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SELECT COMMITTEE ON AGRICULTURAL AND RELATED
INDUSTRIES

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**SENATE SELECT COMMITTEE ON
AGRICULTURAL AND RELATED INDUSTRIES**

Wednesday, 18 November 2009

Members: Senator Heffernan (*Chair*), Senator O'Brien (*Deputy Chair*), Senators Fisher, Milne, Nash and Sterle

Participating members: Senators Abetz, Adams, Back, Barnett, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Crossin, Eggleston, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Lundy, Ian Macdonald, McEwen, McGauran, McLucas, Marshall, Mason, Minchin, Moore, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Colbeck, Heffernan, Milne, Nash, O'Brien and Sterle, ,

Terms of reference for the inquiry:

To inquire into and report on:

Food production in Australia and the question of how to produce food that is:

- a. affordable to consumers;
- b. viable for production by farmers; and
- c. of sustainable impact on the environment

WITNESSES

EVANS, Mr Paul, Director, Government and Regulation, National Foods 1

**JEFFREY, Mr Murray, General Manager, Milk Procurement and Inbound Logistics, National
Foods 1**

O’MALLEY, Mr Conor, Group Executive, Corporate Services and Logistics, National Foods..... 1

Committee met at 4.05 pm**EVANS, Mr Paul, Director, Government and Regulation, National Foods****JEFFREY, Mr Murray, General Manager, Milk Procurement and Inbound Logistics, National Foods****O'MALLEY, Mr Conor, Group Executive, Corporate Services and Logistics, National Foods**

Evidence was taken via teleconference—

CHAIR (Senator Heffernan)—I declare open this public hearing of the Senate Select Committee on Agricultural and Related Industries. The committee is hearing evidence on the dairy industry within its current inquiry into food production in Australia. I welcome you all here today. This is a public hearing and a *Hansard* transcript of the proceedings is being made. Before the committee starts taking evidence, 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, of course, a contempt to give false or misleading evidence to a committee. The committee prefers all evidence to be given in public but under the Senate's resolutions witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to give evidence in camera. If a witness objects to answering a question, the witness should state the ground on which the 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, a witness may request that the answer be given in camera. Such a request may, of course, be made at any other time. I welcome representatives of Lion Nathan National Foods via teleconference.

Mr Evans—I was hoping to make a couple of opening remarks before we kick off with the questions. Because we are doing this by telephone, I was hoping to play a role in directing traffic to the two subject matter experts.

CHAIR—No worries.

Mr Evans—Thanks. Obviously we are always happy to help Senate processes. As we have briefly touched on, Lion Nathan is now formally merged with National Foods. For your own interest, the combined entity in Tasmania has over 600 employees.

CHAIR—I interrupt you for a second to let you know that the prominent Tasmanian senator Christine Milne has just walked into the room.

Mr Evans—That is excellent timing, because the second point I was going to make was to register some ongoing disappointment that some members of the committee continue to support campaigns that boycott our products. How that is supposed to help anyone under these difficult circumstances is completely lost on us. Thirdly, we would also like to acknowledge that the Senate economics committee is holding an inquiry into related matters at the moment. We will be conscious not to pre-empt the issues that may be raised in those forums.

Through contacting the committee secretariat, two issues were identified with us as being the subject matter that you wanted to go deeper on today. The first one was to update you on the status of negotiations and the second was to clean up any remaining issues that there may be around the letter that was sent from National Foods to New South Wales retail outlets midway through this year.

If we can take the first of those and give you an update on where we are with negotiations, in late October negotiations with the collective bargaining group failed. National Foods put an offer that amounted to 37.5c a litre over the year. That included base price plus incentives and the Tasmanian specific assistance package, and we will happy to provide you with more detail on those components. Included in the offer was a commitment to maintain our minimum pricing guarantee. What that means is that if Fonterra moves in response to commodity pricing then so will we. This offer is over 4c above the Fonterra seasonal ratio payment or, if you like, over 6c over the Fonterra listed spring price.

With that in mind, we think it is a very fair, given the circumstances, and we note that others do too. The Tasmanian Farmers and Graziers Association CEO referred to it as a fair price in the current market. The President of the Australian Dairy Farmers said, 'I encourage all dairy farmers to consider the National Foods offer.' We also note, with some sadness, the monsterring that these organisations and the individuals involved received for simply trying to inject some balance into the debate going on down there.

The offer is now being put to individual farmers. We are pleased with the response we have received so far. The deadline for that offer is at the end of this month, and can I send a very clear message to both the committee and anyone else who may be listening in that this is a genuine and hard deadline. There is no more money to be put on the table. To do so would jeopardise our commercial standing in the state, and we owe it to our other Tasmanian employees not to go any further. There is no white knight on the horizon. We believe the vast majority of farmers in question will be better off with it.

On the second issue that we alluded to—that is, the letter that was sent to National Foods retail outlets mid-year—having reread the transcripts and the documents involved, I think there was some confusion because of an assumption that a collapsing commodity price could immediately and seamlessly flow through to our contracted farm gate price, and that simply is not the case. In 2007-08 our costs increased by 72 per cent. Meanwhile, our price increased by only 17 per cent. The collapsing commodity price, which was the focus of much of the discussion last time, is somewhat irrelevant in all of that because the contracts in question are in place until 2010.

To summarise what we have put in a written response to the committee, which I hope you have all had a chance to read, the underlying commercial rationale is sound and justifiable. What we put in the letter is factually correct. Could we have communicated all of that better? Yes, maybe we could have, and we will work harder in the future to be clear with our retailers as best as possible. I hope that covers some of the areas you are interested in. We are obviously happy to take your questions.

CHAIR—Thank you very much. I will ask Senator Colbeck to kick off proceedings.

