Public Submission

to

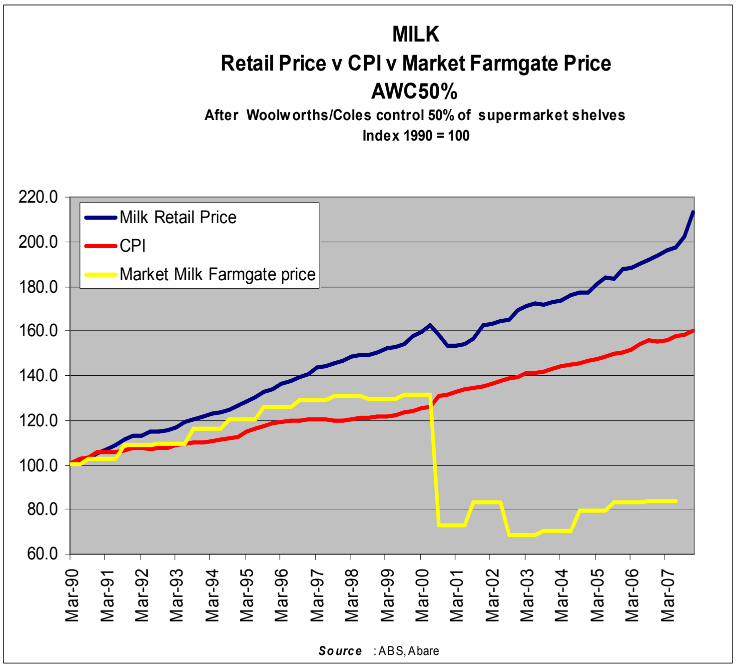
Inquiry into Competition and Pricing in the Australian Dairy Industry

By

Southern Sydney Retailers Association
Contact : Craig Kelly 0413 433 288

The Robinson-Patman Act[1] has been referred to as the Magna Charta of small business. We consider it the Magna Charta of agriculture also. The farmer must have competition in the market place. If he has to deal with giant monopolies either buying or selling, he perforce becomes an economic slave.[2]

US National Farmers Union



[1] A weakened an ineffectual version of the US *Robinson Patman Act* was part of the Australian *Trade Practices Act* (section 49) from 1974 to 1994 when it was repealed in its entirety. Despite attempts by power vested interests, the *Robinson-Patman Act* remains the law of the land in the USA today.

[2] *Hearings on Price Discrimination, the Robinson Patman Act and Related Matters* before the US House of Representatives Small Business Committee, 84th Congress, pt. I at 54 (1955)

Foreword : Who Stole the Milk Money ??

The Farmers Story[3]

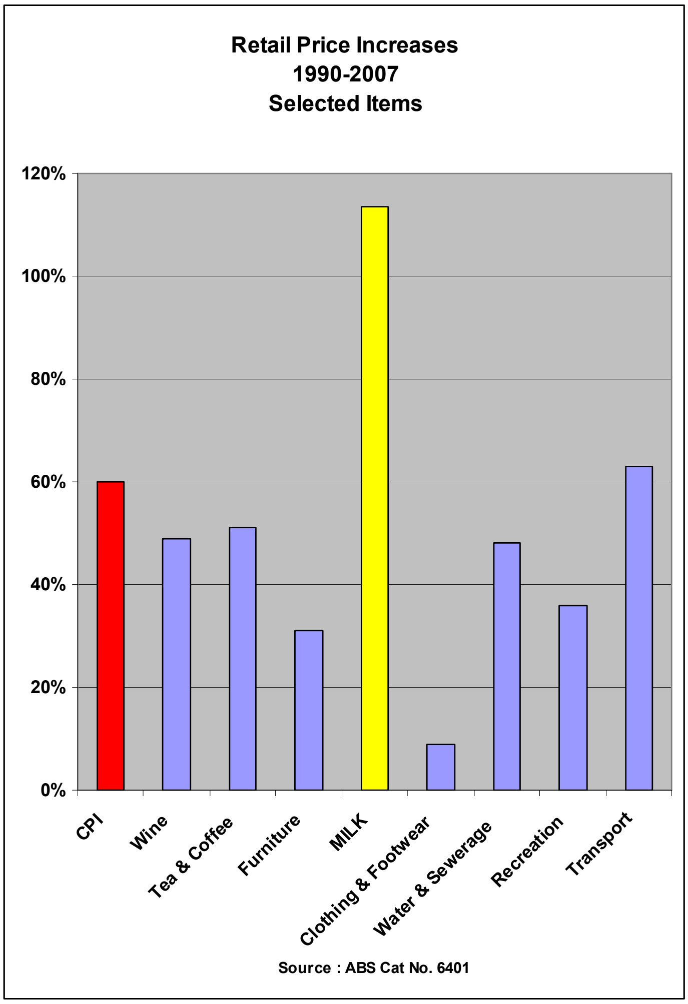
"For four days, Waaia dairy farmer Roger Fletcher's 12-year-old daughter, Corbeth was too embarrassed to go to school. She needed new shoes but her struggling family did not have enough money for them.

