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ECONOMICS REFERENCES COMMITTEE

Reference: Competition and pricing in the Australian dairy industry

THURSDAY, 5 NOVEMBER 2009

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SENATE ECONOMICS
REFERENCES COMMITTEE
Thursday, 5 November 2009

Members: Senator Eggleston (*Chair*), Senator Hurley (*Deputy Chair*), Senators Bushby, Joyce, Pratt and Xenophon

Substitute members: Senator O'Brien for Senator Pratt

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hutchins, Johnston, Kroger, Ludlam, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams and Wortley

Senators in attendance: Senators Colbeck, Eggleston, Milne and O'Brien

Terms of reference for the inquiry:

To inquire into and report on:

The current circumstances of the varying prices being paid to dairy farmers in different Australian states, including:

- (a) the economic effect on the dairy industry of announced reductions in prices to be paid to producers by milk processors;
- (b) the impact of the concentration of ownership of milk processing facilities on milk market conditions in the dairy industry;
- (c) the impact of the consolidation of the ownership of the market or drinking milk sector with the manufacturing milk sector on milk market conditions in the dairy industry;
- (d) the impact of the concentration of supermarket supply contracts on milk market conditions;
- (e) whether aspects of the Trade Practices Act 1974 are in need of review having regard to market conditions and industry sector concentration in this industry; and
- (f) any other related matters.

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Committee met at 10.39 am

CHAIR (Senator Eggleston)—I declare open this hearing of the Senate Economics References Committee into competition and pricing in the Australian dairy industry. On 10 September 2009, the Senate agreed to refer the matter of current varying prices being paid to dairy farmers in different Australian states to the committee for an inquiry. In its inquiry, the committee is specifically interested in the economic effect on the dairy industry of reduced milk prices, the impact of the concentration of ownership of milk-processing facilities on the industry, the impact of the consolidation of ownership of the drinking milk and manufacturing milk sectors on the market, the impact of the concentration of supermarket supply contracts on the market and whether any aspects of the Trade Practices Act 1974 are in need of review, having regard to the aforementioned conditions. The committee is due to report to the Senate on 28 February 2010.

These are public proceedings, although the committee may agree to a request to have evidence heard in camera and may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If the witness objects to answering a question, the witness should state the ground upon which that objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, the witness may request that the answer be given in camera. Such a request may of course be made at any other time.

I remind members of the committee that the Senate has resolved that departmental officials shall not be asked to give opinions on matters of policy and shall be given a reasonable opportunity to refer questions to superior officers or to a minister. This resolution prohibits only asking for opinions on matters of policy and does not preclude questions asking for an explanation of policies or factual questions about when and how policies were adopted.

[10.42 am]

ROGERS, Mr Grant William, Private capacity

CHAIR—Welcome. Would you like to make an opening statement?

Mr Rogers—Good morning, senators. Thank you for your time. I am a dairy farmer in the Derwent Valley in southern Tasmania. I supply National Foods. I am here today to present a submission on the model farm that they have developed as a pricing model. This model is not just for Tasmania; they plan to roll this model out Australia wide, so it has got huge implications. I think it has more implications than the current poor prices we are being paid personally.

The model farm is a bit like a cheap glossy magazine. It looks really good on the outside but when you open it up it is full of newsprint. When you pull it apart, there is not much really there. It is designed to appear to pay a really good premium as against its major competitor in the region, in this case Fonterra. The reality is that it will not. It has been very cleverly designed. It will not pay the suppliers more and it could end up paying them less. Basically they have split the year into two halves—July to December and January to June. In the first half of the year, they say, they will match Fonterra and in the second half of the year they will pay a premium ahead of Fonterra.

The reality is quite different on a number of levels. To start with, they pay differently on fat and protein ratios. They have different monthly pay periods. Fonterra use an actual month, whereas National Foods use a 28- and 35-day split, which allows manipulation of figures. Suppliers have to adhere to very strict volume and quality regulations. We get paid bonuses for achieving these. Unfortunately these premium bonuses are included in their calculations when they decide whether we have reached parity with Fonterra in the first half of the year or whether we are getting paid a premium. So you have actually got to achieve bonuses to achieve that.

If you step too far outside there are penalties imposed on you, which is fair enough. If you are providing crap milk, you should be penalised for it. They are trying to compare themselves with Fonterra. Fonterra have a demerit system. If you go over a certain point you get penalised. With National Foods, it is bang—20 per cent of your milk cheque, thank you very much. This can happen. We do not get results for sometimes two or three days after supply is provided. So we could be losing 20 per cent of our milk cheque for three days without even knowing it is happening, without even knowing you have got a problem.

The fourth point is that all these calculations—this whole model farm—is only based on contract leaders. With any overproduction they can choose to pay us whatever they wish. I believe they do have a 60-day notice period where they have to let us know if they are going to pay us less than the other price, but even so they can basically pass whatever they want for overproduction. With Fonterra you can produce as much as you want and you will get paid the price. There is no cap. In effect, it is going back to a quota system without the prices.

The biggest area where this model farm is not fair—it is just unbelievable what they have done here—is in matching Fonterra step-ups. They use a very complex formula whereby, if

Fonterra steps up before January, they will match it. If they step up after 1 January, they will double it and they will double it back to 1 January. It sounds fine because this model farm produces the same litres in both halves of the year, so you are still getting the step-up. It is probably easier to follow the example I have written on page 2.

Looking at the tables, you will see that in the second half of the year Fonterra stepped up 2c in February. So at the beginning of January they were both on 40c. Fonterra steps up 2c and they have a final payout in that second six months of 42c. National Foods have doubled that step-up back to 1 January, so they end up on 44c, 2c ahead of Fonterra. They then use a complex formula, but basically in that area they say they will pass on a 4c premium. So they add on another 2c to milk produced after 1 January and they will end up paying us 46c versus 42c in that second half of the year.

The problem occurs in the second table, where Fonterra take that step-up right back into the first half of the year and National Foods do not. So when they stepped up for 2c, if we ended up at the end of December on 28c for the first part of the year, and Fonterra steps up in February, they take 2c right back to 1 July and they end up on 30c for the first half of the year, whereas National Foods still stays on 28c. So when you average the overall year, National Foods is paid 46c and 28c, at an average of 37c. Fonterra has paid 30c and 42c, with an average of 36c. So immediately, with one step-up after Christmas, our premium has almost disappeared.

If you look at the full submission I have written I have given examples following through. If I step up three times we are actually in a worse position than Fonterra, and had to provide premium quality milk to do it. This is the big problem and this is typical of National Foods. They have smoke and mirrors and they have things that appear to be one thing but in reality are quite different. But I am not here to discuss anything other than the model farm. That is my submission.

CHAIR—Thank you very much, Mr Rogers. That is very interesting. Senator O'Brien?

Senator O'BRIEN—Thank you for your submission, Mr Rogers. Of course, this is a different committee to the one you appeared before previously. Putting your views of National Foods versus Fonterra into context, what are your options as a dairy farmer in selling your milk here in Tasmania? Who can you sell it to?

Mr Rogers—Personally?

Senator O'BRIEN—Yes.

Mr Rogers—National Foods—I have no other option. In the south of the state, Fonterra will not come down and pick up our milk. I believe they have an agreement with National Foods, but that is another issue. We have one option in the south of the state—National Foods.

Senator O'BRIEN—And that is not the case in the north of the state?

Mr Rogers—No.

Senator O'BRIEN—What are the options there?

Mr Rogers—In the north of the state we have three options—Fonterra, National Foods and Cadbury.

Senator O'BRIEN—I understand that you are trying to produce the same volume of milk year round.

Mr Rogers—No. No-one does what the model farm says—it is purely a model. They have suppliers that do all different sorts of things. We have farmers who calve in January or February to get the premium payments through the summer and winter. We have guys who calve in spring. They just accept the fact that they are not going to get paid much for their milk in spring and pick up as much as they can in the winter. And we have guys who split calve. Personally, I do not have an issue with a model; it is just that this is the wrong model. It is unfair. A model has to be based on something, so whose farm to you pick? They have picked one with a flat supply. It is really simple. It might not suit everyone—it does not suit me—but that is really irrelevant on an individual basis.

Senator O'BRIEN—Historically, how has your milk been purchased? What sort of pricing structure have you had access to?

Mr Rogers—We have been farming here for six years. We have completed our sixth season. In those six seasons we have been ahead of Fonterra twice and behind them four times. Until we formed the collective bargaining group, every year we basically were given a contract and they said: 'This is what we are going to pay you. Sign it.' We got annoyed with that one year. At a suppliers meeting down south, we started talking about price. They said: 'You can't. You've got to form a bargaining group.' So we did that the next day and the rest is history. We have successfully negotiated in the last two seasons. This year there were no negotiations. In reality, it was just put in front of us.

Senator O'BRIEN—So the bargaining group of which you are a part has negotiated with National Foods for the last two seasons?

Mr Rogers—I believe so. I am pretty certain of that. It was certainly last year and this year, and I am pretty certain that it was the year before. I am pretty confident of that. It is just that, the year before, negotiations were pretty short. But last year they went on and on and on—and heaven knows what is going on this year.

Senator O'BRIEN—And, over the last couple of years, prices have been historically high?

Mr Rogers—Yes.

Senator O'BRIEN—Definitely compared to the current circumstances.

Mr Rogers—Yes, very high. No misconceptions, I think last year will probably be the best year of farming I ever have in my life. It could have been better—and prices could have been lower—but we had a very good year last year. I cannot talk for everyone, but personally we had a very good season last year.

Senator O'BRIEN—As far as you are aware, the dairy farmers were satisfied with the bargaining arrangements?

Mr Rogers—Yes. It is hard work and I have never been involved in it. But we are dealing with a multinational corporation whose executives get paid bonuses for keeping prices down, so it is hard yakka.

Senator O'BRIEN—I think what you are telling us is that, if National Foods do not buy your milk, you do not have a market.

Mr Rogers—No.

Senator O'BRIEN—If you do not have a market, what happens to your farm?

Mr Rogers—We are in a little bit of trouble.

Senator O'BRIEN—A little bit of trouble?

Mr Rogers—A lot of trouble. We are really putting our neck on the line here. But you get pushed so far and eventually you react.

Senator O'BRIEN—Could you give us some idea of what sort of investment is involved in an average dairy operation here in Tasmania.

Mr Rogers—I suspect I could give you a rough idea. It is not simple. The average dairy farm in Tasmania has around 350 cows. It is probably producing around 130,000 kilograms of milk solids. It would be over \$3 million for an average farm.

Senator O'BRIEN—That is a farm with about 350 milking cows?

Mr Rogers—Yes, about 350 cows.

Senator O'BRIEN—It has its own dairy, suitable land, pasture and other infrastructure necessary to conduct the business?

Mr Rogers—Yes. It would be about \$3½ million, I would suspect. It depends on where you are in the state, of course. Some areas have premiums for some unknown reason and some other areas are disadvantaged for some reason. That is another issue.

Senator O'BRIEN—Irrespective of that, the price of milk will be the same?

Mr Rogers—Yes.

Senator O'BRIEN—Are there any matters that you are aware of that would assist in equalising the bargaining equation between dairy farmers and companies like National Foods, given you do not have another market, you have a substantial investment and, no doubt, financial commitments to maintain a year-round dairying operation?

Mr Rogers—We have pursued every option we had. I do not know how you take power away from multinationals, or big companies, full stop. They have so much power. We have gone to the public for help. In reality, that is what we have done: we have gone to the public and the politicians for help. We had no other option. What else could we have done? I cannot see an alternative. We did that to try and force them back to the negotiating tables to be reasonable. I understand the price of world milk has crashed. I have no problem with that. I have no problem with our milk price dropping. I do have a problem with their model. I have a real problem with their model. I also have a problem with a company that, yes, has taken a bit of a hit but not a hit compared to Murray Goulburn, for instance, which have huge export exposure. They are paying what they have to. If we put their hat on, that is what we would do too—pay we have to.

Senator O'BRIEN—Are you under any pressure to sign the National Foods contract?

Mr Rogers—Not yet, but I suspect it will get messy. We have just been issued with new contracts. We have until 30th of this month to sign.

Senator O'BRIEN—If you do not sign?

Mr Rogers—Nothing has been said yet. I am sure you guys have heard some of the rumblings that have been around.

Senator O'BRIEN—Some people are suggesting that the wording of the letter accompanying the contract is indicative of National Foods making a decision about whose milk they will take after that period expires. Is that how you read it?

Mr Rogers—I did not read it that closely, to be honest. We are part of a group. We will decide is a group where we go from here. It is common knowledge that they are making noises about getting milk supply from elsewhere. Where 'elsewhere' is, I am not sure. They cannot get it directly from Fonterra because the supermarkets insist on them having farmer suppliers. Fonterra is no better. Let's be realistic here. They stepped up 80c in New Zealand and stepped up 13c here. They have at least half the domestic market here. They are virtually 100 per cent exporting in New Zealand. As much as it hurts me as a Kiwi to say it, they are just another multinational, really, and they are paying what they have to and no more. Until Murray Goulburn pulls its finger out, sorts itself out as a cooperative and gets itself into a strong position, the Australian dairy industry is in real trouble.

Senator O'BRIEN—Thank you, Mr Rogers.

CHAIR—Could I ask you a question about that last bit, then I will go to Senator Milne. You said, 'How do you take on multinationals?' I suppose we have seen that in the grocery area with the formation of IGA against Woolworths and Coles, and you have just mentioned the Murray Goulburn Co-operative. Is there no scope for an association of individual farmers to form a group equivalent, say, to IGA, which would then have bargaining power? Your problem seems to be taking on multinationals.

Mr Rogers—It is being looked at. There are a lot of things being looked at legally—how we set things up. The ACCC allow collective bargaining. I do not know if they allow us to join together and put out tenders for our milk. I do not know if that is legal or not.

CHAIR—You can form some sort of company or group.

Mr Rogers—Yes, and it is being looked at. The other alternative is to form a cooperative. Again, it is possibly being looked at. But you need a lot of capital to do that, and we are pretty short on capital at the moment.

CHAIR—Small donations add up!

Mr Rogers—They do.

Senator MILNE—This committee is looking at the issue of concentration of market share and market power and whether there has been misuse of market power. I heard you say that you have no option but to sell to National Foods. Because of where you live in the southern part of the state, that is it. For dairy farmers it is National Foods or nothing. I also heard you say in response to a question earlier that you had had a letter saying that the offer is there until 30 November and after that there are no promises. It has been said that this is a veiled threat to say, ‘If you do not sign up by 30 November, there is no guarantee we will pick up your milk.’ In your view, is that misuse of market power? Is that how you feel—threatened by this company?

Mr Rogers—Again, Senator Milne, I apologise. I have not actually read the cover letter on the contract very thoroughly. I am pretty bloody busy on the farm at the moment. I did quickly skim through it. I have heard that there have been inclinations of threats made, through other sources. I am starting to get a bit nervous, yes. Of course I am—I am human, I have a bank manager.

Senator MILNE—That is my next question. Of course you are, and you are an individual producer in Tasmania against a multinational, as you said, and you have got to run that farm profitably. If you did sign the contract as it currently stands, is there a risk you could trade insolvent? Could you or any other farmers that you know of be in a position of having to sign a contract that is below the cost of production and that would put you in a situation of having to trade insolvent or not continue to dairy farm?

