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To: Robert Janissen

By email: exemptions@accc.gov.au

Re: Queensland Dairyfarmers' Organisation Limited - application for authorisation AA1000530— Draft determination and interim authorisation.

The Australian Competition and Consumer Commission (the ACCC) has issued a draft determination for the application of authorisation from the Queensland Dairyfarmers' Organisation (QDO) for a voluntary licensing scheme for *processors of milk and dairy products to apply a Fair Go Dairy logo to registered products which satisfy certain minimum criteria relating to milk origin and minimum farmgate price (the Scheme)*.

The ACCC proposes to grant a *five-year* authorisation to enable implementation of the QDO Fair Go Dairy logo, as well as *interim authorisation* to enable QDO to commence negotiations with potential participants in the Scheme, advance preparations and marketing, and announce the Sustainable and Fair Farmgate Price (SFFP) for 2021/22 in Queensland (while the ACCC considers the application for authorisation).

The Australian Dairy Products Federation (ADPF) has consulted with its members and provides comment to the ACCC on their behalf. We previously responded to the consultation phase in September 2020: Queensland Dairyfarmers' Organisation Ltd —application for authorisation AA1000530.

The ADPF is the national peak policy body representing commercial, post farm-gate members of the Australian dairy industry, including processors, traders and marketers of Australian dairy products. For the past 30 years, ADPF has worked to represent the interests of members in promoting and protecting dairy products through advocating for improvements in the manufacturing, marketing and trading of dairy. Our members process more than 90% of Australian milk volumes and provide dairy products for both the domestic and export markets.

The ADPF is supportive of sound policy principles and decisions that foster innovation and the future viability of the whole of the dairy industry. However, the proposed QDO Scheme fails to support any of these**.**

We note, the Report from the Parliament Agriculture and Environment Committee April 2017 on The Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016[1], introduced by the Member

[1] Parliamentary committee: Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016 Report No. 33, 55th Parliament Agriculture and Environment Committee April 2017

for Dalrymple in an attempt to achieve better farm gate prices for the state's dairy farmers and strengthen consumer information. The three recommendations were:

1. *Sustainable Queensland Dairy Production (Fair Milk Price Logos) Bill 2016* ***not be passed.***
2. *The Minister for Agriculture and Fisheries direct his department to investigate options for supporting the Queensland Dairyfarmers' Organisation* ***to devise and operate an industry-operated marketing scheme****, potentially including fair milk price logos.*
3. *The Minister for Agriculture and Fisheries consult with his counterparts in other states and territories, and with the Commonwealth Minister for Agriculture and Water Resources,* ***regarding the institution of similar schemes in order to increase the sustainability of the Australian dairy industry as a whole.***

It concluded that the ***Bill creates more problems than it seeks to resolve, with significant difficulties arising if the state government returns to the role of making 'fair' price determinations for milk farm gate prices,*** as the Bill proposes.

Adopting the labelling scheme proposed in the Bill could leave the *legislation vulnerable to a future legal challenge on constitutional grounds because it seeks to grant a competitive advantage to Queensland producers not available to inter-state producers whose milk is supplied here* – even with it voluntary.

A *number of small milk processors in Queensland are already using labelling and other marketing tools to better position themselves in the competitive drinking milk market*. They are creating a marketing advantage on the basis they offer a quality local product and treat farmers and livestock well.

The ADPF *does not* support the proposed QDO application on the Scheme and would recommend the ACCC does not grant any form of authorisation. The risk and industry detriment from introducing the Scheme outweighs any consumer or dairy industry benefit.

The process and criteria for the Scheme is bias and risks misleading the consumer and disadvantaging other dairy products that may be of the same or higher quality because of where there are produced.

The FGD Licensing Scheme has the potential to discriminate against products for which the farmer *does* receive a fair farm-gate milk price, but the processor has not opted to purchase the Fair Go Dairy logo.

It also has the potential to further impact the market imbalance and bargaining power asymmetry between retailers and dairy processors, in trying to achieve the SFFP.

Pricing is a carefully considered mechanism influenced by a number of variables, and firmly lies in the commercial terms of trade between contracting parties – as opposed to QDO.

New tools introduced since the date of this application work to enhance the transparency on the milk market and farmgate milk prices offered to farmers to help guide and inform business decisions, such as the ADPF Milk Value Portal.

We note our comments on SFFP are based on this draft determination, and additional commentary will follow related to the Queensland Dairyfarmers' Organisation 'Fair Go Dairy' – Revised method of SFFP calculation – AA1000530, received Monday 25 January 2021.

The ADPF provides the following specific comments in relation to the Scheme – with our concerns and comments consistent to that in our previous submission from September 2020.

1. **<u>The Fair Go Dairy Logo Licensing Scheme criteria</u>**: The proposed criteria underpinning the Fair Go Dairy Logo Licensing Scheme are flawed, highly biased and have the potential to undermine the value and sustainability of the dairy industry.

   In considering the 80% threshold and the SFFP criteria:

   1.1. **The rationale for the 80% threshold is unfounded:** Under the proposed licensing scheme, QDO will grant a licence to processors to use the "Fair Go Dairy" logo on dairy products made *using no less than 80% unprocessed milk from Queensland.* The rationale for the 80% is unsubstantiated and fails to recognise the important contribution of volumes coming from interstate to uphold consumers demand for drinking milk:

      - Milk production volumes in Queensland fell from 357 million litres (2018/2019) to 311 million litres (2019/2020) – representing less than 4% of the total milk produced in Australia[2].