Senator COLBECK—Just going to the last point that you made, I do not believe there was any confusion in what was said, and I acknowledge that you have read the transcripts. The issue from my perspective was that everybody knew back as far as January that there was going to be a reduction in prices to farmers, and for National Foods to be claiming in July that record prices were being paid when negotiations had already commenced with some farmers to reduce prices is, I think, a bit stiff. It was quite obvious from the time that all of your competitors reduced prices that there was going to be a reduction in prices, so I want to clarify that, from my perspective, there was absolutely no misunderstanding of the circumstance. I understand that you have made your response. That will stand or fall as people want to interpret it and you have put your perspective on the table today. While it is accepted that the international commodity price fell significantly, how many price rises did National Foods have in that period 2007-08?

Mr O'Malley—I have not got the exact number of price rises that we put through in that period. We did put through more than two price rises in that period but I have not got the exact number. But we did put through price rises in that period when the costs of our raw materials were increasing.

Senator COLBECK—I accept that. If you could provide that to us on notice that might assist. So there was capacity and there were increases in prices during that period of time. What about the supermarket contracts with your major suppliers? Were there escalations as part of that arrangement?

Mr O'Malley—We have contracts with the major retailers that allow for rise and fall mechanisms, and during that period I do not believe that there were price increases put through.

CHAIR—May I ask a plainer question, if you would not mind, Senator Colbeck. When was the last time there was a fall in the prices in the supermarkets?

Mr O'Malley—A fall in the prices in the supermarkets?

CHAIR—You said in your letter that you have to put the prices up because of demand et cetera and then you take the price down. As we all know, it is tied to not disaggregating market milk from manufactured milk. Just say, for instance, the price fell for whatever period of time in one year by 50 per cent or thereabouts. What happened in the supermarkets at the same time?

Mr O'Malley—It is for the retailer to determine the price on shelf. It is really not for the processors to determine the price on shelf.

CHAIR—But you would no doubt keep an eye on that.

Mr Evans—From a market perspective we would always keep an eye on what the consumer is paying.

CHAIR—So in the period in which all this controversy has come about was there a reflected price cut in the supermarkets?

Mr Evans—In fairness, Senator, I think that is a question you should be putting to the retailers.

CHAIR—But you would monitor that, though?

Mr Evans—We would.

CHAIR—So you would know the answer.

Mr Evans—We may know components of the answer, but I think for fullness and fairness it is a question better put to the retailers.

Senator COLBECK—A more pertinent question for you guys is: did you receive a price cut during that period from the supermarkets? You have said that there are rise and fall provisions in the contract. I understand what that means. Did National Foods have to take a price cut during the period that we are talking about?

Mr O'Malley—My answer to that would be that it is commercial in confidence in terms of the actual price that we would be charging our retail customers.

Senator COLBECK—I do not want to know what your prices are. All I want to know is whether you have had to take a price reduction. I am not interested in the actual price. I understand commercial-in-confidence issues, and the detail of that is not specifically of interest to me as part of this. We are talking about application of rise and fall provisions. I do not even need to know what the formula is. I just want to know whether or not there has been a cut taken.

Mr Evans—We will take that on notice, but whether we choose to provide that information I cannot confirm at this stage.

CHAIR—We do not want to play ducks and drakes. It would be fair to say that we could assume there was not.

Mr Evans—I do not know whether that is fair to assume at all.

CHAIR—This is a great opportunity for National Foods under new management to rebadge itself and show a lot of goodwill to both the consumer and the producer. Sure, there are commercial considerations. Sure, it is a competitive market. Sure, for good consumer reasons milk is a lot cheaper than water in the supermarket. But surely to God you could be honest enough to say the answer is simply: we did not take a price cut. What is wrong with telling us that?

Mr O'Malley—We have different contracts with different retailers and we do not supply only one retailer.

CHAIR—I understand that. I understand that for contractual reasons you may have longer contracts with someone and they did not get a cut. Can we generalise it and ask: did anyone get a price cut? Did you have to take a price cut from anyone?

Mr Evans—We are not trying to be evasive here. I think the best way to progress this is to say we will take that question on notice and we will provide as much information as we can on it.

CHAIR—Okay. I guess it is complex. Since this hearing began, as the senators here would know, I have taken a bit of interest in what goes on in the supermarket. I have to say it is quite confusing to work out whether it is a 350 millilitre bottle of milk at 85c or a 350 millilitre bottle of milk at \$1.30 with different branding or the same price for a 650 millilitre bottle of milk. It is very difficult to follow what milk is worth in the supermarket. I will hand back to Senator Colbeck.

Mr Evans—We will respond and we will try and be as helpful as possible on that.

Senator COLBECK—Can I go back to the price offer that you have on the table. You said that you are offering 37.5c a litre over the year, all inclusive, which means it includes the \$1.1 million. It includes all of the other elements. Mr Evans, you said in your evidence—and I think I have written this down accurately: ‘If Fonterra moves in response to seasonal pricing then so will we.’ Is that correct?

Mr Evans—That is correct.

Mr Jeffrey—Just to clarify that: we have got a mechanism in our contract that encourages price movement if it gets to a certain percentage. The intention of our contract is that we have a minimum price guarantee which allows for movement. If Fonterra moves, depending on which price Fonterra is at, we will pay premiums in the second half of the year to match that. It really depends on where our price is at any given time whether we will rise with the Fonterra rise. Our current offer that we have got on the table is well and truly above the Fonterra last step-up of last week, by 3.74c, and it is also 6c above the Fonterra spring price.

Senator COLBECK—In other words, as you indicated to suppliers in your letter of 13 November, you are not going to offer that 1c step-up—or whatever it adds up to, 1.1c—because it is within the range of the premium that you are already offering over and above the cost. So effectively your offer decayed by that amount with the increase, or the step-up, that Fonterra offered last week.

Mr Jeffrey—That is correct. We basically put our offer on the table two weeks prior to the Fonterra offer. We believe that our price is well and truly ahead.

