

Tabled by  
Clover Hill Dairies  
10 March 2011



105 Clover Hill Rd

Jamberoo NSW 2533

The Secretary

Senate Standing Committee on Economics

PO Box 6100

Parliament House

Canberra ACT 2600

10<sup>th</sup> March 2011

**Cover letter for supplementary submission**

These documents are being tabled as further evidence of the problems in the current supply chain for drinking milk in NSW

Despite the deregulation of the dairy industry in 2000 production of milk for drinking purposes is again being strictly regulated in a "quota" style system being enforced by major milk processors.

By denying farmers the right to have dual supply contracts farmers are being forced to sell milk they produce over and above their "quota" to the same processor at a significantly reduced price for many months of the year

This restriction of trade denies farmers the right to seek alternative markets for their product in a market where there is significant demand for milk at both regional and export level

This further restricts farmers' ability to develop their businesses and reduces their competitiveness

Yours sincerely

Lynne Strong

Co-owner Clover Hill Dairies

83-85 Market Street  
PO Box 5364  
Wollongong NSW 2500  
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Dairy Farmers Milk Co-operative  
PO Box 72  
Lidcombe NSW 1825

Our Ref: RD:LF:20101869

6 September 2010

**Attention: Ian Zandstra & Greg Griffith**

### **Strong - supply of milk for July 2010**

We act for Michael, Lynne and Nick Strong in relation to a discrepancy that has arisen in respect of milk prices paid for the July 2010 period.

#### **1. Discrepancy**

- 1.1 Our clients' contract to supply milk to Dairy Farmers Milk Co-operative (*DFMC*) from farm 22031040 (*farm*) expired on 30 June 2010.
- 1.2 *DFMC* represented to our client that, if *DFMC* has not announced a milk price by the 30th of June then all suppliers will receive the guaranteed minimum base price that was on their contract for July 2009; that will be the milk price payable in July 2010 for all milk supplied by all suppliers. All other payment incentives such as contract consideration and volumes incentives will continue to be paid at the same rate(*original contract rates*).
- 1.3 This representation was made verbally in April and was reflected on *DFMC's* website. We attach an excerpt of the relevant portion of the website extracted at 2 August 2010.
- 1.4 We are instructed that in reliance on *DFMC's* representation regarding the price that would be paid, our clients supplied *DFMC* with the milk from the *farm*.
- 1.5 Subsequent to our clients' supply of their milk *DFMC* issued the Announced Base Milk Price for 2010/11 (*new contract rates*) advising that the milk supplied in July 2010 would be subject to these prices.
- 1.6 As a result of the application of the *new contract rates* our clients estimate they have been paid \$8,045.10 less than that which would have been paid under the *original contract rates*.

#### **2. Fair Trading Act**

- 2.1 Section 42 of the *Fair Trading Act 1987* prohibits misleading or deceptive



Business Law  
Property Law  
Local Government &  
Planning Law  
Family Law  
Personal Injury Law



conduct in the course of trade or commerce.

- 2.2 The representations made in respect of the payment of *original contract rates* were clearly misleading and have been made in the course of trade or commerce undertaken by *DFMC*.
- 2.3 Our clients relied on the representation to their detriment and loss has been suffered.
- 2.4 *DFMC* deprived our clients of the opportunity of sourcing alternative and more profitable methods of disposing of the milk from the *farm* for the July 2010 period and accordingly have suffered loss.

### 3. Damages

- 3.1 In these circumstances our clients are entitled to make a claim against *DFMC* as a result of the loss they have suffered based on the misrepresentation.
- 3.2 For the purposes of this claim, although our clients may have been able to obtain higher prices elsewhere, our clients are prepared to calculate their loss as the amount they would have received under the *original contract rates* less the amount received under the *new contract rates* being \$8,045.10 (*payment difference*).