Mr Rogers—I will answer that on two levels: yes. On a personal level, no. My wife and I are pretty good operators and we are very conservative. We came to Australia with not much and built up a reasonable amount but have been very careful. We nearly went out last year and bought the neighbour’s farm, but our investors pulled out on us, thank you. If we had done that we would be in massive trouble. We are a conservative couple. But, on the other hand, there are a number of people in the group. There is one farm already on the market as a mortgagee sale, and there will be more.

Senator MILNE—So we are already in a situation where we have got mortgagee sales because of the pressure—

Mr Rogers—I am assuming it is a mortgagee sale. The gentleman I refer to is Richard Oliver—his farm is on the market. It did not say ‘mortgagee sale’, but you do not have to be a rocket scientist to put two and two together after listening to them at Devonport the other day.

Senator MILNE—How did you feel when the Tasmanian Farmers and Graziers Association came out and said that dairy farmers should accept a deal which is below the cost of production and which will lead to more mortgagee sales or trading insolvent? How did that make you feel as an individual farmer in Tasmania?

Mr Rogers—Not very impressed. Again, personally we are not members. We were always members of Federated Farmers but they were a flat levy and over here they want a portion of your income, and I object to that. I have told them that if they have a flat fee I will sign up tomorrow. I am not a member, so I really cannot say much to them. No, I was not very impressed. I was not very impressed that they went to Melbourne and had discussions with National Foods without telling us what they were doing. I was not impressed that they had a press release that said what it did without having discussions with the bargaining group first.

Senator MILNE—So, as a member of the bargaining group, you feel pretty demoralised because of what the TFGA and now Australian Dairy Farmers have done to you?

Mr Rogers—Have Australian Dairy Farmers said the same thing? I am not very impressed with that at all. All we are doing is sticking up for ourselves. That is all we are doing. All we want is a fair deal. Personally, I want this made fair. If nothing else, just make it fair. Make it do what it actually says it is going to do—make it do it.

Senator MILNE—Just to get to your model farm, for the sake of the committee, can you put it in some sort of context for us? Is the model farm a proposal? Is it what is on the table? Can you give us a sense of what the status of this is in terms of the company?

Mr Rogers—It is on the table now, and that is why they came out with a 1.1c pay rise in the media a month ago or whatever. That was a publicity stunt to say, ‘We are good guys.’ But, according to the model farm, come 1 January they would have had to do that anyway. So they are using this model farm now and I believe—I am not 100 per cent sure—in reality their offer has only improved by about a cent a litre. They will claim more than that. Now they are talking about litres with components in them, which is very misleading.

Senator MILNE—We are just trying to make judgments in relation to the ACCC, unconscionable conduct, misuse of market power and those sorts of things. So it is important that we understand this model farm concept or proposal in that context of whether you think it is misleading in terms of what it is purporting to do and should give us reason to go back to the ACCC about the behaviour of this company.

Mr Rogers—I think it is very misleading. If you look at it on face value, it appears great, for getting the same milk every day. It basically says, ‘We will pay you the same amount as Fonterra in the first half of the year, and in the second half of the year if they step up we will double it and we will pay you a 4c premium at the end of it.’ It sounds wonderful to me. On current prices it is still probably not brilliant. But it will not be like this forever and a day. The market is improving already. If that was what it actually did, I would be quite happy. I would not be happy with what the base price is at the moment, but the reality is quite different. I am sure you have read the submission I put in. It is very simple to follow what they actually do and how they pull the wool over your eyes. Unless some warped bugger like me spent hours and hours at night on a computer with a spreadsheet, pulling it apart, no-one would ever know. When you get your pay

cheque at the end of the year, there is no actual farmer beside you to compare it to—doing your production with the other company. Until it was pulled apart, we could see a few problems with it but it was this step-up thing that was just the icing on the cake.

Senator MILNE—Thank you, Mr Rogers.

Senator COLBECK—I am trying to get a sense of the time line from the commencement of the model farm process. It is a relatively recent thing?

Mr Rogers—I believe they were semi-basing last year's payment on it, but they have modified it since because last year Fonterra stepped down. They did not have a mechanism to do that, so they built that mechanism in so that they do not get caught as they thought they were. The fact that they paid us a lot less for milk the year before seems irrelevant—but that is another issue. This is not a concept; this is what they are using. This is fact.

I will not sign a contract until this is changed. Personally, the price I can bear is here or there. If we sign up to this, for the next five or 10 years—or however long they use this model—we will be doomed to have to provide good quality milk at potentially no more than Fonterra and sometimes less. That is just not fair: plain and simple.

Senator COLBECK—I want to clarify that it is a recent introduction into the supply process between you and National Foods.

Mr Rogers—Yes.

Senator COLBECK—You talk about litres with components. Can you give us a quick explanation of what you are talking about there?

Mr Rogers—All contracts in the past and all discussions in the past were based on a four per cent fat and 3.2 per cent protein litre. They call that a base litre. That is what we are being offered a contract on, but they have turned around and started talking in the media about what they pay for an actual litre of milk. The components in the average Tasmanian litre are something like—and I may be slightly incorrect—4.3 per cent and 3.3 per cent. What they tell the public is based on an actual litre not on a base litre. The trouble is that it takes 13.88 base litres to make a milk solid and it might only take 12 real litres to make a milk solid. Their payment structure is actually based on milk solids. Even though we all talk in litres, it is actually worked out back to kilos of fat and kilos of protein. They are bending the truth. The current base price they are offering is 32c but they are going round telling people they are paying 36c a litre—they are talking about an actual litre not the theoretical litre, and the theoretical litre is what the model farm is based on.

Senator COLBECK—We heard evidence in the other inquiry in Melbourne that, with improvements in breeding and things of that nature, the output from cows these days effectively provides a higher return in butter fat and protein out of a litre of milk compared to what it might have 10 or 15 years ago. So the value of a litre of milk these days that the companies are getting from a farmer is higher than what it was because of those improvements in protein and fat. So you are getting a higher value product these days per litre than what you would have 10 years ago because of the improvement in herds; do you agree with that?

Mr Rogers—I do not know that I would. I am not sure.

Senator COLBECK—So you do not think that farmers are producing milk with higher butter fat and protein content per litre than they were 10 years ago?

Mr Rogers—I do not believe so. They are producing more fat and protein per cow but they are also producing a lot more litres per cow. For instance, average milk production may have been only 300 milk solids a cow 15 years ago and now the average production may be 400 milk solids. In Australia because of a lot of the American genetics that have come in—a lot of people here are into big Holstein cows—there are actually lower fat and lower protein levels, but they may produce 10,000 litres. For instance, we run crossbred cows and our average litres is probably 4.4 or 4.5 and 3.5 but we only produce 400 milk solids per cow. There could be a Friesian farmer next door to me who is producing only 400 milk solids a cow but his fat and protein might be four and 3.1. I will produce 5,000 litres and he will produce 7,000 litres. The payment structure is all based on solids; it is not based on litres.

Senator COLBECK—So the incentive is to have higher returns of butter fat and protein per litre effectively if you can achieve that with your genetics?

Mr Rogers—Yes, solids. You need to produce solids.

Senator COLBECK—Part of a genuine market economy, which is effectively what we are trying to work in, is fair distribution of power. Do you believe you are in a situation where there is a fair distribution of power in the current circumstances?

Mr Rogers—No farmer ever is, no.

Senator COLBECK—So what do you think needs to be changed to provide that? It is a big picture question I know.

Mr Rogers—Transparency would go a long way. For instance, I would love the fresh food people to tell us how much they make out of a litre of milk and how much the farmer and the processor make. Then we would see what the public reaction is. I think transparency would go a long way. I think there are double standards in regulations. Again completely sidetracked: let us look at the requirements placed on Australian vegetable growers. Over in China they are grown in sewage. They are brought into the country and there is no QA program enforced on them. I can get them cheaper and drive down the price of what I am buying at home by the same token. I think that is completely wrong. If they could do it with milk and meat, they would be doing it.

Senator COLBECK—The collective bargaining process is one mechanism of balancing out that market power and market dominance. Do you see any potential changes that could be made to help beef that up? Perhaps that is not a fair question for someone in your circumstances, but it is something that this committee will need to look at as part of the overall process of putting the farming sector, particularly dairy farming that we are looking at at the moment, into a position with reasonable market balance as far as their negotiations go. You guys are locked in effectively because you have a time frame you work over. You gear up for certain production, you breed for that and all those sorts of things and then you come up against the hard rock of the corporates. You need the rules to help balance that situation for you.

Mr Rogers—Yes, there can be changes made. One of the biggest problems I see, apart from the regulations, is the ACCC. They have said—I have read it in the paper—they care only about the consumer. The head of the ACCC said in the *Australian* that they care only about the consumer. Who in their right mind would have allowed National Foods to buy Dairy Farmers? It is inconceivable that they thought that was a good thing. On what level was it a good thing that there is now basically one company in New South Wales supplying milk? I am sure the ACCC do not have the powers to deal with the supply side of the equation, or they just do not care about the supply side of the equation. That would be the ultimate example. Who in their right mind would approve National Foods taking over Dairy Farmers? The chairman said in his opening statement that this inquiry was looking into the consolidation of the dairy industry. That would have to be the biggest blunder that has ever happened to the Australian dairy industry.

Senator COLBECK—So a refocus of the ACCC, away from just looking after the consumer issues and looking at competition issues within the chain itself?

Mr Rogers—Yes—ensuring that people get a fair deal, really. It does not matter which part of agriculture you are looking at—the potato that becomes worth umpteen thousands of dollars. There is beef cattle. You could process an entire cattle beast into mince—I considered doing it back in New Zealand—sell it as budget mince. You would make double or three times what you were making for the carcass with all the good cuts in it. Put the whole thing through a mincing machine. It is just wrong. Everyone is entitled to make some money. I do not begrudge National Foods making money. I begrudge it going to Japan, but that is another issue. I do not begrudge anyone or any business making money, but just let everyone have a fair slice of the cake. Then you do not end up with situations like we are in now. There is a huge amount of bitterness and I do not know how it will be mended.

CHAIR—As there are no further questions, thank you very much, Mr Rogers.

Mr Rogers—Thank you.

[11.23 am]

BARKER, Mr John, consultant, Tasmanian Suppliers Collective Bargaining Group

BEATTIE, Mr Phil, spokesman, Tasmanian Suppliers Collective Bargaining Group

CHAIR—Welcome.

Mr Barker—Thank you for the opportunity for the Tasmanian Suppliers Collective Bargaining Group to present to you today. Mr Phil Beattie is the spokesman for the group. He will be presenting the majority of comment today. I will make some comment, in particular in respect of the ACCC and Trade Practices Act issues. Mr Beattie is a farmer at Bushy Park.

Mr Beattie—I would just like to go through the background of what has been happening. The Tasmanian Suppliers Collective Bargaining Group is a collective of 86 dairy farmers throughout Tasmania which is supplying liquid milk to National Foods. The group was established and registered with the ACCC three years ago following National Foods' concerns that dairy farmers may be contravening the provisions of the Trade Practices Act.

Some very loyal group members have been supplying liquid milk product to the company and its predecessors for up to 50 years. Many of the suppliers who are now out of contract face financial ruin due primarily to an unreasonable and unsustainable liquid milk price offer from National Foods. Recent negotiations between the company and the bargaining group have broken down.

The plight of the suppliers requires urgent resolution. We are seeking an improved liquid milk price offer of 39.8c per litre for the year which began on 26 June 2009. This price recognises National Foods' claim of a difficult financial climate and only equates to the cost of production for us over the year. The initial company offer was 29c per litre. That is 10c below production costs. That offer is now 33c.

A solution to the problem of having to battle over milk price with National Foods every year is the next thing we are seeking. We suggest this should be through arbitration or mediation, with an independent third party participating. This follows National Foods' announcement on Friday, 30 October, that price negotiations had broken down and the company would negotiate with individual farmers only, a practice the company has used in Victoria to break down the collective bargaining group there.

We also wish to have a rewriting of the contract with National Foods to demonstrate a fair and equitable agreement. In fact, recent negotiations have resulted in National Foods agreeing to a much fairer contract, the details of which we are still awaiting.

We are also seeking investigation of these matters by the Australian Competition and Consumer Commission, the ACCC.

Lastly we are looking for clearer and more precise and effective legislation extending ACCC powers to ensure that the interests of small and medium sized businesses are more adequately protected from bullying tactics of large companies, particularly multinationals.

I would like to go on now to the economic effect on the dairy industry of the announced reductions in prices to be paid to producers by milk processors. What does this current impasse mean? National Foods is attempting to rip off its Tasmanian milk suppliers by offering an exorbitantly low price for liquid milk, significantly below production costs. National Foods' suppliers in Tasmania were receiving 49c a litre for their milk throughout the last financial year but the current offer to us was initially 29c, which has been, through negotiation, increased to 33c a litre. It is still well below the average cost of production.

National Foods is expecting milk suppliers now to sign two-year contracts effectively to lose money. The vast majority of suppliers have not signed contract agreements given the offer and, while we have no contract, National Foods have been paying us around 20c a litre. The suppliers have incurred and continue to incur significant fixed costs in the development and maintenance of the essential infrastructure required to produce milk to a level that complies with National Foods' requirements.

In July, August, September and October, suppliers have lost substantial income. I myself am losing in excess of \$100,000 a month. I stress that that is \$100,000 a month, not \$100,000 a year. There are individual examples of farmers having to sell furniture in order to put food on the table for their family and, in some circumstances, offering to hand their farms back to the bank. The first forced sale of a farm which supplies National Foods is taking place on 19 November.

A number of Circular Head dairy farmers who supply National Foods were previous suppliers to the Lactos cheese factory. Most are contracted to supply National Foods until the end of December 2009. They are fearful of the dramatic reductions in milk prices being offered to other farmers currently out of contract. I refer senators to attachment A.

What is our justification for the liquid milk production cost of 39.8c per litre that we are claiming? The group has consistently indicated its average production costs across the year are 39.8c per litre, which is 6.8c higher than the current price offered by National Foods. An independent assessment by Mark Ferguson, the head of TIAR, to the Tasmanian government deals with this matter in detail in attachment B. Farm consultant Penny Williams quotes a figure in excess of 41.7c per litre. That is in attachment C. Readily available ABARE figures for the costs of production in Tasmania over the last few years and also the costs of production in the whole of Australia are all well in excess of 40c per litre.

It is important to note that we as milk suppliers have used the production cost as a base and it is still some 10c a litre below last year's milk price negotiated in these tough times. So why are National Foods making such a low price offer? They contend that the price they are offering is 'in fact higher than any other major milk buyers' 'in Tasmania' and 10 to 20 per cent higher 'than that being paid by our major competitor depending on the suppliers' milk intake'. The company have also said repeatedly:

We are paying a premium price to reflect our need for a flat supply of milk year around ...

They have also stated, in advertisements they put in the press here in Tasmania, that they are paying almost 10c—and I stress that is cents not per cent—per litre more than the current market price. We contend that in fact the company are not offering us a higher price. National Foods' adoption of a model farm concept, which I believe you have had described to you already this morning, is spurious. The company are not actually comparing apples with apples. In fact, National Foods have now decided to change the way they promulgate the price, and the model farm concept is solely a creation of National Foods and has had no input from farmers whatsoever in its development.