Senator COLBECK—So effectively you are not offering anything more than you offered at the beginning of the season in the new offer, because, if the Fonterra price moves enough, the only thing you are offering farmers is what you offered them at the beginning of the season. It has almost achieved that by the decay from the price offers in the last three or four weeks.

Mr Jeffrey—We realised there was an issue in Tasmania with pricing and, to help our farmers out in that area, we certainly moved forward step-ups to help them. As Fonterra prices move—or if and when they do—our mechanism will kick in as per the contract and we will honour those contracts as we always have.

Senator COLBECK—But you did not market it as bringing forward step-ups; you marketed it as a new price. Then you said to us at the beginning of this hearing: ‘If Fonterra moves in response to seasonal pricing then so will we.’ But really you are not doing that.

Mr Jeffrey—We will move in line with our contract.

Senator COLBECK—Yes, but that is not what you are telling the public. That is not what you are saying publicly through your press releases. This goes back to the nub of where this whole process started. You say one thing and yet you are doing something completely different. That is my entire issue with this whole process. From the first day I heard representatives of National Foods talking publicly about what they were going to do, and what I knew the reality to be was completely different. You have said in press releases that you will move if Fonterra moves, yet you said in a letter as late as 13 November—and you have confirmed it here today—that what you are effectively offering the farmers is no more than you offered them in their initial contracts. Given that the price of dried milk powder is now at \$3,300 a tonne and the market is strong, the reality is that you are not going to be paying anything more than what you were proposing to pay at the beginning of the season, except farmers will have to actually apply for some of that to get assistance as part of the \$1.1 million, which is included in your 37.5c a litre offer. So unless they actually make an application for the hardship, they could potentially be worse off.

Mr O'Malley—I understand where you are coming from, but I do not accept the analysis that says that we have not improved our price offer. When we sat down with the negotiating committee, we did put a revised price offer on the table, which as my colleague Murray has just said was brought forward in recognition of the hardship situation in Tasmania at the time. Also it was assuming that Fonterra would potentially step up but if they had not stepped up, if the price had not moved, then that offer was still on the table.

Senator COLBECK—Yes, but you know the market as well as Fonterra does. Again, as I said before, you did not market this as a bringing forward of step-ups. You offered this as a minimum price guarantee. I would submit to you—and I am glad that you acknowledge my perspective although you disagree, I acknowledge that—it really does look less than genuine when the supposed better offer is in fact not a better offer. You knew that the market was moving, you effectively knew at the time you were putting this supposedly better offer on the table that it was no different to what you would be paying out at the end of the day. That is where my difficulty lies with this whole process. You accused the farmers of walking out of the negotiations. You have since made other disparaging remarks in correspondence to others of your business partners about the farmers. Again, this committee has talked about repairing relationships, you have talked about repairing relationships and you do not appear in your actions to have been doing anything to achieve that.

Mr O'Malley—From a National Foods perspective we believe that we are working directly with our farmers to repair those relationships and are talking directly to our farmers in relation to that with extra employees in Tasmania talking directly to our farmers to move that forward.

Senator COLBECK—I understand that you have been talking directly to your farmers. I had the good fortune to sit down and have a conversation with some of them myself, not necessarily militant people I would have to say, but the letter that you sent out on 13 November I can tell you has not assisted you with some of the people whom you might have considered to be your friends. Can I ask you how many farmers have signed the contract since negotiations concluded? I do not need to know whom, I do not want to know whom and I understand your circumstances there. I would like to know how many signed the contract since negotiations concluded.

Mr O'Malley—As we said in a letter of 13 November, which obviously you have, we are not making that number public. We do not feel it is in the interests of our farmers to do so.

Senator COLBECK—Is it above zero?

Mr O'Malley—Some have already accepted our offer and that is what we have written in the letter.

Senator COLBECK—I am aware that some people had already signed but there are some who signed prior to 30 October, which is the critical date when negotiations concluded. What I am trying to clarify is whether you are counting those who had signed before in those who have signed. I am trying to differentiate and that is the critical issue.

Mr O'Malley—I am prepared to say that post the negotiations breaking down and going direct to farmers some have signed.

Senator COLBECK—So you have had some signatures and you are not prepared to tell us how many?

Mr O'Malley—That is correct.

Senator STERLE—Why not? I am showing frustration, gentlemen. You are industry leaders—captains of whatever you want to be. Why would you not tell us the number of farmers that have signed?

Mr Evans—We are not going to provide a daily running total.

Senator STERLE—We are not asking for a daily running sheet. You were asked a very simple question by Senator Colbeck: to identify how many. If you are going to put pieces of paper out there in public that say you are going to go direct to your farmers because the negotiations have collapsed, I think you owe it to this committee to be up front and at least identify the numbers. I do not think that is an unreasonable request from Senator Colbeck.

Mr Evans—We disagree, and we will not be providing that number.

Senator STERLE—Chair, I do not even know why we are wasting our time talking to these gentlemen if that is the way they want to play. No wonder negotiations failed down in Tasmania if that is the way this company operates!

Senator COLBECK—I ask you what is going to happen on 1 December.

Mr O'Malley—We are currently talking to our farmers, hoping that they will sign the offer that we have put on the table. It is not appropriate to speculate and say in public what potentially may or may not happen on 1 December.

Senator COLBECK—Is it correct that your implication to farmers has been that you will pick up their milk but that you will pay the excess price, which is a much reduced price, for the milk that you pick up?

Mr O'Malley—There are a range of options, and what you have just described is one of the options that would be open to us.

Senator COLBECK—So will you be picking the milk up on 1 December if farmers do not sign?

Mr O'Malley—We have said that we will be picking up the milk if farmers are not in a position to sign for their own reasons.

Senator MILNE—What is the oversupply price you will be paying?