Not sure what to do, Roger Fletcher remembered a depressed young girl, Margy Roberston, also 12, living in nearby Cobram who had twice tried to hang herself because of financial pressures facing her dairy farming parents.

He found the $56 for his daughter's shoes.

Roger Fletcher is one of more than 6000 Victorian dairy farmers doing it tough. The drought and a higher Australian dollar affecting export prices have taken their toll. "It's unbelievable what we've gone through in the past 18 months," Mr. Fletcher said. 'I'd say 35 per cent of farmers are on the dole. We work 14 hours a day, seven days a week, 365 days a year, and we don't get paid…….' He blames dairy companies and supermarkets." [4]

Fact : The Farmgate price of milk is lower today than it was in 1990.



The Retailers Story

Meanwhile, over at the Coles group, (the people who place the milk on the shelves and collect the money from the consumer) before the company was flogged off in a distressed state at below market value, as a result of underperformance - just three employees had rewarded themselves treasurers that would make an African Dictator blush. Mr. Fletcher is reported to have pocketed a total of **$46.9 million**, a Mr. Zayadi a reported **$34.4 million** and a Ms. Robertson a reported **$29.8 million**. (See "*Coles execs rewarded for lagging*[5] **).**

In a plot that could be mistaken for either a Monty Python comedy sketch or an Orwellian tragedy - under the current legislative settings of the Australian *Trade Practices Act*;

- Self-anointed competition law "experts" theorized that milk prices to the consumer would be lower as a result of de-regulation.
- The retail price of milk to the consumer has skyrocketed **113.5%** since 1990 (almost double the rate of inflation),
- The price the diary farmer receives has gone backwards, and there are diary farmers that struggle to afford to buy shoes for their daughter's to go to school.
- Three employees at the retailer that sells the milk, pocket over $100 million, while they tell the public the market is "highly competitive", and they claim to have lowered prices, and the *Trade Practices Act* is working well.

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[3] The story is real, but the names have been changed to protect the dignity of this proud Australian family.

[4] ***"Dairy Farmers feeling Milked Dry".*** http://www.theage.com.au/articles/2004/04/24/1082719671185.html?from=storyrhs

[5] ***"Coles execs rewarded for lagging"*** http://www.smh.com.au/news/business/coles-execs-rewarded-for-lagging-says-lew/2006/09/20/1158431782854.html

Why have Australian families been punished with a 113% increase in the price of milk since 1990?

As a nation we should hang our heads in shame for allowing this to occur. And yet some will argue to this inquiry (as they have for the past two decades) that the Australian retail market is "highly competitive delivering low prices to consumers" - and that the *Trade Practices Act* is working well and should not be changed, because this risks "chilling competition".

It is time the admission is made; competition has frozen over under the currently legislative settings of the *Trade Practices Act*, and both the TPA and its Administration by the ACCC are in complete disarray – all to the ultimate detriment of the Australia consumer.

Nowhere is the failure of the *Trade Practices Act* and its administration, and the damage caused by the misguided theories of self proclaimed competition law "experts" that have controlled the legislative settings of competition policy over the past two decades, more evident than what has happened to both the retail and farmgate price of milk in Australia.

The Dairy De-regulation

The Australian Dairy industry was deregulated on 1st July 2000, and the cost of $1.94 billion. The self- proclaimed competition law "experts" theorised at the time;

> ***"……it was the consumer that was most likely to benefit significantly from lower costs for fresh milk…."***

While the economic theories of self-proclaimed competition law "experts", speculated that all deregulation is good, leading to their naïve and mistaken belief that deregulation of the diary industry would result in significantly ***lower prices*** for consumers, this groups total ignorance of the workings of the real world resulted in their failure to understand the hyper-concentration that had evolved in the Australian the retail sector, and how with Australia being one of the few countries in world[6] without any Price Discrimination laws, that deregulation would simply result in Woolworths/Coles exploiting their brute market power to the detriment of their smaller competitors, farmers and ultimately consumers.

These misguided theories of self-proclaimed competition law "experts" have simply sold Australian dairy farmers into a modern day serfdom, whereby the farmgate price for drinking milk they receive today is lower than it was 20 years ago. Meanwhile, Australian families have been punished as well, suffering with the fastest rising retail prices of milk in the developed world – which have increased an incredible **113.5%** since 1990 – almost the double the rate of inflation.