In summary, they are claiming to pay their suppliers a premium over Fonterra. However, to achieve this suppliers need to adhere to strict criteria with regard to quality and daily production. They have heavy penalties for not complying with those criteria, whereas Fonterra do not. All bonuses paid for achieving this are included when calculating any comparison with Fonterra by National Foods. The truth is that National Foods are not paying the same price for the same quality milk. The company claim to account for step-ups in the examples in the evaluation, but they show that, by not backpaying these to 1 July, as Fonterra do, they can completely erode their premium to the point of putting their suppliers in a negative position. Finally, the company have capped contract volumes with all the impacts that that has on farm values and development. We believe this is a clear case of smoke and mirrors. The company also claim to pay a premium. Whilst this has been the case in the past, the current milk price is well below the costs of production. They also add that the commodity price has now slumped, that the whole world market is affected and that 'we as a viable business'—'we' being National Foods—'have to produce and sell our product at a competitive price'. We submit that the whole industry is actually not affected by a slump in the world market and that world prices do not directly impact on Tasmanian milk. The comment that the company need to be viable to be competitive is ironic. What about the small producers who supply them? How can the company remain viable if they send their farmers broke? This week National Foods have sent a revised contract to suppliers who are out of contract. The contract document states the deadline for the return of signed agreements is 30 November 2009. It says:

If we do not receive your signed agreements by this date, and we have not otherwise discussed this with you, then we will presume that you do not wish to accept our offer, in which case we will consider making alternative arrangement for the supply of milk ...

Mr Barker—We will table this document. Attached to it is an offer schedule specific to one farmer.

Mr Beattie—I would briefly like to draw your attention, Senators, to this document that I have in my hand. It is a National Foods income estimate for a particular farmer. I do not think it is necessary for us to name him. This is a document that was drawn up. We all had one drawn up for each of our individual farms. This is a budget drawn up by National Foods to illustrate what the final price would be for this particular farmer. In this case this is probably the second largest supplier to National Foods. National Foods pay a significant volume bonus for large supply. Senators, do you now have this document?

CHAIR—We do not yet but we will get it copied. Here we are.

Mr Beattie—I am referring to the top, where it says National Foods income estimate 2009-10 Tasmania. I reiterate that this is for we believe the second largest supplier to National Foods in Tasmania. This is a document drawn up by National Foods that came with each individual supplier's contract to be signed. It is a budget for his income for this year. You must remember in all this that National Foods are claiming that they are paying 37.6c per litre. This particular farmer, if you look at the bottom on the right-hand side, the penultimate figure on the right-hand column, his net payment in cents per litre, if he signs a contract for two years, which gives him a bonus payment here of a cent a litre, if he signs that document he will receive 33.8c a litre. He has no intention of signing that two-year contract, so he will have a net price of 32.8c a litre, not 37.6c. I draw senators' attention to that particular document.

The next thing I want to talk about is whether National Foods have the capacity to pay a price equivalent to the cost of production. They clearly do. National Foods are promulgating a full-year forecast for 2009 EBITDA of \$178 million. Extracts from the website of their parent company, Kirin Holdings, forecast that its milk segment earnings will improve further in 2009. I draw your attention to attachment E.

Also there is a transcript attached in attachment F of a teleconference between Kirin Holdings and National Foods, and this is on Kirin Holdings' website. The Kirin president and CEO asked National Foods: 'Why did you raise your earnings projections for National Foods Ltd compared to initial targets?' There is no answer on the website, yet in response to a further question from Kirin on page 12, 'Please give us some idea of the improvement you have in mind for now and for subsequent fiscal years', National Foods Ltd advised: 'We are currently reviewing synergies with the merger'—that is with Dairy Farmers. 'That said, we raised earnings for two reasons. First, that personnel reductions are proceeding better than expected and, second, that we have been able to cut procurement costs ahead of schedule.' That is a euphemism for reducing the milk price.

What is the impact of the concentration of ownership of milk processing facilities on milk market conditions in the dairy industry? I want to talk very briefly on that. There really are only two processors for liquid milk in Tasmania, National Foods and Betta Milk. Betta Milk were supplied by Lactos, the cheese makers, prior to National Foods buying Lactos. So we had a situation where the only competitor to National Foods was being supplied with its liquid milk by National Foods. I think it is only fair to say now that National Foods do not supply Betta Milk any longer, Fonterra do. It seems to us as dairy farmers that the fewer the number of processors in Tasmania the greater is their power.

I will now ask John to talk about the impact of concentration of supermarket supply contracts on milk market conditions.

Mr Barker—I will briefly make some comment on that. Given the low milk price currently being received by producers, has the supermarket retail price reduced similarly? Of course, it has not. ABS figures that we have confirm that the average retail milk price in six cities has fallen seven per cent on average from their recent peak prices; the milk price paid to typical Tasmanian dairy farmers has fallen by around 42 per cent since the peak price in 2007-08. The ABS retail milk data is only available up to June 2008, so the fall in the milk price paid to dairy companies for 2009-10 is not yet reflected in ABS price data.

Currently, the retail price of milk in Tasmania is around \$2 plus per litre, with supermarket prices around \$1.50 or more. When the initial offer to farmers was 29c per litre and is now 33c, it is obvious that the question should be asked: where are the margins and who is receiving them? I have a little document to present the committee for the record which compares the prices between the capital cities to the period that I mentioned.

Term of reference (e) is:

whether aspects of the Trade Practices Act 1974 are in need of review having regard to market conditions and industry sector concentration in this industry;

The bargaining group contends there is a desperate need to review the Trade Practices Act and to provide additional protection to small and medium businesses from the unfair, unreasonable and often bullying tactics and, indeed, culture of some large, dominant companies—in this case, a large multinational. The vulnerability of collective bargaining groups to the tactics of these companies must be addressed. While National Foods publicly states its support of the collective bargaining process, it does have the power to break down such groups by individual enticements, increased economic and social pressures on out-of-contract suppliers et cetera. The company does have something of a record of this elsewhere in Australia and is now adopting this process in Tasmania. For the committee's information, I have sought full details of a similar scenario in Victoria. On formal receipt of that, if the committee wishes I will provide that information in the next few days.

Senator COLBECK—We would appreciate that.

Mr Barker—In Tasmania, National Foods is the dominant liquid milk processor. The ACCC's processes are constrained by the act. We contend that the investigation and prosecution processes must be simplified. Only then will the success rate improve and the criticism of the ACCC reduce. The bargaining group has engaged Allens Arthur Robinson, an eminent national legal firm, as its legal advisers. The people we are dealing with are based in Melbourne. Their initial advice suggests it is possible that some provisions of the Trade Practices Act have been contravened. The group's initial preference was to seek independent adjudication of the milk-pricing dispute, but, given National Foods's public indication it no longer is interested in dealing with the collective bargaining group, agreement from the company is unlikely.

I will not go into detail at this point, but the sections of the act that are being considered include the obvious one, section 51AC, in respect of unconscionable conduct. Historically, as I am sure senators know, the ACCC has often found it difficult to obtain successful prosecutions under this section. Nonetheless there are some strong issues under that section that our legal advisers are pursuing, particularly the company's behaviour in contract related matters. We have not gone into a lot of detail on that at all in this submission—it has been a matter for other submissions—but, as Phil said earlier, negotiations with the company in respect of some of the contract conditions have been accepted quite reasonably by the company and we are awaiting the final amended contract arrangements. Regarding section 52 of the Trade Practices Act, in respect of misleading and deceptive conduct, together with section 51AC, as I mentioned, and section 53, regarding false or misleading representation, the advice we have is that the potential to confine the aspects of alleged transgressions, if you like, in respect of the above will be collated. We propose to submit a formal objection to the ACCC by the end of next week.

CHAIR—Thank you very much.

Mr Beattie—In conclusion, we would submit that many dairy farmers who are out of contract with National Foods are experiencing financial destruction with all the resultant family and social impacts that this causes. The bargaining group members and their families are fearful for their future and the future of the whole Tasmanian dairy industry. Group representatives have met with National Foods executives and attempted to negotiate a break-even production cost price of 39.8c a litre. After nine hours, over two sittings, which I was a part of for the whole time, and a further third meeting with National Foods where they clarified their price offer these negotiations broke down. National Foods final offer was 33c per litre over the whole year which is well below the break-even price required by us.

National Foods is embarking on a process in Tasmania to break the collective bargaining group by driving a wedge between it and individual suppliers and others where it can and also placing deadlines and threats on suppliers to sign a contract to lose money. We are extremely fearful that the collective bargaining process may have broken down forever in Tasmania. This is a process that has been followed by the company in other states, particularly Victoria. At meetings with all its dairy farmers last week the group received unanimous support to continue to seek a fair and reasonable price for our milk from a multinational company that has the capacity to pay.

Finally, the actions of the TFGA, Tasmanian Farmers and Graziers Association, and the ADF, Australian Dairy Farmers, in support of the decision of National Foods to walk away from the collective bargaining group are extraordinary and need to be explained. How can farmers negotiate with a giant multinational company if every time the company feels like it they can abandon the process? This is doubly disturbing given the fact that we are not even asking to make a profit this year and National Foods would still be making around \$170 million in profit. Thank you.

Senator O'BRIEN—Mr Beattie, your business has been associated with National Foods or its predecessors for some time—how long is that?

Mr Beattie—As you can probably hear from my accent I have not lived in Tasmania for my whole life. I came to Australia in 2003. We brought our entire family here, our entire family savings and we established our farm at Bushy Park. We converted it from a sheep farm. We are now employing significant numbers of people. To a certain extent I am not typical of some farmers who have been farming for three, four and five generations, but our entire life savings are in jeopardy here. As a family we do not have any outside shares or anything like that. We do not have a second home. Everything is in our farm.

Senator O'BRIEN—Talking about the experience now with prices being offered below the cost of production how does that compare to previous seasons?

Mr Beattie—In the years that I been farming in the UK since 1976 and here I have never done a forward budget that shows a loss. I have never done it. Despite the fact the price may go up or down, we have never been in a situation before where we have been facing the fact that whatever we do we are losing money. The more milk we produce, the more money we lose. There does not seem to be any sense in being a dairy farmer under the circumstances.

Senator O'BRIEN—In terms of marginal costs with additional production how does that work out? The layperson might say, 'You've got the same number of cows, you've got the same property. You're producing more milk; therefore the unit cost should go down.' What is going wrong?

Mr Beattie—There are two answers to that question. Certainly there are economies of scale with dairy farming, but there is a limit in terms of how far a cow can walk. But we are in a situation when we are supplying National Foods where we have a limit on the amount of milk that we can supply. A Fonterra supplier can produce as much or as little milk as he likes per year—and, in fact, per month or per day—whereas we are under very strict controls on how much we can or cannot produce. They are at liberty under their contract as it stands at the moment to penalise us financially for undersupplying in any one particular month.

Senator O'BRIEN—And you are in the Derwent Valley, so presumably you do not have an alternative to sell your milk.

Mr Beattie—I am faced with a monopoly buyer in the Derwent Valley, yes. I do not have anywhere else to sell my milk, so I personally am faced with the decision. By 30 November, I may have nowhere to sell my milk, and I consider that to be grossly unfair.

Senator O'BRIEN—In the past, what assurances were dairy farmers given about the ongoing purchase of their milk from this company?

Mr Beattie—In the past we never came to the point where they threatened us with non-collection of our milk—in other words, leaving us high and dry. The sentence that I read out to you was in the contract that I received the day before yesterday. We are still taking some time to digest the complete ramifications of that sentence, but obviously it is very worrying.

Senator O'BRIEN—So it is the first time that those sorts of threats have been made.

Mr Beattie—Yes. The document was written on 26 October, but we did not receive it until 2 November. This document is dated 26 October, which is, curiously, before the date when we had the last meeting with National Foods.

Senator O'BRIEN—When did you last meet with National Foods?

Mr Beattie—Last Friday, the 30th. So the document was written prior to our last meeting.

Senator O'BRIEN—You could come to the conclusion that it had been pre-prepared and was not posted because of the last meeting. I do not know when that was scheduled or how the timetables work.

Mr Beattie—That last meeting only came about because our—am I at liberty to talk here about what happened in negotiations?

Senator O'BRIEN—It is a matter of your responsibilities in that regard, but you are certainly open to here.

CHAIR—But you have to understand that whatever you say here is recorded by Hansard and is a public record. If you want us to go into camera, we can do that.

Mr Beattie—No, I do not want to go in camera. During the marathon session of the penultimate set of negotiations that we had with National Foods in Devonport, when they made their offer to us, their final offer—this is somewhat complicated—was to pay us 39.8c per litre for 52 per cent of the milk that we supply them and 31.2c per litre for the other 48 per cent of the milk that we supply them. So we, fairly logically, were under the impression that they were going to be paying us 52 per cent of 39.8 added to 48 per cent of 31.2, which is 35.67. When we received our schedule 4s, which outline the milk price and which we have tabled for you, they said 33.0c for a full year and 32.6c for this year. We were somewhat bemused, particularly as we had been in these negotiations for six or seven hours. I spent a couple of days trying to work out how National Foods had come up with a figure that was way below what we were expecting.

Last Thursday, one week ago today, I sent an email to the chief negotiator that we were dealing with, a gentleman called Conor O'Malley, asking him to elucidate how they could come to a figure of 33c when it should be 35.67c. In that email I gave some examples of how I had tried to work out the maths. I received a telephone call from him that morning saying that they would love to come to Tasmania to explain their offer. They came and explained their offer to us. It still does not really make any sense, but they did explain their offer to us.

I have to state that it is my belief that National Foods had no intention of negotiating properly with us. The figure of 33c that they came up with—in the bottom right-hand corner of that schedule—is not what we were under the impression they were offering us. It is almost exactly the same figure that National Foods negotiators were telling us Fonterra would end up at after all the step-ups that Fonterra were expecting and are almost certainly going to announce this week. In a sense, National Foods probably did not explain their offer to us correctly, because we misunderstood it, but they really were not offering us much more than they would have been forced to pay us under their original offer of 12 August 2009.

Senator O'BRIEN—So you are effectively saying that National Foods have not been negotiating in good faith?

Mr Beattie—Yes. That is my belief.

Senator O'BRIEN—Is there any remedy to these circumstances that you are aware of or your legal advisers have drawn to your attention under trade practices law?

Mr Beattie—We have to be aware that National Foods have walked away—I think that is probably the best way to describe it—from the collective bargaining process in Tasmania. When they say that they are going to only deal with individual processors, we can only read into that the fact that they no longer wish to talk to us.

Senator O'BRIEN—What are your rights under trade practices law in those circumstances as a collective?

Mr Beattie—It is my belief that we cannot force National Foods to come to the table and talk to us as a collective bargaining group. That is my understanding. We have done some initial

investigations into this, and that is what we have been led to believe. I would suggest that that is something that needs to be considered. It seems to me that as soon as we reach as farmers a position whereby we can negotiate with National Foods, as soon as we reach a position that they do not like, they can walk away from it. I think that is grossly unfair, particularly when you are dealing with small individuals and an enormous multinational business.

Senator O'BRIEN—Could you explain to us how your collective works? How do you know when you are representing the views of the collective, whether the offer is good enough or not good enough? Could you explain that for us.

Mr Beattie—Initially we had a vote to elect six members of an executive. Recently we have taken on the Lactos suppliers into our collective bargaining group. One of the members of our executive has stood down and then we had an election last week to re-elect four of the five remaining members so that we could bring on the two members from Lactos who had been voted by the Lactos suppliers to be their representatives. That is something that has happened just recently.

We have always taken the line that we cannot actually decide for the members whether we should or should not sign the contract. Obviously you cannot have 91 people negotiating—that is patently obvious—so we have gone into the negotiations representing our members and then we have gone back to the members in a full meeting and have said, 'This is what we have been negotiating about. These are the terms that we have been offered. We believe it is a fair offer, but it is up to you to vote on it.' That is what has happened in all these circumstances, and that is what has happened in these very unusual circumstances that we are in now. Last week we went back to members in four different situations. We went to Smithtown, Ulverstone, Devonport and New Norfolk. We had almost 100 per cent attendance at those meetings and we had complete unanimity about the path that we should pursue.