Mr O'Malley—That has not been put in the public domain yet. We are still working on trying to ensure that we sign our farmers up through the current offer.

Senator COLBECK—So there is not a price in the contract that you are asking farmers to sign that describes the oversupply price?

Mr O'Malley—There are on the schedule two prices we have put to the farmers within the contract.

Senator COLBECK—So, if the farmers do not sign the contract and you pick up at the oversupply price, what you are saying is that you may not even pay the farmers the oversupply price that is in the schedule attached to the contract.

Mr Jeffrey—Our main focus is to get our farmers signed and over the line. We are still working through various options for what we do on 1 December, but our focus is purely on getting our farmers signed. We are hell-bent on making sure that we have long-term sustainable farms in that area, and that is what our company wants to support. We are really driving towards 30 November.

Senator COLBECK—I understand that that is what you would like to do, but we have already determined here today that you are actually not offering them anything. You are only offering them what was on offer at the beginning of the year.

Mr Evans—With respect, we have not determined that at all. We have agreed to disagree—I think that would be a better way of putting it.

Senator COLBECK—Okay, let us agree to disagree. But I think it is pretty clear from the evidence that you have provided here today that, with the projected prices in milk movement, effectively what you will be paying at the end of the year is what was going to be paid when this whole process started, so nobody has got anywhere, which in my mind is a complete and utter tragedy. For all the pain that has been caused to all of the parties involved in this process, we get nowhere out of it. Despite conversations that I have had with members of your organisation privately where they have said that you are looking to get a solution, and your public comments that you were looking to get a solution, I find it really hard to understand that that is what you are genuinely trying to do.

Mr Evans—In our mind, as I said in my opening comments, we believe the offer is fair and compelling. We have put that to individual farmers. We are pleased with the response we have received so far. We are where we are. Again, I think agreeing to disagree is where we are at. I do not think we have conceded any of the points you are trying to make.

Senator COLBECK—I would suggest that that is symptomatic of the whole process. Let us move on to the price. You have said that you do not believe that the 39-odd cent price is a real price. Do you have some figures that you can table to the committee that indicate on what basis you say that the price that you are looking to offer, which is somewhere around 34c, from recollection—

Mr Jeffrey—Just to clarify there, our price currently on the table at the moment is 36.8c plus the 0.7c, which is the \$1.1 million package.

Senator COLBECK—I just need to reiterate that that presupposes that there are no penalties applied to farmers for any of the circumstances that may, and in most likelihood have, occurred in the Tasmanian dairy industry this year. That is an absolute maximum price that a farmer could receive under the terms of the contract—without further step-ups, I understand. But, as things stand, that is the ceiling because, if they do not apply for assistance under the \$1.1 million program, they do not get the money, because you have an application process in place.

Mr Jeffrey—That is incorrect. I can work through how our pricing schedule works. We give a base price of 33c a litre. Our average volume for our farmers in Tasmania runs at 1.5 million litres. We believe our volume incentive is 0.3c. Our average quality in Tasmania currently runs at about a 190 somatic cell count, which is a band 2 quality; which get our farmers to another 1c a litre. The average components in Tasmania, over and above our schedule, are another 1.5c a litre. Our base is based on four per cent fat and 3.2 per cent protein, and our actual components that come into the factory average in Tasmania at 4.21 per cent and 3.33 per cent. We also pay a contract premium of 1c a litre. If you add all that up it works out to be 36.8c, plus the \$1.1 million package, which is what gets us to 37.5c a litre.

Senator COLBECK—But, as I have said, if the farmer does not apply for assistance under the \$1.1 million package then they do not get it. Correct?

Mr Jeffrey—No. From a quality point of view, if you have a band 1 quality in National Foods, which means your results are below 150, you can earn an extra 0.7c; also, on a volume charge, depending on the size of the farm, you can certainly get a lot more as well. We are quoting average figures only, not the maximum price.

Senator COLBECK—But I am talking about the \$1.1 million assistance package, which farmers have to apply for. That is correct, isn't it?

Mr Jeffrey—That is correct. That makes up 0.7c of the total.

Senator COLBECK—So, if they do not apply for it, they do not get it?

Mr Jeffrey—We encourage our farmers, as per my letter on the 13th, to certainly go down that track and put quotes in. We have given them until June next year to do so. We have encouraged that and we want our farmers to take up that commercial offer.

Senator COLBECK—Okay. Let us go back to the cost of production issue. You dispute the farmers' claim of 39c a litre. I am asking for you to table some documentation that justifies you in disputing that figure as opposed to, say, the figures from TR, which are actually independently audited. I am asking you to justify to the committee how you dispute the figure that the farmers have on the table.

Mr Jeffrey—As a business we have always consistently said that the price of the market sets the farm gate price, not the cost of production. We do not want to go down the road of the cost of production argument because people are in different circumstances all over Tasmania. It is an argument that none of us will win.

Senator COLBECK—But you have said in correspondence that you dispute the cost of production. There are letters that you have written that say that. So, if you are going to put it in writing that you dispute the cost of production, all I am asking is that you justify that. We are talking in averages as far as the price is concerned, anyway. All I am asking you to do is to justify what you are putting in the public domain.

Mr O'Malley—We as a processor would always be looking at various independent information to understand what the industry is saying is the cost of production and we are basing those statements on that information.

Senator COLBECK—Could you provide to the committee that information that you are basing those comments on? That is what I am asking for.

Mr Evans—I think they are publicly available, or at least able to be paid for. So I do not think we will have any issues with providing that information.

Senator COLBECK—So you can provide that information to the committee?

Mr Evans—Yes. We will get that back to you.

Senator MILNE—Can you just explain to me why you offered 44c in New South Wales and not in Tasmania in the most recent round of offers in New South Wales?