And all this has been happening while Woolworths/Coles, in defence of their duopolistic interests, have been claiming to have "reduced prices" to consumers in a "vigorously competitive market".

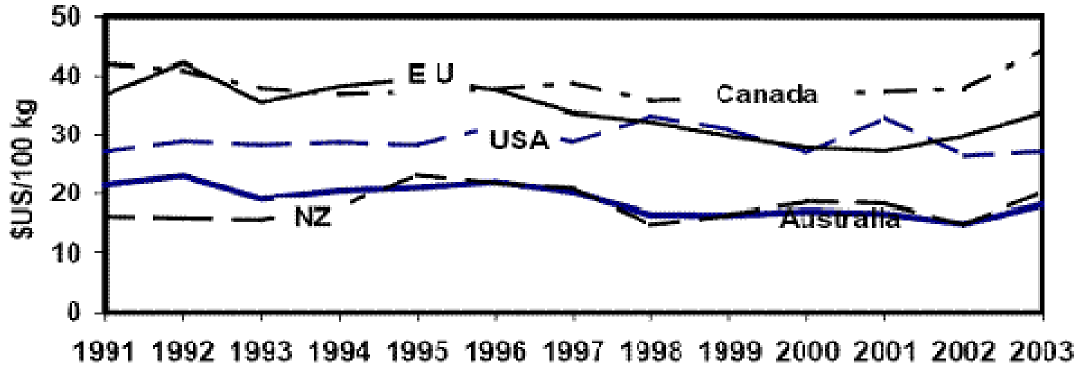
Then, Governments of both political persuasions, having swallowed Woolworths/Coles' propaganda hook, line & sinker have structured the legislative settings of the *Trade Practices Act* to enable Woolworths & Coles to use their size to protect themselves from competition. The failures are now obvious for all to see. The sign in the above picture sums it up, ***"Dairy Farmers paid less, Consumers pay more".*** Competition has collapsed.

[6] **Countries where no specific Price Discrimination laws exist, include;** Australia (repealed 1994) Angola, Burma, Bolivia, North Korea, Solomon Islands, Haiti, Mongolia, Iraq, Iran, Libya & Yemen.
Countries where specific Price Discrimination laws exist include; United States (Robinson-Patman Act) England, Ireland, Scotland, Wales, Spain, France, Germany, Italy, Belgium, Switzerland, Norway, Sweden, Netherlands, Austria, Portugal, Denmark, Greece, South Africa, Japan, Singapore and now even China.

Worldwide Trends

There is some truth that farmgate prices of milk do follow worldwide trends. However, even before the re-regulation, Australian diary farmers were the lowest paid in the develop world.

Table 1 : International FarmGate Price for Milk



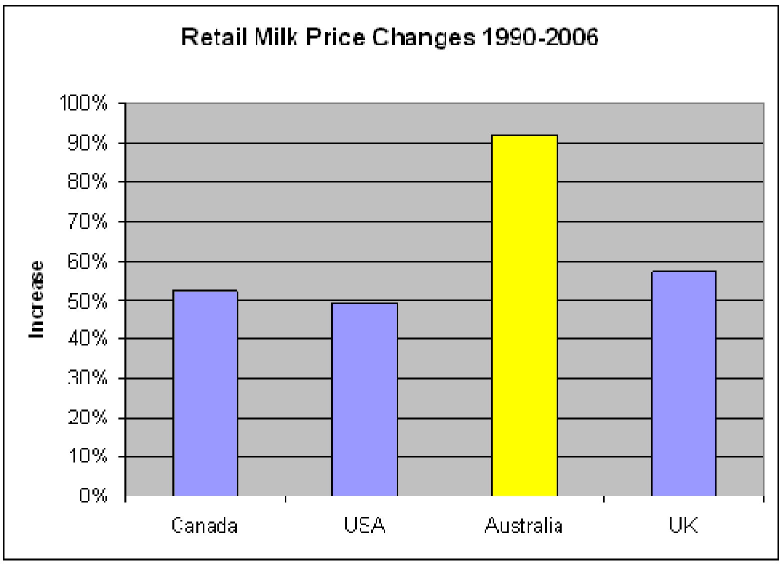
Source : Dairy Australia (2004) *Australian Dairy in Focus, 2004.*

Therefore, if the Australian retail sector is "highly competitive" (as those enjoying record profit increases continually claim) these worldwide trends in farmgate price movements, should also be reflected in similar worldwide trends in retail price movements.

Unless a nation's currency collapses (Zimbabwe style) or competition collapses (Eastern Bloc style) then over a significant period (at least 10 years) it should be expected that there would be at least some uniformity in retail price increases across different countries with similar economic structures.

