact of other relevant factors on milk production.

To resolve the issues identified by the ACCC's investigation, Coles published corrective advertisements on the same online platforms that the original representations were published.

The undertaking also requires Coles to:

- for a period of three years, not make misleading or deceptive representations in relation to the impact of reductions in the retail price for Coles brand milk on the farmgate milk price, Coles' or processor margins on Coles brand milk, and/ or Australian milk production generally, and
- review its Australian Consumer Law compliance program as it relates to the application of section 18 of the Australian Consumer Law to advertising and promotional strategies relating to Coles brand milk, including social media, and to identify specific compliance processes and training for employees of the Coles Media Relations Team to ensure the conduct of concern to the ACCC does not occur again.

2. [Page 34]: Collective bargaining and authorisations in the agricultural sector

CHAIR: Collective bargaining is something you have looked at previously. You are yet to conduct your inquiry, and you do not know what your terms of reference are, but there is a history of examining collective bargaining, and you have provided an exemption for collective bargaining to continue in this industry up to 2021 or something like that. Can you tell us about the importance of collective bargaining? There is an exemption, so you obviously understand that there is a special need for farmers in this industry to have enhanced rights.

Mr Gregson: That is right. Our role with collective bargaining is that, absent of authorisation, it may be illegal conduct and, therefore, we assess the benefits versus the detriments. We have a long history of providing authorisations to parties who wish to collectively bargain. It is particularly so in agricultural sectors, and you have identified that it has long been the practice for us to grant those authorisations in the dairy industry. I think you are referring to the broad authorisation that provides a framework for farmers across the country. There are others as well that have more specific arrangements. We would expect the contribution that collective bargaining makes to the lot of a dairy farmer to be exposed in the inquiry. We continue to grapple with the issue of how far authorisation goes in terms of collective bargaining through to boycotts. That is something we continue to assess and make public comment on.

CHAIR: This issue is very much tied up with the contract terms; that is a strong consideration. But do you have any figures as to the extent to which dairy farmers collectively bargain at the moment? What percentage of the industry is involved in that practice?

Mr Gregson: We are bound to have some pretty good examples of the use of those collective bargaining arrangements. I do not have them with me—and they may not be comprehensive. Ms Ford might have some. Otherwise, we can give you what we can on notice.

Ms Ford: I can provide examples of collective bargaining authorisations in the dairy industry but I do not have the proportion of the industry, those details that you asked for.

Answer:

The ACCC does not have figures on the number or percentage of Australian dairy farmers that are participating in collective bargaining arrangements.

An ACCC authorisation or notification provides protection from legal action under the *Competition and Consumer Act 2010* to enable collective bargaining to take place where it is likely to result in a net public benefit but it does not compel participation in the arrangements.

The Australian Dairy Farmers Ltd authorisation (see below) is available to all dairy farmers throughout Australia. Bargaining groups formed under this authorisation provide their details to Australian Dairy Farmers Ltd but there is no requirement that they register with the ACCC.

The following ACCC collective bargaining authorisations and notifications are currently in place for dairy farmers:

Authorisation granted to Australian Dairy Farmers Ltd until 30 August 2021	A general and wide ranging authorisation that enables groups of dairy farmers throughout Australia to form collective bargaining groups through which they may collectively negotiate terms of supply, including price, with a dairy processing company that each member of the group wishes to supply. Bargaining groups can be formed where dairy farmers each have a reasonable expectation of supplying the same plant of a processor, are within the economic delivery zone of that plant and have similar supply patterns or supply a specialty raw milk product.
Authorisation granted to Premium Milk Ltd until 14 October 2020	Dairy farmer members of Premium Milk (located in northern NSW and south-east Qld) to collectively negotiate farm-gate prices and milk standards with Parmalat Australia Ltd.
Notification by Manning Valley Dairy Farmers in force until 16 March 2019	Seven Manning Valley dairy farmers to collectively negotiate the terms and conditions of raw milk supply arrangements with Woolworths and/or its agent Milk2Market Pty Limited.
Notification by NSW MidCoast & SA Barossa Mid North Co-operative Dairymen Limited in force until 3 February 2018	<p>A total of 16 dairy farmers in the NSW mid coast and Barossa and mid north SA represented by two groups in relation to the terms and conditions of raw milk supply agreements to be entered into with Woolworths and/or its agent, Milk2Market.</p> <p>The NSW mid coast group has common membership with the Manning Valley Dairy Farmers group.</p>