Senator O'BRIEN—In the circumstances, were National Foods to carry out their implied threat, what would happen to members of the collective?

Mr Beattie—There are some suppliers who are still in contract. Their contracts do not run out until the end of December, so patently their milk would still be picked up. We are unsure if National Foods actually mean this. I cannot comment much further than that at the moment. There would be obvious ramifications if that did happen. We believe that this is pretty much standover tactics.

Senator O'BRIEN—In terms of the suggestion in your submission that you would like some kind of arbitrator appointed, I take there is nothing in the trade practices legislation that underpins that?

Mr Beattie—There is, but neither side has to agree to arbitration. It is our belief that a previous collective bargaining group in another part of Australia asked for arbitration and National Foods rejected it.

Senator O'BRIEN—Are you suggesting that we should be looking at a compulsory arbitration provision?

Mr Barker—Clearly, there needs to be further opportunity for the ACCC to assist in the resolution of matters. At the moment they can simply—

Senator O'BRIEN—Or somebody.

Mr Barker—Yes—a third party. If an independent third party could be appointed it would resolve a lot of the issues that the ACCC see from time to time. They often get bogged down in their investigations. In this case, I would have thought it would be a much tidier arrangement and certainly one that would be acceptable to the collective bargaining group to undertake that process. At the moment, that is not really available. It is available if the company agrees, but we have not yet tested that.

Senator O'BRIEN—So it is not enforceable?

Mr Barker—No.

CHAIR—There is alternative dispute resolution through the courts, of course, at times. That is another option.

Mr Beattie—Events have moved fairly fast. We were not aware until last Friday that National Foods were going to walk away—and I use that term advisedly—from the collective bargaining process. We were not aware until, believe, Tuesday that they were going to use the power of a threat to not pick up our milk. To be honest, the situation is moving fairly fast.

Senator MILNE—I would like to go to section 51 of the Trade Practices Act. Mr Barker, you said that you will be making a complaint. I assume you refer to the collective bargaining group—

Mr Barker—Yes, representing the collective bargaining group.

Senator MILNE—It will be making a complaint to the ACCC. Presumably that is on the basis of unconscionable conduct on the assumption that a stronger party is exploiting a weaker party. Part of what you said this morning is that it is because of, in part, the threat. It has been called an implied threat. You either sign the contract or you do not. If you do not, is there a risk that some of your members will trade insolvent?

Mr Beattie—There is. I ran my farming business as a company. I am well aware that I have to sign a document every year that states that I am trading solvently. I am not quite sure that I can sign that document if I sign this contract.

Senator MILNE—So the position now is either you do not sign and National Foods, who have a monopoly in the south of the state, walk away and you have nowhere to send your milk and you have to milk regardless, or you knowingly sign something, or not necessarily in your case perhaps but some of your members may be in a position where they are being forced to break the law because of what is being put to them by this company.

Mr Beattie—That is correct.

Senator MILNE—That certainly constitutes unconscionable conduct as far as you are concerned.

Mr Beattie—Yes.

Senator MILNE—And wouldn't it also demonstrate that National Foods are not negotiating in good faith?

Mr Beattie—Yes.

Senator MILNE—To go back to your issue of the dates on the letter, I am very interested that the last meeting occurred after the letter was dated and there has been a suggestion that the letter may have been dated but not sent. Did any of your members receive the letter before the 30th?

Mr Beattie—No. Well, I say that word advisedly. I am not aware of any members having had that letter. They were all sent registered post, so I would be surprised if they did. I think it is important to explain that the meeting was not a negotiation on Friday, it was an explanation. But, having said that, the dates are somewhat curious.

Senator MILNE—Okay. I want to go to the situation where under the ACCC provisions for collective bargaining the provision is for a collective bargaining group to be established to negotiate on behalf of the producers. What role does the Tasmanian Farmers and Graziers Association have under the ACCC rules about collective bargaining: any or none?

Mr Beattie—They are not allowed under the rules of collective bargaining to take part in price negotiations. It is forbidden.

Senator MILNE—Since it is forbidden that they actually involve themselves in the negotiations, their role is just as an interested observer?

Mr Beattie—I would suggest that their role could be precisely that. They represent their farmer members but they are not allowed to actually take part in price negotiations. For example, we could not use them to do our negotiation with National Foods.

Senator MILNE—But the Tasmanian Farmers and Graziers Association has been meeting with National Foods. Is that correct?

Mr Beattie—We are led to believe that is the case, yes. We are led to believe that the chief executive and the chair of the dairy council had a meeting or meetings with National Foods in Melbourne.

Senator MILNE—And those meetings you believe were pertaining to the price offer, given the press releases came out afterwards?

Mr Beattie—That is what we are led to believe, yes. Obviously I was not present.

Senator MILNE—Given the press release, what is your response, what is the response of the farmers in the collective bargaining group, to the role that the TFGA is currently playing in this dispute between the farmers and the company concerned?

Mr Beattie—Once again, with respect, I might half-dodge that question and say that events are moving very fast and we are having a meeting with the Tasmanian Farmers and Graziers Association board members and the members of the dairy council and the chief executive this afternoon. I think I would probably prefer, if that is acceptable—

Senator MILNE—If there is something you could confirm for me, though—

Mr Beattie—It is also fair to say that we are having a great deal of difficulty containing the rage and the frustration and the general bewilderment not only coming from National Foods suppliers but also coming from dairy farmers who supply other milk companies, Fonterra, Cadbury's and so forth, and also from graziers, from cropping farmers, from woolgrowers—everybody. But I really must emphasise that we are meeting with the Tasmanian Farmers and Graziers Association this afternoon and we are hoping to get some resolution on this.

Senator MILNE—I would like you to confirm for me that at the time that the Tasmanian Farmers and Graziers Association put out their press release urging farmers to accept the offer the TFGA knew that that offer was below the cost of production, because you would, I assume, have informed them of that.

Mr Beattie—Yes.

Senator MILNE—Also they would have been aware that if some of their members had signed that contract they would be signing to trade insolvent. They knew that at the time they came out saying that that should happen.

Mr Beattie—It is my belief that they have been misled by National Foods in Melbourne. That is my personal belief; it is not necessarily the belief of every member of our collective bargaining group. But I really feel that, if we can get some resolution with the Tasmanian Farmers and Graziers Association this afternoon, it will do the whole of the dairy industry in Tasmania a great deal of good. But, with regard to what you have just asked, I must answer yes to all those questions.

Senator MILNE—So you believe they knew at the time that that was the consequence.

Mr Beattie—Yes, they did.

Senator MILNE—In your assessment, they were misled. Doesn't that suggest that either they are totally incompetent or in some sort of collusion with the company?

Mr Beattie—I think that is conjecture. I do not want to be drawn too much on this because those are some pretty profound words that you are using there. Yes, we have obviously conjectured both of those. To be honest, they have been used by National Foods in some sort of a power game. That is my belief.

Senator MILNE—The supermarkets have been let off fairly easily through this whole process. Can you just explain to the committee how the contracting process of the supermarkets for a supplier impacts then on the price of the farmer producing the milk. Could you just explain the role of this market concentration into Coles and Woolworths and how that has played out for the farmers.

Mr Beattie—Coles and Woolworths have a national—in both senses of the word—buying policy for their home brand milk. In other words, they buy home brand milk right across Australia through one company, and that company happens to be National Foods. We as farmers have some serious issues with the supermarkets, but it is our belief that we can only take one of these big companies on at a time. Having said that, a concentration of suppliers into essentially one supplier cannot be good for competition. How can it be? It cannot be. We are obviously not aware of the negotiations that go on with regard to price between National Foods and other potential suppliers and Woolworths and Coles and any other independent supermarkets. We are obviously not privy to those.

Senator MILNE—In terms of looking at the ACCC, market power, market share and those issues, surely there is something wrong here if the supermarkets negotiate with one processing company and there is no reference to the price that has to be paid to the farmer, at the farm level, in that contract. In our deliberations on how this should go forward from here, surely there should be some supply chain fractional agreement between Coles and Woolworths, the processor and the farmer as to how that price goes up and down.

Mr Beattie—There should be. This is conjecture, but I was under the impression that Woolworths certainly have some clauses in their contracts for supply that allow for an increase in the payments made to National Foods if farm gate prices of milk go up. So the reverse, one would think, should be the case too. But I have to say that that is conjecture.

Senator MILNE—That is one thing we need to take up, in terms of how these contractual arrangements operate. If we could get that inserted into those negotiations between the processors and the supermarkets, then that would bring the farmers into the equation and help to alleviate some of this at some point.

Mr Beattie—One thing that I will say is that it seems extraordinary to us as ordinary dairy farmers that the ACCC allowed the takeover of Dairy Farmers by National Foods, which in a sense is almost creating a monopoly.

Senator COLBECK—I had some questions on the collective bargaining process, but I think you have pretty much covered those in respect of provisions to hold parties to the process and other evidence that you have already put on the table, so I will move on from that. You have discussed with us the conditions of the contract that you were initially offered and the fact that National Foods have moved some way towards the collective bargaining group with respect to some of the terms and conditions of contract. Can you tell me whether those have been reflected in the new offer that has been made to farmers in recent days?

Mr Beattie—In general, that is the case. One of the clauses in the original contract, however, referred to termination by National Foods of our contracts. One particular clause—and I am not quoting verbatim here because I do not have it in front of me—was that they could terminate our

contracts if we as farmers brought their trademark or name into disrepute. That was one clause that we discussed with National Foods in that marathon session in Devonport, because we believe that some of the statements that I have been making in the press about our negotiations could be construed as bringing their name into disrepute. National Foods were not prepared to negotiate at all on the terms of that particular clause.

Senator COLBECK—But they have made some changes?

Mr Beattie—Apart from that they have made some significant changes.

Senator COLBECK—In your understanding, when did the collective bargaining process officially cease?

Mr Beattie—It depends on when they wrote that press release announced after our meeting last Friday. So I suppose one would say it was within the first hour of having finished that meeting, when we received news of the press release.

Senator COLBECK—So last Friday?

Mr Beattie—Yes.

Senator COLBECK—Even though negotiations had broken down at the previous meeting, you believed you were still in a collective bargaining process?

Mr Beattie—That is correct.

Senator COLBECK—Until you were effectively officially notified by a press release last Friday, that process had continued?

Mr Beattie—Correct. It is also probably fair to say that we were still negotiating even in Devonport, when the last negotiations took place. We were prepared to reduce our demand, to bring back the amount of milk that we would like to have paid for at 39.8c a litre, so we were still trying to accommodate and trying to negotiate. It is doubly infuriating when we discover that National Foods had no intention of negotiating in the first place. They also said that we walked out of our negotiations, which was just not true. You cannot negotiate when the people you are negotiating with say, 'We're not prepared to move at all with our offer.' Negotiations are over then—after nine hours.

Senator COLBECK—So you are aware, then, that National Foods were making offers to farmers last week?

Mr Beattie—Yes.

Senator COLBECK—So while the collective bargaining process was still live, National Foods were making individual offers to farmers behind that process?

Mr Beattie—Yes, that is quite correct. Senators can draw their own conclusions from that.

Senator COLBECK—It would be interesting to know what they would think if a union were to do something like that with their employees, but that is a different question for a different day.

Senator O'Brien interjecting—

Senator COLBECK—Yes, absolutely. I am not making any aspersions there, Senator O'Brien. I think we are on the same page on that.

Senator O'BRIEN—I think I have actually experienced it from the other side.

Senator COLBECK—I am sure you have. Are you aware that National Foods were actually offering farmers increased volumes of milk as part of those negotiations?

Mr Beattie—No, I am not aware of that, because no National Foods employees have come anywhere near my farm and I have not been offered any inducements like that. But, then again, I have not spoken to them.

Senator COLBECK—I would expect that, given that you are a prominent member of the collective bargaining group, they would not necessarily want you to know that they were offering some farmers increased volumes and others not.

Mr Beattie—No. I was not aware of that.

Senator COLBECK—You are not the first farmer I have spoken to who has appeared to be surprised by that revelation. You said to Senator Milne before, I think it was, that you are not aware of any farmers receiving the letter before this week?

Mr Beattie—I am not aware of it, no, and, as far as I am concerned, it was not sent out before. It is hard for me to judge what National were doing last week and their motives in coming to Tasmania last Friday. It is difficult for us to put anything except the blackest connotations on it, really.

Senator COLBECK—I want to come back to the income estimate sheet that you gave to us. The 33.8c that they are talking about and the price they are effectively saying is their offer price could not be described as a base price, could it? It is effectively a maximum price that a farmer could earn if there were no penalties applied to their supply?

Mr Beattie—Yes.

Senator COLBECK—It is effectively a maximum price; it is not a base price—although it could increase with step-ups.

Mr Beattie—It is a price for a specified litre of milk at four per cent butter fat and 3.2 per cent protein. In all this we have to remember that National are effectively paying for kilos of fat and protein but then converting it into cents per litre using a standard litre at four per cent fat and 3.2 per cent protein. If a Jersey farmer, for example, sent away 5.5 per cent butter fat and four per cent protein milk, he would receive a higher price per litre, but obviously the number of litres he

sold would be significantly lower, because Jerseys give fewer litres of milk. What you are saying is correct: it is effectively a maximum price, yes.

Senator COLBECK—And potentially subject to penalties for fluctuations outside a certain range in the supply specifications of the milk?

Mr Beattie—Yes, not only in terms of numbers of litres but also in terms of quality criteria. In certain circumstances, a farmer could be sending milk that would have a 20 per cent reduction in its price that would be perfectly acceptable milk if it was being delivered to Fonterra. That is part of the basis of our argument: that we are under much stricter quality criteria than a Fonterra supplier would be, and it is essentially spurious to compare us to a Fonterra farmer, particularly as the ratios between butter fat and protein payments vary. A Fonterra farmer receives 2.5 times as much per kilo of protein than per kilo of butter fat, but National Foods only pay 1.875 times as much for protein as they do for butter fat. So the comparison that National Foods would like to force us to accept with Fonterra is essentially flawed. It is not just the model farm; it is also the way that they pay for the various ingredients.

Senator COLBECK—In a season such as we are having now, where you have significant seasonal conditions, would that proportionally disadvantage a National Foods farmer more greatly than a Fonterra farmer because of the fluctuations that it could cause from the standard supply cycle that the farmer is contracted to?

Mr Beattie—Certainly. There is no question that is the case. When cows are under stress, their somatic cell count, the measure of the number of white cells in the milk, goes up to levels which would incur significant penalties as a National Foods supplier but would not incur penalties as a Fonterra supplier.

Senator COLBECK—So that is where you would see a circumstance where a farmer I heard of recently was receiving 19c a litre from National Foods, switched to Fonterra and was getting something like 23.8c. There is a significant difference in price based on a number of factors and that would be something that could explain those variations—for the same milk.

Mr Beattie—Yes, and in September I received an average of 19c a litre, remembering the fact that I am also the largest supplier to National Foods. I received the highest volume bonus, but I still only received 19c a litre.

Senator COLBECK—I just want to go back very quickly, and finally, to the deadline date. Is that something that has been experienced as part of the contract negotiations previously—that a deadline date for signing a contract has been inserted into the process?

