



Statement of Reasons

In respect of a notification lodged by

Premium Milk Ltd

in respect of

collective bargaining with processors for the supply of
of raw milk

Date: 12 November 2020

Notification number: CB1000475

Commissioners: Keogh
Court
Ridgeway

Summary

The ACCC has decided not to object to the notification lodged by Premium Milk Ltd (**Premium Milk**) to enable it to collectively negotiate on behalf of its current and future dairy producer members for the supply of raw milk to processors.

The ACCC considers the notified conduct is likely to result in public benefits in the form of transaction cost savings and enabling Premium Milk and its members to have better input into contracts. There is likely to be minimal, if any, public detriment.

The ACCC has decided to allow the notification to remain in force for a period of 10 years, instead of the default period of three years. The notification was lodged on 11 September 2020 and the legal protection commenced on 25 September 2020. It will remain in force until 10 September 2030, unless it is withdrawn or revoked.

The notification

1. On 11 September 2020, Premium Milk lodged a collective bargaining notification¹ to enable it to negotiate on behalf of its current and future members for the supply of raw milk to Lactalis Australia Ltd (**Lactalis**), Dairy Farmers Milk Cooperative/Lion (**Lion**), Norco Co-operative Limited (**Norco**), and other raw milk wholesalers and distributors (the **Notified Conduct**).
2. Premium Milk currently represents 87 dairy farmers in south-east Queensland and northern New South Wales.
3. Under the Notified Conduct Premium Milk proposes to negotiate the terms and conditions of farm gate milk prices, volume and quantity with Lactalis, Norco, Lion and any other milk wholesaler and milk distributor (referred to as processors). Individual farmers who are members of Premium Milk can choose whether to enter into contracts based on the negotiated terms and conditions.
4. The Notified Conduct does not include a collective boycott.
5. Since 2001, Premium Milk has been granted authorisation to engage in conduct similar to the Notified Conduct with Lactalis (and its predecessors).² Currently all members of Premium Milk supply raw milk exclusively to Lactalis.
6. On 1 January 2020, the Dairy Industry Code of Conduct (**Dairy Code**) came into effect. The Dairy Code applies to dealings between dairy farmers and corporations that directly purchase, or that may purchase, milk from them (which are typically processors).
7. Premium Milk notes the Dairy Code provides for non-exclusive milk supply agreements which opens up an opportunity for Premium Milk to collectively negotiate with other processors (other than Lactalis) to supply raw milk.

¹ Businesses can obtain protection from legal action under the *Competition and Consumer Act 2010 (CCA)* for collective bargaining including associated collective boycotts by lodging a collective bargaining notification with the ACCC. Protection for collective bargaining (which does not involve a collective boycott) will generally commence 14 days after the collective bargaining notification is lodged.

² Premium Milk was authorised in 2001, 2005 and 2010 to engage in collective negotiations on behalf of its members for the supply of raw milk to Parmalat Australia Ltd (now Lactalis).

8. Premium Milk has requested that the notification remain in force for ten years, as the previous authorisation which related to similar conduct was granted for ten years, and the proposed collective bargaining arrangements are relatively stable.³

Consultation

9. The ACCC invited submissions from a wide range of interested parties. Both Lactalis and Norco provided submissions.
10. Norco does not object to Premium Milk representing its members in negotiations with processors, although it advised that Norco only deals with its own members for the procurement of raw milk.
11. Norco submits that three years is a more appropriate period for the notification as this would enable any changes in public policy to be implemented swiftly, which would ensure that practices within the market remain contemporary.
12. Lactalis does not object to the notification as it relates to Premium Milk collectively bargaining for the supply of raw milk to Lactalis. However, Lactalis raises concerns about the notification enabling Premium Milk to collectively bargain with processors other than Lactalis (for example Norco and Lion). Broadly, Lactalis states that:
 - Premium Milk collectively negotiating with processors other than Lactalis is inconsistent with the current agreement it has with Lactalis and may render the agreement void.
 - It would be concerned that Lactalis' confidential information may not be properly protected if Premium Milk is able to negotiate with Lactalis' competitors.
 - The current agreement between the Dairyfields Milk Suppliers Co-operative Limited (**Dairyfields**) and Lactalis precludes Premium Milk from negotiating with other processors in respect of Dairyfields suppliers.⁴
 - Lactalis is unclear as to the continuing role of collective bargaining with the Dairy Code now in effect. Lactalis state that the Dairy Code does not provide for agreements between processor and collective bargaining groups, that contracts must be at an individual supplier level and must be published on 1 June each year. Lactalis state the notion of collective bargaining appears to have been overridden by the Dairy Code.
13. In response to these two submissions Premium Milk submits that ten years is an appropriate period of time for the notification to be in force as this would allow Premium Milk to achieve the most cost-effective outcome for their members. Under the notification, commercial contracts with a processor would not necessarily run for ten years and could be negotiated for shorter periods of time within the ten year period the notification was in force.