### 4. Required from *DFMC*

- 4.1 In recognition of the effect of *DFMC*'s misleading representation on our clients, we are instructed to request *DFMC* remit to our client immediately the *payment difference*.
- 4.2 Alternatively, although our clients are disappointed in *DFMC*'s conduct in this regard, our clients are prepared to postpone further action in relation to the payment following the provision of an undertaking from *DFMC* confirming:
  - 4.2.1 the amount of the *payment difference*;
  - 4.2.2 that the *payment difference* will be paid in full;
  - 4.2.3 the date that it will be paid and if it is to be paid upon satisfaction of a contingency, a sunset date following which our clients will receive payment in any event; and
  - 4.2.4 that *DFMC* will remit interest on the *payment difference* at the rate of 10% from the time payment was made for the July 2010 milk under the *new contract rates* until the *payment difference* is remitted.
- 4.3 We understand that our clients are also awaiting submission of a dual supply contract from *DFMC*. We request provision of this document as a matter of urgency.

**From:** Paul Weir  
**Sent:** Wednesday, 28 July 2010 9:14 PM  
**To:** Ian Zandstra  
**Subject:** RE surplus milk

Hi Ian,  
Just wondering why DFMC cant move surplus milk from regions. Why cant you do a deal to the highest bidder for these surplus volumes and notionally move it from the closest farms within regions. If Murray Goulbourns price will finish in the early 40's cents/lit, why is the centrals T2 price 27 cents when it would be at max 6-8 cents to truck it to Vic. The T2 price in the central region should be at least 32 cents?  
The northern T2 price seems to reflect VICs price less freight = 28cents.  
If DFMC cant move the milk, we as farmers need to be able to. Allowing farmers within regions to put loads together to add better value should be allowed. Is it? Can We?  
DFMC if it plays it cards right over the next few years, could end up saving our butts if Nat Foods carries on like this. We as farmers will be looking to a co-operative to be started to add value to our milk if the private companies dont offer us value for our product. Whats your thoughts?

Regards,  
Paul Weir  
Lismore

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No virus found in this incoming message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 9.0.851 / Virus Database: 271.1.1/3049 - Release Date: 08/04/10 00:22:00

## Lynne Strong

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**From:** Paul Weir  
**Sent:** Wednesday, 4 August 2010 7:53 PM  
**To:** Lynne Strong  
**Subject:** Fw: RE surplus milk  
**Attachments:** \_Certification\_.txt

Hi Lynne,  
Just forwarding some correspondence from Ian Zanstra.  
In relation to dual contracts,  
I am looking to supply another factory as well and according to Mal Maroske our DF rep its ok as long as it is in another vat? I am going to buy another vat and ship my jersey cows milk plus "surplus DF" milk to the other factory if the deal comes off.

Paul Weir  
----- Original Message -----

**From:** Ian Zandstra  
**To:** Paul Weir  
**Sent:** Wednesday, August 04, 2010 3:49 PM  
**Subject:** RE: RE surplus milk

Hi Paul

Good to get your email. I got you phone number, might ring later.

It is all going back in time, isn't it, "surplus milk". What is T2, is it a price signal for supply or is it a value signal, what is it worth to process into other than drinking milk products. Are we all now well and truly into product pricing with Norco having milk at drinking milk value into Pauls and themselves and other value into Sydney and ice-cream. Parmalat with the PDA group has milk at branded and then other. If it is surplus it is surplus to regional needs but do we want to grow it and move more of it. It is that farmer's farm growth avenue plus there is now plenty in milk vats and farmers want value for it.

It is in most northern payment models now and that means if it was not "surplus" and identified, since milk is worth what you can make out of it, it would show up as a lower blend price; and then lower and lower if the blend did not provide a market signal and inhibit growth that was not needed or of lesser product value into the mix of products.

Our arrangement with NFL is that milk other than what is used by NFL in regions must be used at best alternative value allowing for logistics. That has to be transparent. In NSW in general form, as you have noted, it is in to Vic at MG's price. That is the starting point, by year end with the MG step ups NSW T2 milk on farm could be higher, although there is little T2 in the winter months, at the higher value time.