Mr Jeffrey—New South Wales pricing is under totally different market conditions to the Victoria, Tasmania, South Australia pricing. They are different markets and, due to that, there is different pricing in those markets.

CHAIR—Is that just code for there is more market milk and less manufactured milk?

Mr Jeffrey—Yes.

Senator MILNE—Previously you told us that the price was dependent on the international price and now you are telling us that it depends on different markets in different places.

Mr Jeffrey—There are many factors that go into a milk price. That is why it is such a complicated area. The southern prices are certainly run by the world commodity price, and the northern markets are a different market.

Senator MILNE—I thought you had a national supermarket contract.

Mr O'Malley—That is true, we do have—with Woolworths. But we also have many uses of milk within National Foods, one of which is selling our milk to Woolworths in the contract you describe.

CHAIR—What percentage of your milk would you sell to Woolies in that contract as described?

Mr O'Malley—I do not have those figures to hand. Again, from a commercial perspective, I am not sure it is in our interests to share that in this public forum.

Senator MILNE—We have a real difficulty here with the fact that you were able to offer 44c in New South Wales and a price below the cost of production in Tasmania. Earlier, I think in an interview, you said that the higher price in New South Wales is because there is competition in the market in New South Wales.

Mr Jeffrey—There are a range of factors that go into setting a farm gate price. We take them all in and make a call on where that price sits.

CHAIR—By the way, thank you very much for appearing today. It would be fair to say, would it not, that in Tasmania, for the people who are on 20-odd cents a litre, a proportion of that milk would actually end up in the supermarkets at between 85c and \$1.20 for 350 mls in some cases and up to \$3 a litre in other cases? That would absolutely be cost effective on a cost-benefit analysis to your organisation as compared to milk that you are paying 40-odd cents—

Senator MILNE—Forty-four cents in New South Wales.

CHAIR—in New South Wales, which ends up on the same supermarket shelves at the same price in New South Wales. Surely you are creaming a certain amount of extra profit out of Tasmanian farmers because you do not disaggregate market from manufacture?

Mr O'Malley—When we were working through our negotiations with the collective bargaining group we talked openly about this. We talked about the breakdown of milk and the percentages that go directly into drinking milk. The collective bargaining group came to a price based on, as my colleague Murray has said, many factors, one of which is the percentage of milk that goes into drinking milk. But there are other uses, as I said, both within Tasmania and across the whole of National Foods' demand—milk goes into various other uses.

CHAIR—I appreciate that, but it is the lowest common denominator for the producer. You are at liberty to break it up however you like for the on costs and the retail end of it. I tend to go and look at these things. I spent a bit of time in Aldi, Woolies and Coles the other day. Besides the fact that the price of bananas varied from \$2.99 a kilo to \$10 a kilo, I noticed that there was a huge array of milk. There was a little 350-millilitre bottle of milk, which is what you get in a

motel—if they have got any brains, they do not give you any more than that. Some of it was a home brand and it was 80c and some of it was a market brand and it was \$1.20 or \$1.40. There was a 650-millilitre bottle that was \$1.42 and a 650-millilitre bottle that was \$2.20 or \$2.40. There was a one-litre bottle that was \$3 or \$3.50 and a one-litre bottle that was \$2.40. What does all this mean? If I got a series of cartons and wrote the price on them, would you be able to explain to me why the price varies so much from one bit of milk to another? I could offer to come down there and walk you through a supermarket to show you what I am talking about.

Mr O'Malley—As my colleague Paul Evans said earlier on, it is the retailers who set the price of milk on the supermarket shelf. It is entirely up to them what they decide to put in front of the consumer as part of their overall consumer offer.

CHAIR—But if they are selling milk for the equivalent of \$3.60 a litre can you understand why the dairy farmer in Tasmania who would not sign up to a contract at 20.8c a litre might feel a bit peeved?

Mr O'Malley—As a consumer, I understand fully that it is a very complicated marketplace and the retailers will set their own pricing as they see fit for their business.

CHAIR—But at the same time you offer the lowest common denominator, in the case of Tasmania, based on what some Chinese dairy out the back of Beijing is getting for powdered milk. Could you give the committee a feel for what has happened since the global financial crisis has turned around a little and since the US and the Europeans introduced a subsidy on manufactured milk? How has the international price of milk turned around and have the subsidies been dropped? In the meantime, is that being reflected in the market here?

Mr O'Malley—I think at a macro level it is fair to say—and we would look at it as you obviously do as well—that the prices indicated in their marketplace do seem to be heading upwards. But, as we are all aware, with the strength of the Australian dollar there is always an offsetting factor in that. On the one hand the price for those potential commodities, be they skim milk powder or cheese, might be improving. But, from an export perspective—and I am sure the cooperatives would be saying the same thing as processors such as us—the strong Australian dollar is having an offsetting effect.

CHAIR—You have generously given a figure on the proportion of milk that you sell in the market there. Once again, I thank you for your evidence and for your second appearance. A lot of people do not have the guts to show up, so at least you have shown a bit of intestinal fortitude by being here. You are to be congratulated for that. It shows a bit of Australianism. But what proportion of your milk in Tasmania is market milk?

Mr Jeffrey—From regional quotes, 90 per cent of the milk in Tasmania is actually sold outside of Tasmania.

Senator COLBECK—Yes, but let us talk about your supply, not the overall supply.

CHAIR—Is it commercial in confidence to tell us how much you sell locally and how much you export, and where that you export it to Timbuktu or just to the mainland?

Mr O'Malley—We have not divulged those figures publicly. Having said that, in the conversations we have with the collective bargaining group in private negotiations we have shared that information. But from a public perspective I think that would be commercial-in-confidence. But to say that we have not—and I am not suggesting you are saying this—shared it, we have shared it in the context of our negotiations.

CHAIR—I appreciate that and I am eternally grateful. But just to have a rough guess, would 20 or 30 per cent of what you buy somehow find its way into the local market, or 10 per cent? We do not want to know the precise figure. Be a devil, go on, tell us!