      - The Schemes proposed criteria permits 20% of milk volumes to come from interstate to accommodate the demand for drinking milk in Queensland.

      - However, there is no solid rationale for the 20% threshold and discriminates against all but the smallest of processors, as the size of larger businesses means volumes are needed from interstate (such as NSW), to meet consumer demand.

      - The 80% rule also fails to recognise the growing importance of interstate volumes in meeting consumer demand for drinking milk in Queensland, as milk production volumes in Queensland continue to fall.

   1.2. **The process and criteria for determining the SFFP criteria is bias:** The SFFP is proposed *determined by QDO and based on the cost of production multiplied by the CPI Adjustment Rate – with the cost of production defined as the average cost of production for milk published by the Queensland Dairy Accounting Scheme annual report.* QDO intends to set the SFFP by 28 February 2020 for the following financial year (2021-2022), with the Scheme Rules to take effect on and from 1 July each financial year.

      The ADPF raises due concern with the QDO being responsible for setting the SFFP and the proposed definition and criteria for 'fair and sustainable', and in turn the impact this could have on the value and viability of the dairy industry:

      - Pricing is a carefully considered mechanism influenced by a number of variables, and firmly lies in the commercial terms of trade between contracting parties. This incorporates, but is not limited to freight costs, product mix, marketing strategies, manufacturing capacity utilisation and efficiencies, and exchange rate hedging policies. In addition, competition for milk in different production zones has proven to impact farmgate milk pricing, often to the advantage of the seller (i.e. dairy farmer)**.** New tools introduced since the date of this application work to enhance the transparency on the milk market and the farmgate milk prices offered to farmers to help guide and inform business decisions, such as the ADPF Milk Value Portal.

[2] Dairy Australia 2020, In Focus 2020 – The Australian Dairy Industry

- Having the SFFP process sit with QDO and being based on the QDAS Reports is flawed and biased. The 2019/2020[3] annual Report represents only 60 farms in South, South-East Coastal, Central and North Queensland – less than 17% of the 356 registered dairy farms in Queensland[4].

- The proposed criteria for 'what is the SFFP' can be manipulated in a way, that the price QDO decides to be 'fair' could actually be much higher than what is required to be 'fair'.

- Production costs may be higher due to production inefficiencies, which the SFFP has no regard for.

- Farmgate milk prices in Queensland are already high and further increases run the risk of making the industry less sustainable.

- The implications of announcing SFFP by the end of February each year has the potential to impact minimum prices that are required to be published on 1 June each year, as per the mandatory Dairy Code of Conduct – considering farmers expectations versus setting of a realistic farmgate prices for the contracting period.

2. **The proposed Scheme can mislead the consumer**: The ADPF advocates that the proposed Scheme has the potential to unfairly impact competition and lessen the number of products available and displaying the logo for consumers to choose from, based on unfounded and bias criteria for qualifying for the Fair Go Dairy logo.

   Milk or dairy products (cream, desserts and cheese) that may be of the same or higher quality – having regard for their nutrition content, social license and responsible production, farmgate milk pricing – do not qualify for the logo, because of where there are produced or processors not paying for the logo.

   The Scheme may also mislead the consumer about the content of their dairy products:

   - The choice of products available to the consumer, is in the hands of QDO, *biasing – and potentially lessening* – the product choice they have access to and the reasons why. As per the ACCC's draft determination (page 7), the initial uptake of the Scheme is only predicted to be by *smaller processors accounting for approximately 4.5% of milk sales* into Queensland.

   - Consumers may be misled into understanding 100% of the product is from Queensland, as opposed to the permitted 80% threshold.

   - The expansion onto other products and into other states runs the risk of exacerbating this even further.

3. **The proposed Scheme could unfairly impact competition and distort the market.** Similar to the point above, the ADPF notes that the proposed SFFP criteria is discriminatory in that it dictates which

[3] Department of Agriculture and Fisheries 2020, Balancing dairy production and profits in northern Australia. QDAS Financial and production trends – 2020
[4] Dairy Australia 2020, In Focus 2020 – The Australian Dairy Industry

processors are able to display the Fair Go Dairy logo, distorting the types of products available in the market.

It also has the potential to further impact the market imbalance and bargaining power asymmetry that exists between retailers and dairy processors, and processors' ability to negotiate.

- Milk or dairy products (cream, desserts and cheese) that may be of the same or higher quality – having regard for their nutrition content, social license and responsible production, farmgate milk pricing do not qualify for the logo, because of where there are produced – which can damage the brand value.

- The Scheme has the potential to discriminate against products for which the farmer *does receive a fair farmgate milk price, but the processor has not opted to purchase the Fair Go Dairy logo*. Again, damaging brand value.

- The Scheme may also facilitate increased market power to the retailers as they have the price flexibility to increase shelf pricing at their election and discretion to potentially achieve the SFFP – which processors do not (and need to seek approval for). For example: when a branded operator increases their price by 5cpl the cost of a 2-litre bottle increases by 15cpl (as the retailer takes 5cpl of additional margin) – making the SFFP more expensive and also damaging the value of the processors brand as there is a risk of lower sales.

In considering the consumer benefits and whole of dairy industry implications versus opportunities, the ADPF advocates that the QDO Fair Go Dairy Logo and licensing scheme can bring disruption to the industry and be at the detriment of any public good.

We ask for the opportunity to meet with the ACCC to directly discuss our submission in more detail before any final decisions are made, and to work collectively to determine the best outcome for the dairy industry.

Yours sincerely

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