Mr Beattie—Yes, it is, but without the additional sentence of saying they will not pick the milk up. We have always had deadlines that have been allowed to overrun if the negotiations continue. I have to stress that this year National have been very different in their approach to these negotiations. They have been completely stonewalling us, whereas in the past they had been difficult to deal with, but all multinationals are difficult to deal with, but in a sense they had been fair. This year they have been unfair. We have not been faced with this threat of non-pickup of milk.

Senator COLBECK—What have been the issues with the signing dates previously? Has it been access to back payments or incentive payments in previous—

Mr Beattie—That type of thing has happened. You can understand it from National Foods' point of view—they want to get a contract signed so that they can go back to the supermarkets and say, 'We've got our farmers signed up under contract.' So, to stop the negotiations spinning out for ages and ages, they naturally wanted contracts signed, so they put in dates. If we were still negotiating, they had not enforced those dates, whereas this time they appear to mean it.

Senator COLBECK—My understanding is that a lot of the contracts ran out in late December or January this year—is that correct?

Mr Beattie—Some Lactos contracts ran out then. All the liquid milk supply contracts to Lenah Valley ran out on 27 June this year. That was the end of the National Foods' June month. For some reason, July starts on 28 June.

Senator COLBECK—What has been the circumstance of the Lactos farmers who ran out of contract back in January?

Mr Beattie—As far as I am aware, they have been paid under the same aegis as they would have been paid if they were in contract. I might be wrong.

Senator COLBECK—If you could confirm that on notice, that would be fine.

Mr Beattie—I could confirm that later.

Senator COLBECK—What I am trying to sort out is how National have been working with their contracts over that period of time with various different parties to the overall process. I am trying to get a handle on their behaviour, if you like. They have a range of contract dates that they are obviously trying to work with or manage.

Mr Beattie—My understanding is that there were three different contracts that Lactos had, depending on when the producers were supplying the majority of their milk. They were at liberty to choose which contract they took up. National decided in their wisdom that they wanted to have a statewide contract for all suppliers, which I suppose is understandable. It makes things simpler. So they are in the process of trying to shuffle all the producers into one contract that runs basically with the financial year. However, we have another member of our collective bargaining group that was supplying Hillwood Cheese who was under another contract that has caused him significant financial problems, because National Foods' lawyers found some holes in his contract and punished him financially quite severely.

Senator COLBECK—We might have heard from him in the other inquiry in Devonport—Mr Oliver?

Mr Beattie—That is right.

Senator MILNE—I would like to clarify a couple of matters in relation to the model farm. It has the collective bargaining group or any farmers been involved in developing the model farm

proposal? We heard from Mr Rogers that it was not to his knowledge, but I just wanted to ask you whether any producer has been involved in developing that concept.

Mr Beattie—Certainly no producers in Tasmania have. It is my judgment that no farmer in Australia has had anything to do with it.

Senator MILNE—That is the first thing. The second thing is: Mr Rogers told us that he believed the model farm is not fair and that in fact it is deceptive and misleading in the claims it makes about the payments. Would you concur with that?

Mr Beattie—Yes, I would.

Senator MILNE—In terms of what we do as a Senate committee and the ACCC and so on, what I am hearing from you is that National Foods unilaterally have come up with a concept which is misleading and unfair and have put it out there as: ‘Take it or leave it. That is the basis for price negotiation.’

Mr Beattie—That is correct. It is also fair to say that, when we went into our negotiations with National Foods, we went with the best intention of doing a decent, long-term deal with them. In other words, we went in there saying: ‘We recognise that you have got too much milk in Tasmania. We understand. We also understand some of the reasons why, but we are not going to go into that. Therefore we are prepared to have a two-tier price structure. In other words, if you will pay us 39.8c a litre, which is only the cost of production, for those litres that are sold by you under contract and you will pay us the Fonterra price for any litres that you say have to go into the world market, then we will be prepared to accept that.’ The problem is that National Foods are now saying that they are only selling 52 per cent of their milk into that premium market, which is a bit strange because only five per cent of National Foods’ gross income comes from exports of milk products. So we have a little bit of difficulty. As I said, we are only simple farmers but we cannot quite square those two things up.

Senator MILNE—In terms of a recommendation for how we can take this forward as far as the ACCC is concerned, what I have heard you say is that we need to address the end of the process, whereby if the collective bargaining breaks down then there has to be some way of compulsorily requiring both parties to have a third-party independent arbitration; but there also should be some requirement that, if the company is going to come up with a model like this, there should be some negotiation about what that model might be, as an upfront part of the process.

Mr Beattie—Yes.

Senator COLBECK—So you effectively do not see a role for the model farm concept as it currently is designed?

Mr Beattie—No. As I said before, we believe that we are supplying a different market; in fact, we know we are. So we cannot see why there should be a connection between us and Fonterra. The whole thing seems to me to be spurious, and they are using it as a tool to beat us with when the world market price comes down.

CHAIR—Thank you very much, Mr Beattie and Mr Barker. That was very interesting evidence.

Mr Barker—I assume that the committee would be happy to receive any examples of economic hardship that become evident to us, as they occur.

CHAIR—Yes. You can forward them to the secretary, Mr Hawkins. Thank you both for appearing.

Mr Barker—Thank you.

[12.33 pm]

WILSON, Mr Robert Thomas, Private capacity

CHAIR—Welcome. We have gone a bit over time because we had some very interesting evidence, but that does not mean we will necessarily shorten your time.

Mr Wilson—That is okay.

CHAIR—Would you like to make an opening statement?

Mr Wilson—Just a short one. I did appear before the Senate inquiry in Melbourne a couple of weeks ago, and I have been invited back to further answer some questions I believe some of the committee members may have. I am appearing as an independent. I have retired out of the dairy industry actively. My history is a lifelong one in the industry in Tasmania. I have been intimately associated with the operations of National Foods in Tasmania when it existed as Baker's Milk and Consolidated Foods. I was an inaugural member of the Tasmanian Dairy Industry Authority, which was set up by legislation in Tasmania to proceed with the dismantling of the old whole milk quota system to try to equalise returns to farmers and take some of the excessive returns, as they were seen then, from one group of farmers and spread evenly across all farmers. History seems to be reoccurring because now we are again seeing two groups of farmers fighting over returns at farm gate.

I will make one other personal comment before we go to questions. One of the issues that concerns me greatly is the fact that we have an industry in Australia where approximately half of our milk is exported out of the country and is subject to the vagaries of international rises and falls and the other half of our milk production in Australia is converted to forms which are sold within the Australian market. Those forms, of course, are market milk and all the associated variants of market milk—because now you have many, many forms of milk. Plus you have all of the other things that milk products are turned into—the soft cheeses, the fat products and bakery, confectionary and other associated products. To me, it is an absolute anachronism that you expect returns at farm gate in Australia to be benchmarked to the vagaries of the international pricing. This is ridiculous. The deregulation and the level playing fields that have been so-called created by our economic pragmatists do not work in this environment. If you believe they do, you belong to the flat earth society.

It is impossible for farmers to plan and it is impossible for processors and other operators to plan if you do not know your benchmark raw material price from one year to the next. You have international situations now which are creating just as much chaos as we have here with reduced returns. In fact, in the last few days, in the EU they have set up a very, very special expert committee to further explore the pricing mechanisms in the chain from milk production to retail, because the same things are happening world wide. The strength of retail and the strength of processes have been obscene, and their mechanisms for retailing and distributing their products are worked to comply with contracts with the supermarkets' desire for housebranding, national distribution and so on, and what is left find its way to the farmer. This is unacceptable.

There somehow has to be some more transparent way in which we can see that those who work in this system get a fair margin in their activities. If you look at the market milk sector, which is creating the greatest chaos here, particularly in Tasmania now, you have four sections of the industry. You have those who produce milk. You have those who process and manufacture and package the liquid milk products. There is the complex distribution sector, which is extremely complex. And then you have the retail. When we see milk flow into that product and then see a retail price, the appropriate margins being earned, gained or manipulated by the different sectors are not visible. In our world today you cannot continue with an industry like this where they are kept in that form. There has to be some more transparent disclosure of the appropriate margins that these different sectors are earning from that chain of value in that product.

Senator O'BRIEN—Mr Wilson, in Melbourne, you gave us an outline of your industry experience, but this is a different committee. Can you reiterate that, please?

Mr Wilson—With the?

Senator O'BRIEN—Industry experience. Because this is a different committee and a different inquiry, it would be easier if you could run through that again for us.

Mr Wilson—Just quickly, I come from a dairy farming family. My family were involved in selling raw milk around the streets of Hobart when I was a youngster in the 1950s and 1960s. We fell into the clutches of compulsory pasteurisation and ended up being a supplier to the Baker's milk company, which grew into Consolidated Foods, which was an amalgamation of Victorian market milk companies and in Tasmania. I worked for them as a technologist. I became an operations manager with them. They were a major shareholder in Lactos Cheese at the time and one of the ways that industry worked was to have quota milk and the surplus milk was fed into other products, including Lactos and so on. I left Tasmania in the 1970s and went overseas as a technologist specialising in UHT processing and packaging, and I have worked as an international consultant in that area for some considerable years. Working in South-East Asia, I have a lot of knowledge of the selling and use of Australian raw materials in the Asian market.

I returned to Tasmania and spend some more time with Consolidated Foods before they were taken over by Gadsden's on their road to becoming National Foods. I sat up my own business at Edith Creek in Tasmania specialising in contract packing for any customer. We packaged liquid foods, dairy products, started operation in the early 1990s and were major suppliers to the chains both here in Australia and in Asia, including China. We grew the company from nothing to become 40 to 50 million litres of milk a year out of Circular Head. Most of it be supplied on contract in companies' own label to our own formula. That company was sold recently to Murray Goulburn, who are now operating in Tasmania, and the company has grown further. I sit as the chairman of the TR board at the university in Burnie looking at overseeing dairy research and I am also a board member of the Tasmanian Development Board.

Senator O'BRIEN—In your days when you operated a business which purchased milk from dairy farmers, processed it and sold it to supermarkets, how did your business structure its arrangements with the farmers, what sort of price arrangements were entered into, how were they done?

Mr Wilson—When we set up Classic Foods it was obvious that we would require a supply of good-quality milk and we went to Edith Creek for several reasons. One, there was a premises there that we could convert and use. Secondly, it is the centre of Australia's best milk producing area, if not the world's best producing area. We knew we needed milk supply. We did not want to get involved with the intimate problems of another buyer from farm gate because that was already being covered by quite a few operating companies. So we ended up with a joint venture arrangement with United Milk, which was Tasmania's cooperative in those days. In simple terms, our pricing mechanism worked like this. Whatever UMT paid farmers, including quality premiums, winter premiums and so on, at the end of the day when they added all that up and they had a farm gate final price we bought milk with a 10 per cent bonus on top of that. So we offered a 10 per cent premium on top of their best returns across the year and that ensured us with our regular supply. That joint venture stayed in place until we actually bought out UMT from our company as they changed to Bonlac and so on. But the method of purchasing was to look at the best returns that the cooperative could get from its basket of products that it sold in the international and Australian trade and we offered them a premium on that.

Senator O'BRIEN—And you had a profitable business.

Mr Wilson—Yes.

Senator O'BRIEN—Do you know anything about the current costs of production in the industry? What can you tell us?

Mr Wilson—You have in Tasmania a fairly unique situation compared with the rest of Australia because under the industry's own methods of looking at cost of production you have reference farms in Tasmania which are taken from north-west, central coast, the north, north-east and the Derwent Valley. Those farms were benchmarked and their cost of production figures have been tabulated. The information that was evident on those farms was circulated within the industry in Tasmania to all farmers if you read the newsletters and so on and you could see the various input costs to their milk production as the seasons changed and as their farming methods changed and as they put in irrigation and so on.

Those costs of production have been benchmarked for some 15 or 16 years. Those benchmarks are used when there are competitions and other references to farmers determining who as a farmer is giving the best return on capital, is the most profitable and so on—and that is still going on. I think we do that more intimately in Tasmania than any other state. If you want to know what it costs to produce milk in Tasmania, you have got nowhere better to look in Australia than the reference figures that we have here in Tasmania. They are with the TIAR and within the industry itself. As we have all heard, the costs vary from different areas of Tasmania but you are looking at figures that are \$3 to \$4 a kilogram as to milk solids. They vary depending on how good the farmer is and what is happening with the climate and so on.

Senator O'BRIEN—And seasonal production and the like?

Mr Wilson—Yes, and seasonal production and the like. Tasmania has always been a difficult area to work in when you look at the low period in winter and the vagaries of weather. It has sometimes been difficult to get the right quality of milk suitable for liquid milk and other dairy products. Mid-winter milk varies a lot and causes processors a lot of heartache even when they

are making cheese and other products. So there has always been this little bit of mid-winter crisis milk, if we want to call it that, and you have to be very careful as to how you can use that milk. That often leads companies to have winter incentives and winter volume programs to try to fix that. National Foods and other companies have endeavoured to do that.

As Tasmania's milk production has grown this has become less of a problem. If I take you back 10 years or so, it was a critical problem and, in fact, our little company at Edith Creek could hardly get enough milk in the winter. There was not enough, but today we have doubled milk production since we started at Edith Creek so you have more milk in the milk pool to draw from, providing its quality is okay. This is one of the issues with the deregulation model and so on because, if you just look at a level playing field and a deregulated model, technically there might be enough milk there but you do not know where it is and what availability it has so it all becomes difficult. Therefore a company like National Foods would like to secure supply and they would do what they do to try to do that. But it can give you issues as to farmers' expectations, because across the total milk situation you have only got a very small amount of milk in Tasmania being used for market milk. I think it is 10 per cent or less than our total state volume. If there is plenty of milk throughout the year, then you should be able to buy that milk from across the board.

Previously, when quotas were dismantled and there was this trauma of having access to the city milk open to all farmers and all companies, the milk was drawn from companies to supply the liquid milk processors, so Betta MILK and the previous operator in Lenah Valley would get their milk allocated to them and the suppliers would be the existing dairy companies: Lactos Cheese, UMT, Cadbury and so on. That was a method of getting milk of the right quality into the city milk market. But as deregulation came and the ownership of companies and cooperatives changed the strategists within those companies did not want that to go on as they would like to move away from the commitment of supplying city milk. Hence you have companies like National Foods who have grown into a contractual agreement with farmers and it is the same with Betta MILK as a contractor of the agreement from another processor. But, as milk supply shortens—as it did here a couple of years ago—and the price in the export market goes up, then everybody is very conscious of getting the best returns so it becomes difficult for companies to buy milk for their liquid milk operation. Betta MILK have been through that program and I think National Foods, in their restructuring in Tasmania, have taken their eye off the ball and have lost confidence in farmers over quite a few years, not just now.

Senator O'BRIEN—Going back to the costs of production here, you talk about benchmark figures. Are they publicly available? Are they available in some other way to this committee?

Mr Wilson—Those figures that I have just spoken about are. I think there is evidence being given today or tomorrow—

Senator O'BRIEN—We have had some evidence, but if you could refer us to where we could access them independently of the witnesses that would be good.

Mr Wilson—The Tasmanian Institute of Agricultural Research—TIAR—at the University of Tasmania, at the Burnie campus.

Senator O'BRIEN—That is fine, and thank you for that. I refer to the legal trade practices arrangements for farmers. Have you got any information or views that you want to put to the committee about any matter that we should take into account or make recommendations on regarding changes to the law or aspects of the law that are deficient in any way?