Mr O'Malley—I am just looking at the notes to confirm in relation to our letter to you. We have actually said that of the 145 million litres of milk around 30 per cent would be processed for liquid drinking milk market.

CHAIR—Thank you very much for that. So for 30 per cent of the milk, based on a price which is the manufacturing price globally, for the 30 per cent of the milk that you get at the global manufacturing price there would be an extraordinary profit, I take it, in that part of the milk that arrives at the supermarket, compared to processing and sending it off to compete against a subsidised European product.

Mr Jeffrey—We do pay a premium over the top of the commodity price as per our contract.

Senator COLBECK—But that is only up to a certain volume, isn't it? If farmers supply over volume, you pay at a lower price, which we have already discussed.

Mr Jeffrey—That is correct. That oversupply goes into a commodity product.

CHAIR—It is not disaggregated, it is just a way of averaging down your costs. That is fair enough. You are in it to get a quid and if you do not get a quid the bloke overseas sacks you and you are looking for a job. I suppose that is fair enough.

Senator MILNE—I come back to the price you are offering on top of the 33c, the 3.8c. Am I correct in thinking that that is not an automatic price that you pay; in fact, in order to get that it is under the terms of your model farm agreement?

Mr Jeffrey—The 33 base is under the terms of the model farm agreement, correct. The other incentives that we pay are on volume, quality, average components and contract premium. The contract premium is a given. The average components are what we pay in Tasmania but there will be some farmers that have lower protein and fat that will not get that. But on average it is 4.21 and 3.33. There are some farmers that get well above that as well. Quality, band 2, we quoted on band 2. We have got a percentage of our farmers on band 1 quality that can get an extra 0.7c as well. And there is obviously our volume charge. Every farm is different, so when we have actually gone out with individual contract offers to our farmers we have given them an individualised view of what our pricing means for their farm, to try and be as fair as possible, because it is complicated.

Senator MILNE—Yes, except that the way that you have presented this to the public in terms of what you are prepared to pay implies that the price is going to be that they going to get this

3.8c on top of the 33c and that that makes up the price you are offering. What we are hearing is that it is going to be extremely variable. I wanted to come back to the model farm part of it and I wanted to talk about your contracts to see whether the contracts which you are currently offering contain the provisions that National Foods can make unilateral changes to the terms of the contract regardless of the consent of the producer. Is that still in there?

Mr Jeffrey—We would have to take that on notice. What I will say is that as part of our CBG negotiations we went through and made all the requested changes through that negotiation and we have provided that to the committee.

Senator MILNE—But I am asking if you can confirm to me whether that is in the contract that you are currently touting around individual farmers to sign, and the other provisions in that, the requirement to supply the minimum quantities of milk per month and the penalties imposed if the requirement is not met and the lack of indemnity by National Foods in relation to any loss or damage they may suffer resulting from National Foods' breach of the agreement or National Foods' negligence. I want to know if those provisions are in the contracts that you are currently touting to individual farmers to sign.

Mr Jeffrey—I will have to take all of those on notice. All the issues raised to us by the CBG we worked through with the CBG and agreed on in principle, and we made contract changes, with a new contract to be offered to our farmers.

Senator MILNE—I would have thought you would be able to tell me whether or not that is in there, but in the interests of time I will continue. You said in your opening remarks that people had been 'monstered'—that is the word you used. I would just like to know: who are you suggesting is doing the monsterring and who is being monstered?

Mr Evans—In fairness, I think you already know the answer to that.

Senator STERLE—I do not. I would not have a clue what you are talking about.

Mr Evans—I will let you know. I think even a cursory review of the media reporting on the CEO of the Farmers and Graziers Association's public comment and the subsequent response received from farmers groups would indicate a level of, in my terms, monsterring, and would justify me saying that in my opening comments.

Senator MILNE—I do not quite follow that. The issue here as I understood it was that the Farmers and Graziers Association made statements that did not represent the views of several of their members. That is not the same thing as individuals monsterring other individuals, as you imply. It was an internal dispute within the TFGA and its members. Isn't that correct?

Mr Evans—There was that and, in our understanding, there was a lot more as well. It is a view of ours. We believe that they were monstered. You do not agree. I am not going to argue the point with you about—

Senator MILNE—Well, you are making allegations about what went on and I understand you have also said that there was unfair treatment by an activist minority within the collective

bargaining group. These are allegations you are making publicly and I think you had better be able to substantiate them.

Mr Evans—I believe that we can. As I said, we can send you a range of press clippings which will justify us holding that view. I am not asking you to share that view but I think there is enough even just on the public record for us to fairly hold that view. We would be more than happy to send through those clippings.

Senator MILNE—Okay. We will appreciate receiving the evidence of the monsterring to which you are referring.

Senator COLBECK—I would just like to continue on that. Mr Evans, you have represented the views of the TFGA with respect to their press release of the Friday that they came out suggesting farmers should consider your offer. You have not, though, reflected subsequent statements by the TFGA, when they came out alongside the dairy farmers after they had a fairly significant meeting, which indicated that both parties were working together to get a fair price for farmers. You are to a certain extent representing a superseded view. I acknowledge that they made the statements on that Friday. I cannot recall the exact date. I acknowledge they made those statements. But the farmers and the TFGA have since come together and in concert said that they will work together to achieve a fair price for dairy farmers. So you are, in characterising what occurred, representing a superseded position.

Mr Evans—Just to go over my opening comments, Senator, you will recall that I attributed the comments to the CEO of Tasmanian Farmers and Graziers Association and then went on to suggest that they were trying to inject some balance. So in my view I represented their position fairly—that they are seeking to bring balance to the discussion going on down in Tasmania—and I have simply taken a direct quote from the CEO of the Farmers and Graziers Association. I think that is fair in the context of these Senate proceedings.

