

## Portfolio Committee No. 5 – Industry and Transport

### Inquiry into the sustainability of the dairy industry in New South Wales

#### Supplementary questions for ACCC

**Department/Agency:** Australian Competition and Consumer Commission

**Question:** 1

**Topic:** Portfolio Committee No. 5 – Industry and Transport, Inquiry into the sustainability of the dairy industry in New South Wales, Supplementary questions for ACCC

**Date:** 16 November 2018

**MP:** The Hon Rick Colless

**Hansard page number:** [Enter page number here]

#### Question:

1. Would the ACCC please provide comment in response to the following remarks by Mr Greg McNarmara, Acting Chief Executive Officer and Chairman, Norco Co-operative Limited, on Friday 16 November 2018?

**The Hon. RICK COLLESS:** As a cooperative, how are you managing that, knowing that the farmers do not have any more room to move and have not been getting the consumer price index [CPI] increases? How do you manage that as a cooperative?

**Mr McNAMARA:** We went to the retailers in late July. We knew that the white grain harvest in Australia had been missed. There was no rain and we could see that the grain prices were moving dramatically. We put the scenarios together of what the cost increases would be. We took a scenario to the retailers of increasing the price by 10¢ a litre to support our farmers for a period of time. That got knocked out. We went back with another proposal to support them with 5¢ per litre for the months of September and October. Then we moved from a proposal to, "We are doing this." It was to test the theory from the ACCC. The ACCC report clearly said that we could as a processor put forward a price increase to the retailers and that they would have to accept it.

#### Answer:

#### *ACCC Dairy Inquiry findings*

For many years questions have persisted about the fairness of prices and other trading terms that Australian dairy farmers receive for the milk they produce. These intensified after Australia's major supermarkets reduced the retail price of private label milk to \$1 per litre in 2011, and again after late-season 'step-downs' to the farmgate prices paid by Australia's two largest dairy processors in April 2016.

Recognising these concerns, during the Dairy Inquiry, the ACCC conducted an in-depth examination of the effects of retail pricing along the dairy supply chain. This included the use of compulsory information gathering powers to obtain data and documents from supermarkets and processors from FY2010 to FY2016, and summoning all relevant processing and retailing businesses to give evidence under oath in private hearings.

As explained at our appearance before the Committee on 16 November 2018, the ACCC did not obtain any evidence that supermarket pricing, including \$1 per litre milk, has a direct impact on farmgate prices. As the ACCC witnesses explained, the ACCC's Inquiry found that contracts for the supply of private label milk allow processors to pass the farmgate price paid to farmers through to the wholesale prices they charge to retailers. This means that processors do not have an incentive to reduce farmgate prices as a result of the lower wholesale prices they receive for private label milk, as the farmgate prices are passed through to the supermarkets.

Further, farmers' lack of bargaining power means that they are unlikely to benefit from an increase in the retail (or wholesale) prices of private label milk or other dairy products. Even if processors were to receive higher wholesale prices from sales to supermarkets, this does not mean the processors will pay farmers any more than they have to secure milk. Farmers' ability to capture their appropriate share of profits will, as in all industries, depend on their bargaining power.

Ultimately, we found that farmgate prices in central/northern NSW are largely a reflection of competition between processors and the overall local demand for raw milk, with a number of processors often supplementing local production with milk transported from southern dairy regions. This practice is likely to be more prevalent when export demand is relatively weak.

### *Norco*

Due to the confidential nature of the evidence given, the Dairy Inquiry findings and the supporting information included in the report did not identify the terms of contracts between specific processors and retailers. As the information was gathered using compulsory powers under the *Competition and Consumer Act 2010* (CCA), they are subject to confidentiality claims. The ACCC granted all claims related to commercial contracts.

Representatives of Norco were summoned by the ACCC as hearing witnesses during the Dairy Inquiry to provide insight into Norco's higher level strategy and budget issues. These witnesses were examined under oath by counsel for the ACCC.