Mr Wilson—No. I have not been involved with any of the current contractual dilemmas and the particular clauses in those supply contracts, so I cannot answer that in terms of anything as to the ACCC. Suffice to say that the milk that has been purchased by contracts from farmers has been processed and sold but do not forget that there are contracts to supply the retail trade and a lot of those retail trade contracts go beyond one year. I think some of those could extend out to even being three-year contracts. So you have got processors supplying supermarket chains on a contractual basis outbidding each other across the nation and some of those supply contracts are for several years.

Senator O'BRIEN—I am struggling to recall in the last decade a real farm gate price for milk lower than the one that is currently under offer.

Mr Wilson—That is correct.

Senator O'BRIEN—Can you assist us in that regard at all?

Mr Wilson—After we started the business that I spoke about we put the first milk through that factory in 1990 and our pricing of milk then, with the 10 per cent bonus and so on, was probably running at about 29c or 30c a litre. That was what we were paying for milk at that particular stage. As winter premiums came in it rapidly jumped up to the low thirties and mid-30s, so it was at the low thirties and mid-30s purchase-wise for Classic Foods back in 1990 to 1995.

Senator O'BRIEN—So in real terms many cents more than is currently being offered?

Mr Wilson—Correct.

Senator O'BRIEN—I am just trying to get a benchmark. Is that generally true over the intervening period until now?

Mr Wilson—There has been a steady growth in international returns during the nineties. This was stimulated by the general growth in South-East Asia and certainly in China with their welcoming of dairy ingredients into a whole range of foods. Convenience foods and modern foods have changed the face of dietary patterns in Asia. You have school programs, you have products like ice cream and you have bakery products and dairy desserts. You have fast-food chains using cheese and so on. All of those things have led to a growth in the consumption of dairy foods in general. The ingredients that go into those are usually protein based and New Zealand and Australia are the major suppliers. As that demand has gone up so has the price.

In Australia we have had a shrinking of the overall milk supply because the industry has been contracting with our climatic issues, with our droughts, and with the movement we have had colossal impacts in Victoria and New South Wales with a reduction of production. Tasmania has doubled its milk production and it has the potential to double it again, but we are losing sight of

the price that it should be at the farm gate. This is an issue, but it is all not clear and a forecasting model is not possible. The current international crisis has probably made the dairy industry's operations a little bit worse. I would like to throw this scenario at you. If you are buying milk and the milk is in short supply in Australia and you are getting high prices in your export markets, therefore in Australia you are fighting for milk supply and you are going to offer attractive prices, so farmers enjoy high prices. If you are out of synchronisation with offering high prices, when market sales start to drop off you can be caught holding a problem: you have overpaid for milk in a period in which you should have been reducing prices while knowing that your market was declining.

Now the market has been declining, and that was known several years ago. It did not happen this year. If you are forecasting with a model to do this, you should be looking at the supply end, and I think that has been overlooked. Therefore there may have been extensive overpricing of some milk purchased in the last 12 months by industry which it has to recover. So it is going to open the next season very conservatively until it sees how the market settles down before it will start to get into the step-up procedures that the industry has and end up with a final price. Hence you would have a reticence by industry to be too aggressive in opening prices for current step-ups. But that may change in six months time as the current milk supply goes into its production cycle and product goes back into the market and the market is starting to move—and we have all seen indications of that. So you will get very little willingness to try to put a price on where the industry might be able to get a farm gate return.

Senator O'BRIEN—Finally, where do you see the industry in Tasmania standing in terms of efficiency compared to other parts of Australia?

Mr Wilson—There is absolutely no question that our input costs to produce milk are among the best in the world in terms of being low. We have a climate that can grow grass. We have very good farmers. They are extremely well organised and they are switched on. We have had a lot of people come to Tasmania because of this. With those input costs the way they are, you can make a farm operation very, very economic and quite profitable, but you need to be able to forecast your farm gate returns. This is where the whole issue becomes very murky. If the world vague export earning price is used as the benchmark for setting the price here, to me that is crazy because half our milk is consumed within the country. Half of our milk that is sold within Australia could enjoy a premium in the marketplace of a few cents a litre or a few cents per kilogram of milk solids. If that went back to the farmers, you would not have the problem you have today. But we are not doing that. We are using an international benchmark to screw down the price paid to farmers because the consuming public are getting cheap food, according to the ACCC.

Senator O'BRIEN—I think we already have evidence elsewhere that there has been no reduction in dairy prices in this country.

Mr Wilson—To go back and answer your question: Tasmania is probably one of the best places in the world, with our environment, to convert grass to milk solids. We have got some of the best farmers in the world, and they are all going to go out the back door.

Senator MILNE—One obvious criticism of this scenario is the fact that the companies use the international price and there is not a capacity to differentiate. Do you have any

recommendations about how you might go about doing that, since we are trying to find ways that we could recommend solutions? How would you go about setting up a tiered price structure in the way you have suggested? Or who might be best to work out how to do that?

Mr Wilson—You would need a very special group of people that could act in this area. I believe it is potentially achievable. This group could look at the whole thing. If you go back a little bit, we had a system here in the Australian industry of having a support, a market milk levy, which assisted farmers that were being driven out of the industry by drought and deregulation. That levy was administered at a federal level, and the levy was some 11c a litre on all market milk. It was in place for a period of years. In my experience of many years, that has been one of the easiest mechanisms to comply with, as a processor. It worked well. It was audited well. The price gained at retail was brought back and paid back into the industry, to farmers.

If you were to look at something similar, to support what I am saying, to get a better yield out of the Australian market, you would have to look at that sort of mechanism. What you cannot do is allow any price elevation for the benefit of the farmers to find its way through the current system, because it will not get there. It will not get back to the farmers. So it has to be an independent administered and audited function. It needs review. It needs some of our best minds in this country to get around that, as to how we could do it. I believe that politically it should be quite acceptable to the Australian consumer to know that they are paying a modest premium for all their Australian products, whether it is a bar of chocolate, an ice cream or a liquid, if they know that that premium is going back to the farmer that produced the milk.

Senator MILNE—You talked about transparency. This goes to, if you were to put a levy on it, the consumer accepting that that was where the levy was going. How do we get transparency so that the consumer can see how much the farmer is paid, how much the processor makes, how much the distribution network makes and how much the supermarkets or the retail outlets make? How do we get transparency in the system?

Mr Wilson—That needs investigation as well, because there has to be some way that the consumer realises that the \$2 per litre that they are paying for liquid milk is broken up into those four sectors: farm, processor, distribution and retail sectors.

Senator MILNE—We need to have solutions here and I am wondering how you would go about doing that.

Mr Wilson—It has to be a function that is carried out annually, and it has to be an audit-type function where those four components submit their particular piece of the pie. You do not have to get into the nitty gritty of what they make in profits. You just have to have whether there is a farm-gate price, an ex-factory price, a semiwholesale price and a retail price. Each sector can say, 'We started at this level and we are letting it go at that level.' It needs to be done. The people who are taking advantage of deregulation are really doing the industry a complete injustice.

Senator COLBECK—Senator Milne has covered the visibility down the market chain so I do not need to deal with the transparency down the market chain. Can you give us—and I know that you mentioned this in the previous inquiry but, as Senator O'Brien said, this is a separate inquiry—some sense of the costs as far as the processing, packaging and distribution are

concerned from your knowledge and time in the industry, accepting that you have stepped back a bit now. But could we get some sense of what the cost might be.

Mr Wilson—In quick terms, because I have been out of it for a while, assume you are taking in milk at 30c at the farm gate and you have a collection cost of a couple of cents a litre. Then, within the factory that is doing market milk, it is a fairly straightforward operation. You have a processing mechanism today that is much more efficient than it probably was a few years ago. Then you have a packaging cost. So, to get an ex-factory price, processing and packing roughly would be of similar cost these days. Plastic has impacted as a package in the industry; it is tending to replace paperboard in some sectors. The most common package size today is a three-litre plastic bottle with a handle on it et cetera. But in costs per litre if you were looking at some 20 cents and also 15 cents or so of processing they you are looking at an ex-factory price of somewhere less than \$1—well below \$1. So 50 per cent of the retail value is giving you a product that is out in the distribution chain. Then, the distribution nowadays is vastly different because it changes due to the national delivery system. You have got milk being transported within manufacturers' vast distances—you have products going out of southern Victoria and finding their way to Brisbane and so on in bulk tankers and whatever else. Then you have the delivery of the packaged product in bulk these days rather than in more broken down loads. The efficiency of that would be fairly good, although it is expensive in the dairy industry because it is refrigerated and it is something you do daily. Also, it is very convoluted; in other words there are a lot more costs in distribution of fresh milk than people realise. You then have an in-store price with mark-up. Bear in mind that today you are providing to the retail trade a product which is barcoded, is date coded and is delivered into the store cold by the industry's distribution wing. So the retailer does very little. They wheel in stacks and stacks of milk and the consumer helps themselves. So it is very difficult for me to be happy with someone trying to justify a high expense in retailing. I believe that is a furphy. It is not as expensive in retailing today as it was some years ago.

Senator COLBECK—To clarify, you are talking processing at about 15 cents a litre.

Mr Wilson—It is horses for courses. A large factory that is running 24 hours a day with modern equipment has vastly different costs to, say, something that is quite small, such as a regional operator who has to run four or five hours a day, six or seven days a week. The cost of processing is really dependent on energy—the heat and electricity that is used, and that of course includes refrigeration. But there is little else. When you make a capital investment in stainless steel equipment for processing milk, it is a lifelong investment; it lasts forever. So there can be very efficient plants in processing.

Packaging is similar, with high-speed fast machines that form, fill and seal in-situ, or they form and fill and so on. These high-speed machines, both in paper and plastic, have brought those costs in general terms to fairly low levels, and they have not moved a lot. If you were to go into details I would doubt whether any input costs in processing factories have changed beyond CPI for the last six or seven years. There has been a recent indication from packaging material people that as a result of the current world crisis there may be a seven or eight per cent increase in packaging material coming down the track. That is the first warning of an increase of that size for quite a few years. I do not know whether that will happen or not, but there is a warning out there now.

Senator COLBECK—You mentioned that when you were with Classic you were supplying supermarket branded product to the supermarkets and you also talked about supply contracts for a longer term than annually. What sort of escalation clauses and price variation clauses would there have been as part of those longer term contracts? Would they have had an annual renegotiation or a built in CPI type process? How would those processes work?

Mr Wilson—There were none. You were invited to bid and you received an invitation to bid and a format by which you would bid, which was usually online. You had no indication as to the price that the buyer was expecting to pay and they indicated to you no price that they were willing to pay. You bid in order to win the contract to supply the product. Through the bidding function you entered your price and you chose the area or market that you were supplying. You then waited. At the end of the day you were notified as to whether or not you were a successful bidder. During the bidding process you received a ranking. In other words if you submitted a bid and you were not the lowest but you were the second lowest you got some information back saying that you were the second lowest, which was an invitation to bid lower to try to win the contract. That is the way it went. One of my most difficult moments in business over my entire life was sitting down putting bids in to supermarkets. You were told basically whether you had won the price or not and they set the price at which they were going to pay. I would imagine that all suppliers have similar very exciting price negotiations, but to me the supplier is always pushed down. To get a price increase, which does happen occasionally, it needs something of a national crisis or something else where the buyers are humbled into admitting that they should perhaps increase the price—hopefully the price going back to the farmer, as some well-meaning supermarkets have done in the past. But whether or not it ever gets there you do not know.

Senator COLBECK—So there is no scope for the bidder to set conditions. Basically, there is a set of conditions supplied as part of the tender and you supply a price based on those conditions?

Mr Wilson—They will have their requirements nationwide and city wide for their range of products—sizes and formulas and so on—and they would have indicative quantities in those particular areas. You are then invited to bid. You, in some cases, can choose to bid for a part within one state, or nationally across several states or you can choose to bid partially within the state. I am speaking about the supermarket branded products. If you are selling your own product that is a different story because, there, you are placing your product on the shelf and you would do your normal negotiations with the buyer. In those negotiations you would have your pricing and there would be a little bit of negotiation on promotions, ullage, shelf space and all the other things that go along. So you find in the supermarkets at times quite big price differentials between the branded products and the unbranded products, and in different states it would be for different reasons.

Senator COLBECK—Finally, we have talked about the exposure into the global market. To what extent do you see the local market being impacted on by product coming in from the global supply market and how does it impact on prices?

Mr Wilson—You do see products move into Australia, particularly in cheeses and so on, and you do see some butters, but I do not think they impact in any great volume on the Australian market. In my particularly speciality of UHT products, over the years quite a few UHT products

emanating from other areas found their way into the Australian market but they never impacted in volume in Australia in my opinion.

Senator COLBECK—But did the fact of their being here have a capacity to impact on price?

Mr Wilson—No, not at all, to my recollection. In most cases the pricing of the imported product was above the Australian pricing.

Senator COLBECK—In the context of what we are talking about, particularly what has been put to us by some companies, the product coming into the country is also part of the overall market and therefore impacts on the price they get in Australia. We all understand that we are playing in a global market with global auction processes and a whole range of things going on that impact on that proportion of the supply chain that is directed to that market.

Mr Wilson—That is right.

Senator COLBECK—I am just trying to get a sense of what the reverse might be. You are correct in what you are saying: volume does play a part, but it is the extent of that volume and how that volume impacts on the rest of the national market.

Mr Wilson—That is one of the difficulties of the industry, and of course our trade with New Zealand is probably the one area in which that would be most evident. If you see New Zealand dairy products on our shelves here then that is a price benchmark that they would be referring to when they say that the importation—

Senator COLBECK—I recently experienced Danish butter, for example, which has been in the supermarkets. There is the question of whether or not that was a particular buy that became available to the supermarkets because, for example, of a high level of subsidisation going on in Europe at the moment—they saw an opportunity to grab some of it and bring it in.

Mr Wilson—My experience with those sorts of things is that they usually involve somebody finding a supply somewhere in the world that looked quite attractive and cheap to buy so they have brought it in and put in into the retailers, but it is not an ongoing thing. You see this sort of thing come and go and that has been going on for many years—

Senator COLBECK—So it might have an intermittent impact on the local price but not necessarily a continuous one.

Mr Wilson—Definitely.

CHAIR—Thank you for your evidence.

Proceedings suspended from 1.13 pm to 2.23 pm

McCALL, Dr Tony, Lecturer, School of Government, University of Tasmania

CHAIR—Dr McCall, you are not due to give evidence yet, but the prior witness has not turned up, so we might see you instead. Welcome. Would you like to make an opening statement?

Dr McCall—I would like to thank the committee for this opportunity to discuss this important issue. I would like to read my statement, if that is okay, because some of the offences that have occurred in recent weeks are quite upsetting for those of us who have been working with dairy farmers in Tasmania for quite some time. As we meet, Tasmanian milk suppliers to National Foods are being expected to sign contracts that will see them lose 6c for every litre of milk they supply. This week, the Tasmanian Farmers and Graziers Association, their own locally based advocacy group, together with the Queensland based Dairyfarmers' Organisation, are collectively telling Tasmanian milk suppliers they should accept that market outcome, presumably because at the moment the Queenslanders are not in the same situation as our National Foods suppliers in Tasmania find themselves in.

On my calculations, losing 6c a litre equates to a combined loss of \$7.8 million across 90 suppliers in Tasmania. If you add a conservative multiplier of 2.5 to that loss, that translates into a regional economic impact of minus \$20 million. That is just a conservative estimate of economic loss. The social cost is almost impossible to quantify and the qualitative impact is real. It is not just employment loss; it is family breakdowns, bankruptcy and loss of life, sometimes in the most tragic circumstances. Those contracts with Tasmanian suppliers to National Foods will enable the company to contribute a profit projection of \$178 million to its parent company in Japan, Kirin.