We do talk to others about milk values and supply but are a way off (if ever) moving it ourselves. We thought of that as a model, a milk trading co-operative, but the planning, logistics and relationship issues, let alone the price risk would not have benefited our suppliers. But the market dynamics do move. DFMC need not supply NFL the excess milk but if DFMC has a deal wherein NFL must take all of our member's milk we must have caution to at other times to say "only when it suits us". Remember we are not working, or would we want to, in the spot market; TMQ tried that. I think there would be interest in our "need sell" T2 into white milk but would anyone do that even to get a better milk price, I hope not.

Let it bed down; there are no local sink factories because the milk is too dear and the scale too small to compete. Challenge in WA is, sadly, on its knees with 70 million litres. I think we will see the start of new co-ops in time, it generally happens in these corporate dominated landscapes, but Challenge tried that and loyalty, capital and product mix are the problems.

Regards Ian

## Lynne Strong

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**From:** Roger Downs  
**Sent:** Tuesday, 14 September 2010 5:28 PM  
**To:**  
**Cc:** 'Lynne Strong'  
**Subject:** Strong - reimbursement and dual contract  
**Attachments:** \_Certification\_.txt

Greg,

Thank you for taking my call today.

My letter of 6 September

I confirm your advice that a response will be available by the end of the week.

Dual contract

I confirm this is still with your lawyers Addisons. It is my expectation that work on this contract would have been occurring at the same time as the standard contract which was made available in early August.

With due respect to the undoubted ability of your lawyers I would have expected the necessary work to convert the standard form contract into a dual supply contract would involve a moderate range of appropriate changes to the standard contract and, subject to you providing timely instructions to Addisons, having regard to your presumed importance as a client to Addisons, a month to complete that further work seems reasonable.

Summary

Our client is unprepared to assume the necessary reimbursement (apparently acceptable to you) will be paid, without appropriate unconditional confirmation.

Our client is similarly unprepared to remain silent and meekly accept the current lack of clear indication of when the proposed dual supply contract will be available, leaving our client in an invidious no-mans-land in respect of their contractual relationship with Dairy Farmers and a position of gross uncertainty in respect of their business..

Roger Downs  
Partner  
Kells The Lawyers

W: [www.kells.com.au](http://www.kells.com.au)<<http://www.kells.com.au>>

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**From:** Greg Griffith  
**Sent:** Wednesday, 22 September 2010 9:13 AM  
**To:** Lynne Strong  
**Cc:** Roger Downs; Helen Whitelaw; \_\_\_\_\_  
**Subject:** RE: Dual Contract

Hi Lynne, the Dual supply contracted has been forwarded to me from the Lawyers, however it needs approval by the Board of DFMC and National Foods before I can release it. The Board are not meeting until Tuesday and then I will have to forward to NFL for approval after that. Sorry about the delay, however these things just take time.

Moving forward, I understand that you will not sign the contract until you have had a chance to view the dual contract. DFMC will continue to pay you contract consideration and productivity incentive post 30<sup>th</sup> September (even though these payments are suppose to stop) until you have had a chance to review the Dual Supply contract. Once this has been provided, my expectations are that we will provide you with an additional two weeks to make a decision to either enter into a new contract with DFMC or I will have to stop paying you the incentives per the terms of your contract.

As you know, at the end of this month I am looking to make the switch for those suppliers who have entered into a Flat Volume Contract i.e. currently all suppliers are being paid on the Variable Price model. The switch will involve back dating all suppliers who have entered into a FP contract to the 1<sup>st</sup> of July 2009, reworking the Regional AFD and adjusting the milk statements to pay any amount owing as a result of being paid a Flat price vs. a the Variable Price.

Although it is likely that you would not have entered into a Flat or Variable contract, I am happy to move you onto the Flat payment option at the end of the month if that is desirable to you – could you please indicate what your preference might be.

I look forward to your reply.