Senator COLBECK—Yes. The only point that I am making is that that quote and that occurrence has since been superseded by subsequent events. I just wanted to put that on the record from my perspective for what I see as what has occurred since that date. When I had a meeting with—

Mr Evans—Senator, can I just point out that, further to that, to our understanding the farmers and graziers are still saying that it is a fair price, and that is the critical issue here. As I said, in our understanding—I am happy to be corrected on this—they have not retracted that statement.

Senator COLBECK—I think that you need to be a little cautious in your interpretation of what is going on down there. I have had extensive conversations with both parties, both before and after the meeting where they reconciled their positions. I understand the comments that you are making, and you are correct in that the initial statement has not been detracted. But I reiterate, having had extensive conversations with both parties on the day of their meeting and subsequent to that, I think it is a little bit offline to suggest that what you are suggesting is still the case. Parties can deal with that as they see fit.

Mr Evans—Can we agree that views down there are mixed, at least? There is not a consensus on whether or not it is fair—can we agree on that?

Senator COLBECK—No, I do not think we can agree that it is a fair price. In fact, given the evidence that you have given us today, and my perspective that we have effectively moved nowhere, I am not sure that you could say that at all. We might have to agree to disagree again. I think Senator Milne might have something to say.

Senator MILNE—Yes. I just wanted to follow up on that. I wanted to know whether, subsequent to the reconciliation of the TFGA and the collective bargaining group, the TFGA have given you to understand that they still believe your offer is a fair price. Are they still saying that?

Mr O'Malley—To the best of our understanding, the TFGA is still of the view that it is a fair price.

Senator COLBECK—But have they stated that?

Senator MILNE—Have they stated that to you at all, Mr O'Malley? Have you had a meeting with them, spoken to them or had any discussions with them subsequent to that agreement between the collective bargaining group and the TFGA that would give you to understand that the TFGA continues to share the view that what you are offering is a fair price?

Mr O'Malley—The TFGA have not retracted that price. We talked to the TFGA—

Senator COLBECK—That is not the question.

Senator MILNE—I asked you specifically, Mr O'Malley: have you had any talks to them subsequent to that reconciliation?

Mr O'Malley—We do talk to the TFGA, as we talk to other farming bodies in Australia, and we seek to continue to work with all industry parties to move forward the situation in Tasmania, as we would in any other part of the country. It is certainly still our understanding that the TFGA believe it to be a fair price.

Senator MILNE—Then I think, Mr O'Malley, you are misrepresenting them, or else they are misrepresenting themselves to their members.

Mr O'Malley—I cannot comment on that.

Senator COLBECK—Mr Jeffrey, at a previous meeting you provided me with a document that provided the supply curve for milk in Tasmania. I know you cannot give it to us now, but I am asking if you can give to us on notice your supply curve. You have said to us that you buy 145 million litres. That is in your submission to us. You said 30 per cent of that goes into the processed drinking milk market in Tasmania, with the rest being manufactured into products such as cheese, butter and milk powder, but I am interested in getting some information on your supply curve. I understand the Tasmanian supply curve because you have provided that to me, but we are really looking at your circumstance—not necessarily the state circumstance. Is it possible for you to provide us with that information.

Mr Jeffrey—Absolutely. We will provide that information. Our supply is relatively flat, as per our model. Fifty-two per cent of our milk comes in the first half, from July through to December, and 48 per cent comes in the second half, from January through to June.

Senator COLBECK—That is important information in the context of this inquiry. Just going back to the other products, Senator Milne was asking, or it might have been Senator Heffernan, about the product that stayed in Tasmania. As I said, your submission says that 30 per cent goes into drinking milk. Can you give us a sense of the other products, the cheese and butter, that stay in Tasmania? Milk powder may not.

Mr Jeffrey—The majority of our factories in that region make cheese, so what is not in milk goes into our regional cheese plants.

Senator COLBECK—I understand that, but I am looking to get a sense of what stays in Tasmania.

Mr Jeffrey—I would have to take that on notice.

Senator COLBECK—That is fine. I am happy with that. Would you characterise the collective bargaining group and those involved in the campaign to receive better prices as having the sole purpose of trying to damage the National Foods brand? Would you characterise that as being their sole purpose?

Mr O'Malley—I would say that the collective bargaining group were acting in negotiations of behalf of their farmers, as all collective bargainers would do, to get the best price for their farmers. Having said that, there are activities that they have sought to use from a press perspective that have damaged or sought to damage our brands in the marketplace as well. But was their sole purpose to damage National Foods brands? No, I do not believe it was.

Senator COLBECK—It is important to have that on the record given a letter of yours of 13 November that the campaign mounted by that group of individuals has been damaging. It says, 'I am sorry that your businesses have been affected too. I can understand that. But I cannot imagine how they might convince anyone to join a campaign designed to damage our brand and drive down sales.' I just put that on the record again.

Mr O'Malley—That was referring to the campaign as opposed to the negotiations initially for price. There is a difference.

Senator COLBECK—I accept your evidence in respect of that. Thank you for your clarification. Just for the record, I might just table that letter and the letter I was referring to of 13 November to farmers say that that is on the public record.

CHAIR—Thank you. While you are gathering your papers, I am a farmer so I do take an interest in what happens and why people continue to farm, and this committee is interested in how the hell we are going to keep farmers viable, especially against consolidated retailing. Are you able to give us a snapshot? The price of your milk to farmers we heard in Tasmania for people who would not sign a contract, and I have forgotten the details, was at of bottom of about

20.8 or something like that. But it is easy working with 25c or 26c. When you are paying the farmer 25c or 26c, what are you charging Woolies and Coles?

Mr O'Malley—That is commercial-in-confidence. It is the price that we negotiate through a variety of different contracts with our customers.