By way of contrast, over the past months European Union milk suppliers have marched through to Brussels and Luxembourg. They have demonstrated; they have burnt tyres, hay bales and effigies of politicians, and their reward is immediate: €15,000, or approximately A\$24,000, of emergency relief per supplier. Just recently, an additional €280 million, A\$448 million, has been distributed to the 21 member states out of 27, who demanded assistance given the fact that milk suppliers in Europe have been producing milk below production costs for in excess of 12 months. That equates, if it is possible to distribute that to every supplier, to approximately €1,000, or A\$1,600, per supplier. So the contribution to milk suppliers by the state in the European Union over the past three months has been in excess of \$25,000 per supplier. The EU will continue to operate under a system of intervention prices which essentially establishes a floor for market prices in important commodity groups such as milk, grain et cetera. They will continue to operate under that support system until 2015. Right now it is unlikely that the 2015 deadline will be met, because there is growing political pressure in the European Union to abandon the liberalisation of the milk sector.

Seventeen countries out of the G20 advanced economies have moved to enhance protectionist policies around their domestic economies since the global financial crisis. The Doha trade negotiations to extend the virtues of free trade died in 2007 and are unlikely to be resurrected in the current political-economic circumstances we find ourselves in globally.

Tasmanian milk suppliers and the vegetable growers that preceded them in 2005 find themselves pushing against gravity in a race to the bottom due to the unintended consequences of elevating competition as an end in itself rather than what was originally intended with the policy framework, a means to an end—to enhance productivity and innovation in the sector that would support income maintenance and the lifestyle advantage that we enjoy in Australia.

Under the umbrella of that competition framework, we have seen powerful retailers and processors use their market power to do many things under that umbrella. Competition has become a dominant policy mantra, supported by the regulatory framework of the Trade Practices Act and the functional role of the ACCC. One of the many things that have taken place under the rubric of competition is that those powerful retailers and processors have been able to insist that food products be regarded as global commodities. In doing so, they have extracted value from the product rather than added value to it—an adding of value that could actually be transferred to the supplier or the grower and enhance their wellbeing.

Competition also has defined winners and losers, and some of the debates around the fate of the National Foods suppliers in Tasmania have used that sort of terminology to describe what is happening here on the ground. Winners and losers are defined through a price mechanism that trends down to a point that is, conveniently, rarely reached where a producer is competitive, or they are defined because retailers and processors constantly demand cheaper products or impose quality costs. The commodity price downward spiral evident here in Tasmania with milk suppliers to National Foods means that their productive capacity, something that they have invested heavily in, often because they have been encouraged to do so by National Foods, is rewarded by a lowering of their standard of living and a corresponding increase in corporate profit margins.

Does being competitive mean that dairy farmers in Tasmania must accept or expect a similar standard of living and income reward as Chinese, Vietnamese, Brazilian or Chilean milk suppliers? I remind the committee that a Chinese milk supplier makes less than \$5 a day, but for National Foods that Chinese milk supplier is a competitor for an Australian based milk supplier in Circular Head here in Tasmania. If this is to be the future, governments need to tell our suppliers to get out of the industry right now. Let National Foods or Kirin import milk products from China, Vietnam, Brazil and Chile and see what the consumer reaction is. Then again, with such appallingly weak labelling regulations, regarded as being too costly for those with market power—the retailers and the processors—they would not have to clearly identify where the product was sourced from.

Competition cannot be proclaimed. It is proclaimed by policymakers, but those policymakers do not get their hands dirty in the red basalt of north-west Tasmania or in the manure of a milk shed. Competition cannot be proclaimed without understanding the conditions under which it operates. My submission outlines the circumstances in which a freely competitive marketplace can take place, and they are not evident in Tasmania.

What are the policy responses and solutions to this quandary and this increasingly difficult circumstance for these farmers, their families and their regions? My view is that, instead of ridiculing the likes of the European Union, which value the contribution of food production and food producers, we should also value it and embrace it within what I would describe as a food security policy and make it just as important as national security. In the age of scarcity and

uncertainty that we are likely to confront over the next 15 to 20 years, that policy framework needs to be an imperative. The European Union has always known this, not just as an organisational framework but as individual member states. In Australia we need to acknowledge this reality as a risk assessment for policymaking into the future and develop a similar policy response to the European Union, where there are intervention thresholds around price for suppliers. The European Union refers to this as 'flexible production regulation'. It is a vital component of interventional thresholds for food security in Europe. I might add that this policy operates within the World Trade Organisation guidelines, and multinational corporations operating in the European Union do not revolt and food suppliers are valued by their communities. This value actually translates into their political power, which is almost entirely absent in Australia.

My final comments are that price signals are a very poor, inadequate measurement of the value these food producers bring to our nation and to its rural and regional communities, particularly those in small, isolated territories and states like Tasmania. Policy frameworks need to be established that demonstrate to food producers that they are valued, first and foremost, by their governments and their communities, and that value needs to be understood by the distant and remote corporate boardrooms of foreign multinationals and their domestic proxies.

One remaining quality that Australians hold dear, even in a globalised world, is fairness. Nothing that I have seen in relation to this contemporary and current dispute with National Foods in Tasmania is fair. It amounts to unconscionable conduct and should be condemned by this committee and by the communities who are supporting these milk suppliers in a terribly difficult period. Thank you.

Senator COLBECK—Thank you. We appreciate your contribution to the debate over the last eight weeks or so. You have discussed the elements of the market economy. One thing we talked about earlier with some of the other witnesses is the fair distribution of power within those market economies. Obviously you would suggest that at the moment it is not fairly distributed. Your submission talks about the structure of the ACCC and how that might be modified. Would you like to expand on that? We are interested in how we even up that market power so that the conduct that we have seen over the time of this dispute can be mitigated but also so that those that currently have less power actually have a fair shake of the stick.

Dr McCall—I think the simple answer to that is to make sure that transparency around markets is apparent. We cannot keep proclaiming that we have got free, open markets when the realities do not match up to those circumstances. From remote Canberra it is easy to describe a milk supply market in Tasmania, but if it does not have the constituent parts that allow competition to take place we need to recognise that and we need to adjust our regulatory framework so it takes that into consideration.

We have got the situation right now where our Queensland colleagues in the dairy industry are telling our growers here, our suppliers here, that they should accept a market-determining price, but the circumstances around competition in Queensland are entirely different to the ones that are sustained here in Tasmania, where there are two and a bit processes and the competition framework is nonexistent. So you cannot proclaim that the market should rule in a circumstance where the market cannot operate. The market is a complex operation; it has constituent

components that need to be in place. If they are not in place, that needs to be recognised and the regulatory frameworks need to be adjusted appropriately.

For example, if the ACCC took the view that the Tasmanian milk supply marketplace was an example of a competitive model then (1) that that would be ludicrous but (2) it allows them to not intervene around what I have described here as unconscionable behaviour under the Trade Practices Act. So, going to the second part of your question, we need an ACCC that has some capacity to intervene when the market is not operating to the extent that we would want it to in a perfect market world. In Tasmania, that does not operate in hardly any market arrangement. In fact, we were the state that in a sense constructed monopolies as if it were an art form in many ways. Why have we done that? Because the size of our marketplace is so small that we have been reluctant to embrace competition in energy supplies, transport and a whole range of other sectors. It naturally flows that, with a population of 500,000, it is difficult to construct an appropriate, competitive market with the characteristics that I have mentioned in my submission.

As I mentioned previously, there are better models for intervention in the marketplace as a regulatory framework, and the ones that I am familiar with are largely from the United Kingdom, where the ACCC equivalent does not have to react to a complaint. It does not have to react only to the direction of a minister. It can act independently to pursue and investigate unconscionable behaviour within the marketplace. People have said to me, 'It doesn't happen all that often in the United Kingdom.' There is a reason for that: the United Kingdom is a large marketplace where there are many suppliers and buyers, where there are competitive frameworks that allow the market to largely sort out a price signal that reflects the competition between suppliers and between buyers. Here in Tasmania that is not the case, so those who have the retail and the processing power use that power to manipulate the value adding that takes place within that product line—today's conversation is about milk supply. It is not a unique circumstance, but it is a circumstance that needs to be adapted to rather than ignored, because the context is really important. It is about people's lives, it is about rural and regional communities and it is about being able to sustain an agricultural sector in Tasmania.

Senator COLBECK—In your presentation you mentioned reacting to price signals. At the farm gate level those price signals are quite evident, given the current discussions we are having about dairy in particular, but if you go to the supermarket at the other end of the supply chain—that is something we have also discussed here—there has been very little movement in the retail price of milk. The consumer is effectively insulated from the impact at the other end of the scale. The lack of transparency within the supply chain does not allow those price signals to be transmitted to all parts of the chain.

Dr McCall—It does not, but one of the really interesting responses to what I would describe as a crisis here in Tasmania with the National Foods suppliers is the fact that, even though consumers are protected from those rather dramatic increases or decreases in the price signal, there is some evidence that consumers have made strategic choices here in Tasmania—

Senator COLBECK—That is quite evident.

Dr McCall—about the product lines that they have purchased. There is some evidence—and I am sure other people have mentioned this—that National Foods have suffered a 25 per cent decrease in their sales since this dispute started. The attractive component of these threshold

prices that are important within the EU structure is that it sets a floor price. One of the arguments here is that it is a commodity: 'In 2007, the price was fabulous; in 2009, it is not so great. Dairy farmers should be able to ride on that train line.' In the European Union the dairy farmers do ride on the train line of high prices and low prices, but what they have is security around their cost of production the moment the price in the marketplace falls below that threshold. It is an extremely complex calculation made by an independent commission, not artificially constructed. It is very similar to the grants commission calculations. It is a complicated formula that derives what a threshold price would look like. And so they have the advantages of being supported by a threshold price which values what they contribute to the community and to the economy. If the price rises, they take advantage of that as well; when it falls, they are protected.

That consolidates the trends as to the consumer price. They do not have those large disparities around the pricing, so everyone in a sense benefits. My point about that is that it is the most central component of their food security policy framework. It is so critical. We criticise it here in Australia because we want to see a free and open global economy. Well, hello, that stopped about 18 months ago. No-one is waving the flag of a free-trade bonanza for the next five to 10 years. No economy is doing it. No political leaders are running around doing it. In fact, what happened in Europe—in Brussels and Luxembourg—in the last six months indicated that most member states who have significant agriculture production systems are actually calling for rollbacks of the liberalised processes. They are calling for adjustments to the dates for these rollbacks to occur. My point is that this is going to happen in 2015, so our producers are still faced with another five years of so-called protected European food status. Well, hello, in my view the policy needs to match the context of the time and not be ideological or dogmatic but be pragmatic—and the Europeans are pragmatic.

My final point in relation to that question is that the beauty of it politically is that it sends a signal to producers in the agricultural sector that we and their governments actually value what they do, so it is not just about a price signal and we actually put in place a threshold requirement that does two things: it brings stability to the sector and it provides food security into the future. That will become critically important not just because of the global economy but because of the environmental challenges and the population challenges. A whole range of real policy challenges need to be addressed, and they cannot be addressed by what we have got in place right now.

Senator COLBECK—One of the issues that have been discussed not just at a local level but at a more global level is the impact of the assistance packages that have been provided in various jurisdictions particularly in the EU and the US. They have exacerbated the time frame in which prices remained low. I think there was a 50 per cent reduction in the assistance provided in the EU in the last week or so and it has almost been met straight away with a corresponding lift in prices within the market. So obviously there is some correlation between the assistance that has been provided and the prices that are being achieved in the global marketplace. How do you align those two things given the evidence that you have just given to us?

Dr McCall—I think you might find that that price fluctuation might indeed change over the next six months as well. If you look at the actual commodity price for global milk you see it varies depending on what area you look at. In September, for example, the price for milk product at a commodity base in the Oceania region, which obviously includes us, increased by 22 per cent. None of that transferred into either the retail price or the price that is available for our suppliers. In the European Union it barely moved. In the United States it was less than five per

cent. So there are fluctuations all around. I am not trying to create circumstances whereby we can control supply and demand. What we need to do is protect the integrity of our full food system and our food suppliers by establishing threshold prices that are not anticompetitive but are grounded in good science and good market analysis so that the situation does not produce distortions but does prevent the rollercoaster ride that impacts not only on those communities but on consumers as well. I am not sure that was very helpful in relation to your question.

Senator COLBECK—I think I understand what you are trying to say.

Dr McCall—There are some things that you can control and there are some things that you do not want to control. You do not want to try and control supply and demand. You just want to manage the impact of supply and demand particularly in circumstances where the marketplace is not present to the degree that you might want to have it—and here is one of those cases.

Senator MILNE—Dr McCall, I want to go to the issue of what is essentially a price floor for, presumably, all primary products because you would not do it for just one or two and you would have to do it for all of them. Before lunch we had evidence from a witness who was suggesting that maybe you could put a levy on, in that case, dairy product but let us say in this case it is a levy on fresh primary industry products that is paid by consumers. That then allows us to establish a body—and in the case of the European Union it is a commission or whatever it is—that could oversee the payment of that levy according to the threshold price. That was a suggestion as to how to even it out. The second thing he suggested was that there should be some way of differentiating the global price compared with the domestic price, so you might have a two-tiered system of offering a price from a processor. If that processor had 50 per cent of the product going into the domestic market, that would trigger a certain payment. If 50 per cent were going into the export market, they might get paid according to the export price. Firstly, is my understanding of your proposition consistent with that notion of a levy? Secondly, is it reasonable to think about a two-tiered payment system?

Dr McCall—The short answer is yes. I cannot for the life of me understand why the Australian government in particular almost constantly insists that we need to reinvent the wheel about everything we do. I am advocating a food security policy framework which should be, in the first instance, based on the 25 years of operation of the European Union. We can pick the components that we think are pertinent to our circumstance. Their challenge is that they have got 27 member states. We have got fewer in our own federation. We need to pick out the policy framework and see what is applicable. Personally, I like the idea of separating domestic and export price indicators, as you outlined there. I think that is a reflection of the context in which suppliers find themselves. Regrettably, consumers here in Tasmania believe that National Foods export our milk into the global economy. In my view, there is no evidence that that occurs at any market value or aggregate volume level at all, so it is a fraud. We need to understand the extent to which that product is subject to global pricing and then we need to do as I suggested earlier. I went to the trouble of finding out what this global milk commodity pricing looks like, because everyone talks about it. But it is not a global milk commodity price. It is a localised regional price that obviously is largely driven not by international price demands but by regional price changes and supply and demand in the region.

For example, the price of the powdered product might skyrocket for a period of six months, driven by demand in, say, South-East Asia, and then drop off. Because I am very interested, I am

still trying to build the details of the mechanisms that are in place. My response is that the mechanisms are there. Whether they suit our context is what we need to determine, and I think that requires a comprehensive study.

Senator MILNE—That is what we are trying to do—to work out what we can do. When I have put some of this to the government, their response has been: ‘We are the purists in the free market and we don’t want to do anything that sets a bad example in the WTO context, given that everybody else in the world does the wrong thing.’ I do not think there is any recognition we are the only ones who are supposedly doing the right thing. So anything we come up with will have to be within the WTO guidelines or else it will not get a hearing, just because of the current ideological framework. The flexible intervention regulation, the floor price, is obviously within the WTO guidelines, but what about the European payments that have been made recently? Our minister would argue they are contrary to WTO guidelines. In fact, when I have put it to the minister’s advisors and asked for assistance and so on, they have said to me, ‘That would be contrary to the WTO guidelines.’ That is the context.