Kind regards

Greg Griffith  
Executive Officer  
Dairy Farmers Milk Cooperative

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[www.dfmc.org.au](http://www.dfmc.org.au)

**From:** Lynne Strong  
**Sent:** Tuesday, 21 September 2010 11:56 AM  
**To:** Greg Griffith  
**Cc:** 'Roger Downs'  
**Subject:** Dual Contract

Dear Greg

As dual contract details have not been forthcoming and I do not intend to sign a new contract until I have seen the dual contract – I need written confirmation from DFMC as to where I stand in light of this

*Lynne Strong*

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[www.dairyyouthaustralia.com.au](http://www.dairyyouthaustralia.com.au)



## Lynne Strong

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**From:** Greg Griffith  
**Sent:** Wednesday, 29 September 2010 8:08 AM  
**To:** Lynne Strong  
**Cc:** Ian Zandstra; Helen Whitelaw  
**Subject:** RE: Dual Contract  
**Attachments:** \_Certification\_.txt

Hi Lynne,

The Dual supply contract has been approved by the Board. It has now been forwarded to NFL for review and comment. Based on your feedback below, we will move you onto the Flat payment option and will adjust milk payments accordingly as if you are on a signed contract from the 1<sup>st</sup> July.

Helen, could you please adjust the spreadsheets to capture the monthly allocation?

I hope to have the Dual contract for you to review on by the end of this week.

Kind regards

Greg Griffith  
Executive Officer  
Dairy Farmers Milk Cooperative

[www.dfmc.org.au](http://www.dfmc.org.au)

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**From:** Lynne Strong  
**Sent:** Wednesday, 29 September 2010 7:31 AM  
**To:** Greg Griffith  
**Cc:** Ian Zandstra; Helen Whitelaw  
**Subject:** RE: Dual Contract

Dear Greg

In reference to your statement below "Although it is likely that you would not have entered into a Flat or Variable contract, I am happy to move you onto the Flat payment option at the end of the month if that is desirable to you – could you please indicate what your preference might be."  
Our preference is to move to the flat payment option"

Would you please also thank the board for their letter of congratulations on behalf of DFMC for Clover Hill Dairies National Landcare Primary Producer Award win. It is wonderful to be part of the DFMC family who acknowledge their farmer/suppliers who strive for excellence

*Lynne Strong*

## Lynne Strong

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**From:** Greg Griffith  
**Sent:** Sunday, 10 October 2010 8:11 AM  
**To:** Lynne Strong  
**Cc:** Roger Downs  
**Subject:** RE: Dual Contract  
**Attachments:** \_Certification\_.txt

Hi Lynne,

Regarding Dual Supply contracts, I am not sure if I will be able to offer you or any DFMC supplier one of these contract options. As DFMC is in a back to back pricing and supply agreement with NFL, they have (via the contract terms of the Milk Supply Agreement) the right to approve or not approve contract terms that we offer our suppliers. At this stage they have rejected our dual supply contract stating they do not want them introduced at all. I will keep you posted on the outcome of that debate.

To your second point, we have we have just put everyone onto their correct contract terms (for you we have put you onto the flat supply terms) and back dated this to the 1<sup>st</sup> of July. These adjustment should be seen on this months statement.

Kind regards

Greg Griffith  
Executive Officer  
Dairy Farmers Milk Cooperative

[www.dfmc.org.au](http://www.dfmc.org.au)

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**From:** Lynne Strong  
**Sent:** Friday, 8 October 2010 6:56 PM  
**To:** Greg Griffith  
**Cc:** 'Roger Downs'  
**Subject:** Dual Contract

Hi Greg

1. Just confirming I am yet to receive a copy of the dual contract – would you please provide me with an update on its ETA
2. Would you also please let me know when AFD “excess supply” adjustments will be repaid

*Lynne Strong*

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[www.dairyyouthaustralia.com.au](http://www.dairyyouthaustralia.com.au)

**From:** Lynne Strong  
**Sent:** Thursday, 14 October 2010 12:34 PM  
**To:** Greg Griffith  
**Cc:** Ian Zandstra; Helen Whitelaw  
**Subject:** RE: Dual Contract

Hi Greg

In light of your email on Sunday 10<sup>th</sup> October and my reply ( to which you have not replied ) and in particular this paragraph cut and paste

"Regarding Dual Supply contracts, I am not sure if I will be able to offer you or any DFMC supplier one of these contract options. As DFMC is in a back to back pricing and supply agreement with NFL, they have (via the contract terms of the Milk Supply Agreement) the right to approve or not approve contract terms that we offer our suppliers. At this stage they have rejected our dual supply contract stating they do not want them introduced at all. I will keep you posted on the outcome of that debate".