³ The ACCC may provide a written notice determining the expiry of the collective bargaining notice if the ACCC is satisfied that the standard three year period is not appropriate and another period (up to 10 years) is appropriate in all the circumstances. The ACCC must, in or with the notice, provide a written statement of its reasons for giving the notice.

⁴ Dairyfields and Lactalis have an agreement whereby all members of Dairyfields supply milk to Lactalis for an indefinite period. Dairyfields members are members of Premium Milk.

ACCC's Assessment

14. The ACCC has considered the Notified Conduct in accordance with section 93AC of the *Competition and Consumer Act 2010* (Cth) (the **CCA**).

Future without the Notified Conduct

15. The ACCC has taken into account the likely future with and without the Notified Conduct. The ACCC considers that, absent the Notified Conduct, as Premium Milk would not be able to collectively bargain terms and conditions for the supply of raw milk on behalf of its members, its member dairy farmers would enter into separate supply agreements with Lactalis or other processors.
16. Given the significant imbalance in bargaining power between farmers and processors⁵, it is likely that individual agreements between Premium Milk members and processors would be standard form contracts.

Public Benefit

17. The Notified Conduct is likely to result in the following public benefits:
- Reduced transaction costs (such as negotiation and contracting costs) for Premium Milk and the processors, compared to the situation where Premium Milk members negotiate individually with processors.
 - Improve the opportunity for Premium Milk members to have a greater input into raw milk supply contracts relative to a situation where Premium Milk members negotiate individually with processors.
18. Lactalis expressed concern with Premium Milk being able to collectively negotiate with processors other than itself. A number of the objections raised by Lactalis relate to commercial issues which are outside the scope of the ACCC's assessment.
19. Lactalis queried the continued use of collective bargaining in the context of the new Dairy Code. The ACCC notes that the Dairy Code does not prevent collective bargaining from occurring. With limited exceptions, farmers in collective bargaining groups and the processors who are engaging in collective negotiations are also not exempt from the Dairy Code.

Public Detriment

20. The ACCC considers that the Notified Conduct is likely to result in minimal, if any, public detriment arising from a reduction in competition between the members of the bargaining group to supply processors raw milk. In particular:
- The Notified Conduct is likely to have a minimal effect on the level of competition between the members of Premium Milk.
 - Participation in the Notified Conduct is voluntary for the members of Premium Milk, Lactalis, Norco, Lion and any other processor.

⁵ See generally, [ACCC Dairy Inquiry Final Report 30 April 2018](#) .

- Premium Milk has been collectively negotiating on behalf of its members since 2001 without any identifiable public detriment.
- The notification does not protect Premium Milk from legal action should they breach their agreement with Lactalis, including in relation to any confidentiality obligations. Premium Milk and its members will need to ensure that any information sharing does not breach confidentiality obligations in their existing agreement.

Period for which the notification will be in force

21. A collective bargaining notification (and therefore the protection it confers) will be in force for a period of three years from the date it is lodged unless the ACCC determines that another period is appropriate or the notification is withdrawn or revoked.
22. In this case, Premium Milk requests the notification to be in force for a period of ten years.
23. The ACCC considers that it is appropriate for the notification to remain in force until 10 September 2030 for the following reasons:
 - The likely benefits of the Notified Conduct may be expected to continue for the duration of the Notified Conduct and therefore total benefits are likely to be greater with the extended notification period.
 - The extended notification period is unlikely to increase the minimal public detriment which is likely to result from the Notified Conduct.
 - The ACCC may act to remove the protection afforded by the notification at a later stage if it is satisfied that the public benefit does not outweigh the public detriment.⁶

Decision

24. The ACCC considers that the benefit to the public that is likely to result from the Notified Conduct will outweigh the detriment to the public that is likely to result.
25. Accordingly, the ACCC does not object to the notification at this time.
26. With respect to the period for which the notification will remain in force, for the reasons set out in paragraph 23, in accordance with s 93AD(5), the ACCC is satisfied that a ten year notification period is appropriate in all the circumstances, being the period ending on 10 September 2030.
27. The protection provided by notification CB1000475 commenced on 25 September 2020 and will continue until 10 September 2030, unless the notification is withdrawn or revoked.
28. This Statement of Reasons serves as the written notice and written statement of reasons for giving that notice required by section 93AD(6) of the CCA.

⁶ Section 93AC of the CCA.