Dr McCall—That is absolutely correct, Senator.

Senator MILNE—Is anybody taking that up with the European Union or are they getting away with it?

Dr McCall—The European Union, under the WTO regulations, has an opportunity, almost at whatever point it wants, to seek an exemption. These two instances here, the €280 million distribution and the €15,000 emergency relief, were activated by the EU using its—

Senator MILNE—Exemptions.

Dr McCall—capacity to seek an exemption from WTO regulations.

Senator MILNE—So, in theory, Australia could also seek an exemption if they chose to—

Dr McCall—Yes.

Senator MILNE—but I do not think they will.

Senator O’BRIEN—Emergency assistance.

Dr McCall—Yes; thank you. There needs to be a trigger.

Senator O’BRIEN—The concept, whilst it has some appeal, has some obvious issues. Let’s take milk production. We are not a subsistence milk producer; we are a substantial exporter in terms of the volume of production, and Tasmania—probably not as much as Victoria but more than other states—falls into that category. In another inquiry, for example, Fonterra produced a graph showing fluctuations in various commodities—powder, butter, cheese et cetera—and a fluctuating market price. If we are to give a guaranteed price, do we also limit those who can enter the market at that price—in other words, do we have quotas? The Europeans do not have quotas and they subsidise exports. They have got to the point that they are at in part because of overproduction over a period of time and because of a recent expansion of the European Union

into states that are more agriculturally based than the original members of the union. If you throw in all those factors, it is a very complex set of circumstances that the EU finds itself in.

What I am trying to understand is, if we were to try to replicate it here, how we would not set up a signal that it was safe for anyone to invest in a market and then end up having to subsidise a massive amount of production. Fonterra at the moment is substantially an exporter—I know their home is New Zealand, but their Australian production is substantially not for our market—what do we do about their position in the world market if we say to them, ‘You’ve got to pay 10c a litre or \$1 a kilo of butterfat higher than the world market for the product you buy here’? How would we deal with those imbalances that we would create in a market which at the moment is saying to dairy producers: ‘It’s not worth your while being here because not only are you not going to make money but you are going to lose money. You’re producing too much; get out of the market’?

Dr McCall—The first thing is that the market place does not make adjustments, as we have seen even in the dairy industry over the last five to six years. My understanding of what happens in the European Union is that one of the reasons they are able to continue these threshold price levels through to 2015 under the current WTO regulatory framework is that the threshold price is transparent. Therefore, they allow imports into the member states below the threshold price. So they are not obstructing trade liberalisation under that framework; they are regulating it to meet their domestic policy frameworks. I think every nation state at some time is going to have to find a policy framework which provides them with the foundation for their food security and it will be a jumbled mess, especially for Australia because, as senators have observed and as policy analysts have observed, we have led the free trade aspirations globally. I think we should take some pride in what we have done in providing opportunities for those countries attached to the Cairns group which do not have the grant that we have had, nor the resources. However, things are changing quite dramatically and we need to make sure that we do not continue to be free trade lemmings because there is no indication that we are going to get support benefit from it in the long term and there is little indication that the market place, at a global level, will provide the support that our agricultural producers required to maintain the living standards and support for their communities which we have managed since the Second World War.

Circumstances could and will be dramatically different and we need to be flexible. I am sorry, Senator, but I do not have the answer to that really terrific question of yours, but someone in the bureaucracy in Canberra, or an academic on a research project, needs to start looking at that detail so that the next time we meet we can provide some discussion points for that. All those complicated, contested areas need to be drawn out. My point again though is: let us not reinvent it. Let us go to existing frameworks. The World Trade Organisation allows the European Union, with all its faults and foibles, to conduct trade policy and commodity price exporting and importing under these policy frameworks. They do that because they recognise that the foundation for that policy framework is around food security and we need to be able to argue the case in a similar way. But as you say, the with complexity of what that looks like and what the design looks like and the consequences of doing it, a risk assessment needs to be done. Why can we not do it? My ideas need to be confronted, just as do the bureaucrats in Canberra who insist that this is the only way forward. If it is the only way forward, why is not everyone else adopting our stance at a public policy level? This is laughable in the United States of America. This is laughable in Idaho, in Iowa and in those midwest states. Politically it is impossible. From a policy perspective it is not going to happen. Where are these other lemmings? They have

disappeared. They are all retreating into their burrows as we confront the next 10 to 15 years. So now is the time to start thinking about what our policy response will be when everyone has retreated to the burrows.

Senator O'BRIEN—There is not much doubt that the multilateral round was well and truly stalled even during the good times before the global financial crisis. So I am not sure we will come up with the solution that you are suggesting in the short term. But looking at some measures that are available to government and have parallels, should we be looking at market concentration issues and developing laws which, for example, allow a regulator to require divestment in markets to encourage competition? Whether it be on the basis of unconscionable conduct or whether it be on the basis of the desirability to have a more competitive market, should that policy be embarked upon?

Dr McCall—This might sound a bit contradictory to the stance I have taken. I do not want to see that actually happen. What I do not want us to do is pretend that we have got a competitive environment when those concentrations are taking place. It may be that at a policy level we need to dismantle the concentration of retail power or processing power in a particular marketplace. My essential argument is that the reason we do not do anything about it is that in a sense we are blind to the fact that this is not a competitive environment. We persist with believing that competition exists when in fact it does not exist. As I have said in my submission, there are seven constituent components of a competitive marketplace that need to be in place before it can be constituted as a competitive marketplace. If we have got market power there might be reasons why we want to dissolve it, but what we cannot proclaim is that it is a competitive arrangement—because it is simply not. To me that is the most important component.

I am not sure whether bringing in some sort of artificial regulatory framework that says Fonterra cannot control 80 per cent of the milk supply in Tasmania is the way to go, because it sends entirely inappropriate messages. However, the proclamation that this is a competitive framework is counterintuitive. That is, I think, the worst outcome because it does not benefit investors, it does not benefit suppliers and ultimately it leaves consumers in a fog because they do not have the information that a competitive environment would have available for them.

Senator O'BRIEN—But I think we have come to the realisation that, this being the only state where milk production has grown over the last four or five years in a circumstance where the ownership of processing capacity has been more and more concentrated in the same period, it has become a processing buyer's market. Having listened to the evidence that we had today and noting the suggestion in correspondence which has been produced before us from National Foods to those it is seeking to contract—that perhaps if they are not contracted by the end of the month National Foods might go elsewhere for its milk—it is an offer of financial calamity or an unacceptable contract—take your pick. That might be unconscionable conduct. What is the solution to it?

Dr McCall—I think the other observation that we need to make—and, again, I do not have the empirical evidence but I suggest it would be there if we went to find it—is that when the dairy industry in Tasmania did restructure, when the ownership concentrations in the processing sector occurred, there were quite significant aggregated enlargements of property holdings and investment. In fact, one followed the other.

We saw what happened when Fonterra become the player here in Tasmania and the subsequent investment by the same company, essentially, in the Circular Head area and the recognition by suppliers in the region that they had to get bigger or get out. Even in Tasmania there is a capacity for the marketplace to make the appropriate adjustments. I do not think there are any simple answers to the complexities. Politically, how do we feel comfortable with that sort of threat made by such a company operating here in Tasmania?

Senator O'BRIEN—I do not think anyone feels comfortable about it.

Dr McCall—To know.

Senator O'BRIEN—If we read the words to mean what they seem to mean, it is very discomfoting

Dr McCall—Yes, it is very discomfoting. I have kept in very close contact with these suppliers. Most of the relationships they have had with National Foods have been very poor in terms of the way they have conducted themselves. As I have said time and time again, when these suppliers shake someone's hand, it is a question of trust. They cannot have that undermined to the extent that it has been over the course of the last six months. Every step along the line has been either demonstrable undermining or clandestine undermining.

Senator O'BRIEN—I suppose there will be a lot of farmers in the dairy industry who will be scratching their heads and wondering why they acquiesced to the disappearance of the cooperatives in this state. That is the reality at the moment and that has seen a different sort of marketing to which they sell their milk.

Dr McCall—My personal interest in research is around collaborative business models. This is one of the reasons I am interested in their fate. Having spent a lot of time with vegetable growers and milk suppliers in Tasmania since 2005 particularly, I know that no-one has any time for cooperatives because they have seen them collapse and they have seen them being poorly managed. My proposition to them has always been that cooperatives work like any other business—if they do not have a proper business model they will fall over. Again, it is the Europeans, the Canadians and the US based cooperatives which have shown how good business models can produce value adding because of the obvious advantages that collaborative business models have for the value adding of the operation. It allows individual milk suppliers to continue to do what they have done. It does not mean they lose their property. It does not necessarily mean they choose to share resources et cetera. What it does do is give them better bargaining power. The really significant evidence in the United States is that it does allow them to manage the supply cycle a little better than they might have under different circumstances. Again, a lot of that management is not about profit; it is about sustainability. They recognise that prices fluctuate for a whole range of reasons which might be ecological, marketplace or the like. If they can manage the supply, they can secure some viability and sustainability around their production and they do that through collaborative business models.

Senator O'BRIEN—And shave the top of the curve and put it into the bottom.

Dr McCall—Yes, exactly, and save it and invest it for a rainy day. Some of these organisations are just fabulous. They are fabulous because they make the investment at the top level in the quality people they need to manage it and they do it very successfully.

CHAIR—You talk about the Tasmanian milk supplies to National Foods and the ACCC policeman to get on a bike. Section 51AA deals with unconscionable conduct. Has anyone raised this situation in Tasmania with the ACCC or has the ACCC shown any interest in what is happening here?

Dr McCall—I cannot speak to that—I can say that National Foods and Dairy Farmers have taken advice on how they might pursue this claim and in the course of the next few weeks they might pursue it. I can say this because I supplied some of this advice indirectly. What inevitably happens when a legal action around unconscionable conduct is taken is that the poor dairy farmers find themselves in the courtroom, with a QC opposite with lots of money behind him or her, and the first thing that happens is a delay in proceedings, and the whole thing is strung out. I talk from indirect experience from a practitioner in New South Wales.

CHAIR—I know what you are saying.

Dr McCall—So the costs rise, to the point where one of two things happens: (1) the obvious, which is that they withdraw the action, or (2) they lose anyway, largely on the basis of the representation, the experience of the legal team put in place by the supplier or whoever. So it is not a fruitful excursion, either for those operating under the Trade Practices Act or for the ACCC, to pursue, on the basis of outcomes. It just does not work. We might need to revisit the framework of section 51 to see if it is easier to mount a case around that, but it is the process that deters more than the evidence that is available.

CHAIR—I understand what you are saying. That inequality of power occurs especially in insurance claims, where you have an individual taking on an insurance company that has immense wealth and is able to get the best QCs and so on. The individual, of course, is not able to compete. I would have thought the ACCC would have some obligation in a case of unconscionable conduct to provide some balance and protect the weaker party to some degree. But, from what you are saying, that does not seem to be a factor.

Dr McCall—It is not a factor unless the minister directs the ACCC to investigate or someone actually makes a complaint. As I understand it, that complaint can be dealt with at the local office of the ACCC here in Hobart, but, if the local office do not support the evidence provided within the complaint, they will not act any further. Once they decline to pursue, there is little option available for those who originally made the complaint. I am hoping—and perhaps I should be better informed about this—that the National Foods sellers group has taken advice on whether they should actually put a formal complaint in. I read in the media that they are getting some representation at the legal level over the next few days, so perhaps they are about to trigger a complaint or pursue legal action. But I do not think they have done so in the past.

CHAIR—That is usually how it works, isn't it—there is a complaint to the ACCC and, if the ACCC think it has merit, they take up the issue? I suppose that could happen in this situation because it seems quite clear that the purchasers are exploiting the producers. Would you agree with that?

Dr McCall—I think there is enough evidence in what I have seen to suggest that there is a foundation for a complaint. Whether it meets the stringent regulatory foundations of unconscionable action is really determined by the framework, but I find it quite disappointing in a sense, and this is where I go back to the UK equivalent of the ACCC. There should be some mechanism for an institution that is interested in competition, market power and regulatory behaviour to intervene directly outside of the requirement of a complaint or ministerial directive. The UK regulatory institution has the capacity to do both of those things. It acts entirely independent of government or the requirement for a complaint. It will investigate what might appear to be irregularities within the marketplace. As I said, people will say that it does not operate very often. Well, one, it does proportionately and, secondly, the UK market is a larger marketplace where a lot of those characteristics are present, as distinct from our rather small compressed marketplace here in Tasmania.

Senator MILNE—Following Senator O'Brien saying that we could get the ACCC to intervene and maybe increase the so-called competition in the marketplace by forcing the sell-off of parts of companies or whatever else, but that still would not take out of the equation collusion between those who are left in the market. Have you seen any evidence of collusion between Fonterra and National Foods about what the price will be?

Dr McCall—I have not, I am sorry, Senator. I am not that close. Others have mentioned it in passing, but I have not seen it.

Senator MILNE—We have taken evidence at the other inquiry as well. It just seems to me that National Foods is always aware of exactly what Fonterra is going to offer and sets the price accordingly and vice versa. It just seems to me that that could not, out of the ether, suddenly come down with prices which are that close. I wondered if you are aware of any collusion, but you are not.

Dr McCall—I am not aware of collusion, but I understood that National Foods had publicly declared that that is the way they determined—

Senator MILNE—That is what they say, but I am just interested in how Fonterra arrives at the price. I would be very interested to know what discussions actually go on between these two companies. You were mentioning food security and this is a matter which interests me. But the other point about the European context—it is not the same here—is that it is culture, where in virtually all over Europe there is such a pride in regional product—if not local product, at least regional—and people will not buy a cheese from somewhere else if they live in one part of France or somewhere else and so on. They have their appellation requirements, they have a very strong loyalty to the local product and so it is not so much about food security as it is national pride in maintaining the culture fabric of their society of which their local product forms a significant part. I would suggest we do not have anything like that kind of commitment to localisation, regionalisation, local product and the recognition of the role of the farmer. When you talk about food security, I would argue that in a lot of these places you do have over-supply, just because everybody furiously hangs on to everybody doing everything, which is why the European Union has had this reputation for a long time of basically sandbagging their producers. That is part of the equation which is beyond food security—it is a culture context and we do not have that. I am interested in how we either encourage it or create a framework that allows its development.

Dr McCall—I think the short answer to that is, again, in the historical context, we have been very fortunate not to have experienced the scarcity challenges that the Europeans have felt in two world wars. But, as you quite rightly point out, Senator, it is such an important element of the community fabric, and I think it also enhances competition—

Senator MILNE—Undoubtedly.

Dr McCall—and the value and the structure of the competition. I am always quite astounded that we congratulate ourselves for bringing the Aldis and the cheap retail wholesalers into Australia because it enhances competition, but we will never have a Waitrose here because we do not value the product to the extent that would allow a Waitrose to operate here successfully and commercially—we do not embrace the food culture and its value to the degree that they do. There are some really fine traditions around food in Tasmania; it is just that it is not valued. Our heroes are not our farmers, unfortunately. They should be, and they will be increasingly important into the future. It is regrettable, and the market is not going to solve that challenge.

CHAIR—Thank you very much, Dr McCall.

Dr McCall—Thanks very much for the opportunity.

Committee adjourned at 3.26 pm