CHAIR—You could understand, couldn't you, why a lot of people think that with the monopoly there is cartel-like behaviour of processing. It is no different to wine, don't feel badly about it, it happens in other places, and in the fertiliser market it most definitely happens. People get pretty pissed off. I mean, it is patently obvious—we will try and get from Woolies and Coles what all that means on the supermarket shelf. But it would be very helpful for your PR if you had justifiable margins and not some grossly over-the-top margins—I daresay you have not got grossly over-the-top margins—and to explain to farmers like this dumb one who is talking to you now just exactly what happens to the milk price after it leaves the farm in the morning. Surely, if you were the farmer, and you were me, you would be curious to know what sort of a margin is involved.

I have no idea what you charge Woolies and Coles and whoever else it is. We are aware of the letter you sent out in, I think, July where you said to someone you supply, 'Sorry old mate, we are going to have to put the price up because there is pressure in the market—there are rising costs and all the rest of it.' At the same time, you were negotiating to knock the farm price down.

Is there no way that you can give an explanation or a graph or an indication of why, with the price at which 30 per cent of your milk down there is marketed, you are happy to pay the reflection of the global market—including the effect of the subsidies that we cannot afford in this nation because there are not enough of us—so that we know that you are absolutely not ripping farmers off? Wouldn't it be good for your image if you were able to say, 'We can only pay you 36c or 38c and in New South Wales up to 51c for these reasons'? They tell me, by the way, that on the North Coast that they are going to 56c shortly.

God love us—you get on Virgin airlines and 350 millilitres of water costs you \$2.50. You can take the bottle home and fill it up 3,400 times out of the tap for the \$2.50 you pay for the bottle of water on the plane. There is that sort of stuff. One of the great curiosities, of course, is that people will pay \$2.50 for 350 millilitres of water but would not even think of paying that if it were milk. Wouldn't it be in everyone's interest if we could have more transparency in the tram line from the farm gate to the supermarket shelf?

Mr Evans—Senator, there was a lot in your comments. Before we go on to answer that question, I point out that we were under the impression from the secretariat that this session would go for approximately an hour. For our own planning purposes, could you give us some idea of—

CHAIR—No worries. We will not be long, which means you can probably scramble out of this!

Mr Evans—No—

CHAIR—You are not bunch of sooks are you? You are not sooking on us, are you?

Mr Evans—No. I refer you to your rough comments earlier about our Australianness and our willingness to front up.

Mr O'Malley—As somebody who has been in this country for three years, I thank you for those comments, Senator.

CHAIR—No worries, mate.

Mr Evans—The first point I will make in response, and I think Conor will give a more detailed response, is that I think you can all recognise the unfairness of the competitive position you would put us in by having us declare our margins with retailers, our own costs of production and so forth.

CHAIR—It would be fair to say that we really do not want to know the nitty-gritty, but it would be—

Mr O'Malley—I will give the response from National Foods. We submitted last time that we were here that the returns National Foods had made were insufficient for a business of our size with the cost impost that the business had had over the previous couple of years. As that letter showed and as my colleague Paul says, perhaps it would have been better to try to recover those costs in the marketplace. The other point I would make, and this was made earlier on, is that from the supply side it is a very complex marketplace that drives the price that we will pay our suppliers for milk.

CHAIR—But my point, and the point of this committee of inquiry, is that given the global food task, which is going to double in the next 40 years, there is something fundamentally wrong in the marketplace when you have to force from the farmer a product at less than the cost of production to be able to be competitive at the retail end. There is something skew-whiff, as it were. It might be the value of shares in Coles and Woolies, for all I know. But you would agree that it is a very peculiar arrangement where you are having to say to farmers, 'We really can't afford to pay you the cost of production because'—for whatever reason, which is commercial-in-confidence, as you say—'we can't get a return on milk we take from your farm at the cost of production.' That says to me there is something fundamentally wrong with, shall I say, the home budget on food, in that maybe we have got to put more into the food than into the car and the three TVs and all rest of it.

Mr Evans—These are massive industry-wide, and potentially global, issues you are talking about. We wish you and the economics committee well in your endeavours in sorting all of that out. But I think the expectation that somehow our company, National Foods, are going to be the deal breaker in all of that is quite unreasonable. I am not saying that that is your expectation, but it feels like the occasion.

CHAIR—Yes.

Senator COLBECK—I must admit we have been trying to get a sense of that information, but we do understand your reticence in providing it and the issues that it would cause for you, so thanks for your attempts. I just want to make one final comment in respect of today and the public events, and that is about the way that I perceive one element of what has happened. The

company has been very happy to talk about averages when it talks about what it pays, with the 37.5c offer, but it appears that it is very reticent to talk about averages when it is about what farmers claim. I understand the complexities. We all understand the complexities. And I think perhaps you guys need to think about that as part of this overall process because it is part of what has been motivating or activating part of the discussion. So I just want to say thanks for your time today and for appearing before us again and assisting us with the inquiry.

CHAIR—Yes, thank you very much. The difficulty that I see is that at the end of the day, unless something fundamentally changes in the food chain, dairy farmers might as well say: ‘The world might as well go without milk. If we’ve got to lose money every time we milk the cows, then let some other bugger have a crack at it and let the world go without milk.’ Something has to fundamentally change to keep farmers viable.

Mr O’Malley—As a closing statement, I think it is fair to say that the agricultural industry is a cyclical industry and there are highs and lows. As we have stated pretty publicly, and as everybody would know, there have been highs in the last few years. It is in National Foods interests and our long-term interests to work with our farmers for a long-term sustainable relationship with our farmers, and that is what we are seeking to do, not only in Tasmania but across the whole of Australia.

CHAIR—Thanks very much for that. Now don’t go away and sook!

Mr Evans—No, we wouldn’t do that!

Committee adjourned at 5.18 pm