In regard to the statement to the Portfolio Committee about a potential price increase, it is not clear to the ACCC whether Mr McNamara was referring to the farmgate milk price, the wholesale price, or the retail price.

The relationship between processors and retailers concerns the wholesale price for milk, and the farmgate milk price paid to their farmer suppliers is at the discretion of processors. In this regard we refer the Committee to Figure 1 of the ACCC Dairy Inquiry final report. This chart reflects data collected from all major processors and illustrates that despite the retail price of branded milk being higher than for private label milk, the farmgate price paid to farmers is the same for all milk that farmers supply.

The ACCC understands from media reports<sup>1</sup> that Norco increased its farmgate milk price for September and October 2018 by 5c per litre, and has indicated that it intends to extend this for a further time period.

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<sup>1</sup> For example, 7 September 2018, 'Dairy co-operative Norco lifts farm gate price by 5 cents a litre', ABC News, <https://www.abc.net.au/news/rural/2018-09-07/dairy-cooperative-norco-lifts-farmgate-price-by-5-cents-a-litre/10215068>

*ACCC letter to processors and media release*

As the committee may be aware, in September 2018, the ACCC warned dairy processors (see media release at **Attachment A**) not to mislead farmers about milk prices. The ACCC wrote to a number of processors following reports of representatives of some businesses stating or implying that private label contracts with supermarkets were preventing them from increasing farmgate prices.

Our letter noted that any such representations made to farmers to this effect would contradict evidence provided during the course of the ACCC's dairy inquiry. We invited processors to notify us if there had been any recent developments or changes to their supply arrangements with supermarkets that might justify any such representations. No processor has responded to provide additional information. Consequently, the ACCC assumes that there have been no changes to the contract clauses impacting on farmgate prices.



# MEDIA RELEASE

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18 September 2018

## PROCESSORS WARNED NOT TO MISLEAD DAIRY FARMERS ABOUT MILK PRICES

The ACCC has warned dairy processors not to mislead farmers about milk prices, following reports of processors blaming their private-label milk contracts with supermarkets for the low prices offered to farmers.

A key finding of the [ACCC's Dairy Inquiry](#) was that almost all contracts for the supply of private label milk allow processors to pass-through movements in farm gate prices to supermarkets. In addition, farmers are paid the same price irrespective of whether their milk goes into private label or branded products. These findings were based on detailed evidence provided by supermarkets and processors.

“Dairy processors need to be honest with farmers. We have written to a number of processors warning them not to mislead farmers by blaming private label milk contracts for the prices offered for milk at the farmgate,” ACCC Chair Rod Sims said.

“We’re concerned this is misleading as the power lies with processors to raise the farmgate price paid to farmers, and then pass these higher farmgate prices on to supermarkets.”

“Almost all contracts between processors and supermarkets for the supply of private label milk allow processors to pass-through movements in farmgate prices to supermarkets. This means processors set their farmgate prices independent of the supermarkets’ retail prices,” Mr Sims said.

The ACCC has heard reports from a number of dairy farmers in NSW and Queensland who are struggling to cover costs in the face of drought conditions. These reports allege that processors say they cannot pay farmers more for their milk because of the low \$1 per litre price for private label milk. Given the existence of these pass-through clauses, this is not correct.

### Background

The milk supply chain works by farmers selling their products to dairy processors who process and package the product. Supermarkets then buy the packaged milk from the processors, both private label and branded products, and sell it to consumers.

On 27 October 2016, the Treasurer issued a notice requiring the ACCC to hold an Inquiry into the competitiveness of prices, trading practices and the supply chain in the Australian dairy industry. The ACCC released its final report on 30 April 2018: [Dairy inquiry](#)

Among other terms of reference set by the Treasurer, the ACCC examined the impact of supermarket pricing of private label milk and other dairy products on outcomes up the dairy supply chain.

Typical supermarket private label milk contract