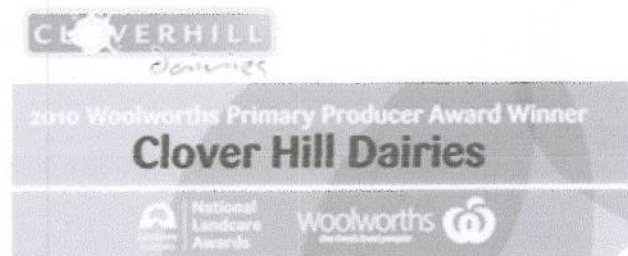
Where does this leave Clover Hill Dairies in light of this cut and paste here of previous email from you below date 22nd Sept

"Moving forward, I understand that you will not sign the contract until you have had a chance to view the dual contract. DFMC will continue to pay you contract consideration and productivity incentive post 30<sup>th</sup> September (even though these payments are suppose to stop) until you have had a chance to review the Dual Supply contract. Once this has been provided, my expectations are that we will provide you with an additional two weeks to make a decision to either enter into a new contract with DFMC or I will have to stop paying you the incentives per the terms of your contract."

Please provide in writing DFMC (your) intentions as to the way forward in respect of whether DFMC will continue to pay us contract consideration and productivity incentive post 30<sup>th</sup> September until you have resolved this situation with National Foods

*Lynne Strong*

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**From:** Greg Griffith  
**Sent:** Wednesday, 29 September 2010 8:08 AM  
**To:** Lynne Strong  
**Cc:** Ian Zandstra; Helen Whitelaw  
**Subject:** RE: Dual Contract

Hi Lynne,

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Kind regards

Greg Griffith  
**Executive Officer**  
**Dairy Farmers Milk Cooperative**

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**To:** Greg Griffith  
**Cc:** Ian Zandstra; Helen Whitelaw  
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Dear Greg

In reference to your statement below "Although it is likely that you would not have entered into a Flat or Variable contract, I am happy to move you onto the Flat payment option at the end of the month if that is desirable to you – could you please indicate what your preference might be."  
Our preference is to move to the flat payment option"

Would you please also thank the board for their letter of congratulations on behalf of DFMC for Clover Hill Dairies National Landcare Primary Producer Award win. It is wonderful to be part of the DFMC family who acknowledge their farmer/suppliers who strive for excellence

*Lynne Strong*

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## Lynne Strong

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**From:** Lynne Strong  
**Sent:** Thursday, 14 October 2010 5:46 PM  
**To:** 'Greg Griffith'  
**Subject:** RE: Dual Contract

Okay Greg  
Thanks for that

*Lynne Strong*

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**From:** Greg Griffith  
**Sent:** Thursday, 14 October 2010 5:41 PM  
**To:** Lynne Strong  
**Cc:** Ian Zandstra; Helen Whitelaw  
**Subject:** RE: Dual Contract

Hello Lynne,

DFMC will continue to pay you incentives (as if you have signed a contract) until such time that a Dual Supply contract is offered for consideration or a formal decision has been made to not offer suppliers a Dual Supply contract. Once one of those two options has been presented to yourself, you will have two weeks to make a decision to either enter into a new FP or VP contract (we currently have you listed on a FP option) or not to enter into a supply contract with DFMC. After the two week period has concluded and If you had decided not to enter into a contract with DFMC, DFMC will then stop paying you for your contract consideration and productive incentives. DFMC will also at the same time issue you with a 90 day notice period to terminate your contract with us.

I hope that answers your questions.

Kind regards

Greg Griffith  
Executive Officer  
Dairy Farmers Milk Cooperative