However, with the "benefits" of the diary de-regulation in Australia, the increase in the value of the A$, and the elimination of sales tax on production inputs on fresh milk, and its packaging (as milk is GST exempt) – Australia should have enjoyed much smaller increases in the retail price of milk than has occurred in the rest of the developed world.

But the opposite has happened. Australia leads the world in increases in the retail price of milk. Clearly, something has gone very, very wrong in Australia, both for the diary farmer and the consumer.



Sources : Australian Bureau of Statistics, Statistic Canada, UK National Statistic On-line, & US Department of Labor Statistics

Higher Prices Explained by a Price Fixing Cartel

The United Kingdom has experienced a slightly higher retail price increase (about 5% higher) for milk than has occurred in the USA and Canada. However, the reason for this higher increase in the UK could be explained by a criminal price fixing cartel that has inflated the retail price of milk in the UK.

In the UK, the leading Supermarket chains; Sainsbury's, Asda & Safeway have all admitted that they were part of an illegal price fixing conspiracy that increased the retail price of milk during 2002 and 2003 and stole £270m (A$569million) from the wallets of UK families.[7] The supermarkets have agreed to pay fines totalling some £116m (A$250 million) after an Office of Fair Trading (the UK equivalent of the ACCC) probe. Sean Williams, Office of Fair Trading Executive Director, said;

> *'This is a very serious case. [The] supermarkets have been colluding to put up the price of dairy products. Consumers have lost out to the tune of hundreds of millions of pounds. This kind of collusion on price is a very serious breach of the law. Businesses should understand that where we find evidence of this kind of anti-competitive activity we will use the powers at our disposal to punish the companies involved and to deter other businesses from taking such actions.'*[8]

If this criminal price fixing conspiracy can help explain why the retail price of milk increased approximately **5%** higher in the UK than it has in Canada & USA - what the hell is going on in Australia where retail prices have increased **40%** higher than in USA and Canada !!

Meanwhile, back in Australia, Woolworths/Coles and their apologists have been telling the Australian public, “relax”, have a lie down and “take a bex”, the Australia market is highly competitive.

Clearly, it’s time for the charade that the “Australian retail sector is highly competitive and is delivering low prices for consumers” comes to and end. Politicians from all parties must now openly admit that the *Trade Practices Act* has failed Australian consumers and its failed Australian diary farmers, and to allow the market to evolve into one where just two corporations act as gatekeepers to 80% of the nations supermarket shelves, has been foolish and has undermined national economic prosperity.

International Comparisons.

The Australian diary farmer is the most efficient milk producer in world. Figures from Diary Australia indicate that Australian farmers receive approximately 30% less than their diary farming cousins in the USA.

Therefore, even a moderately competitive retail market in Australia, should result in Australian consumers enjoying retail prices for milk lower than consumers in the USA.

To determine if Australian consumers are receiving the benefits of having the world’s most efficient dairy farmers, we applied the following test to achieve a fair and accurate comparison;

What is the “best supermarket price” available for milk (full, low fat and flavoured) for a family living in Sydney, as compared to a family living in San Francisco, on the week before Easter 2008.

Reduced Fat Milk - Best Supermarket Price	
Safeway San Franscico	**Woolworths Sydney**
	
US$2.69/gallon	A$3.79/3 litres
Per litre Australian $ equivalent	
A$0.76 per litre	**A$1.26 per litre**
Result : Sydney families pay 66% higher price	

[7] “Supermarkets admit milk price fix”, BBC News http://news.bbc.co.uk/1/hi/business/7132108.stm
[8] Source : http://www.oft.gov.uk/news/press/2007/134-07

Full Fat Milk - Best Supermarket Price	
Safeway San Franscico	**Woolworths Sydney**
	
US$2.69/gallon	A$3.19/3litres
Per litre Australian $ equivalent	
A$0.76 per litre	**A$1.06 per litre**
Result : Sydney families pay 39% higher price	

Flavoured Milk - Best Supermarket Price	
Safeway San Franscico	**Woolworths Sydney**
	
US$3.99/gallon	A$3.98/2litres
Per litre Australian $ equivalent	
A$1.13 per litre	**A$1.99 per litre**
Result : Sydney families pay 76% higher price	

The results are appalling. (i.e appalling for the Australian consumer, but reason to break out the champagne bottles for Woolworths shareholders). Instead of Australian supermarket prices being lower, as a competitive market should have delivered, they are higher. And not just higher - but higher by a massive 39%, 69% and 76%.

However, the results are not surprising given the data from the various international statistical agencies that clearly demonstrate that the retail price milk has spiralled upwards faster in Australian than the rest of the world.

Summary of Results – Best Supermarket Price, Sydney v San Francisco

In *Safeway* supermarkets in California, the best price[9] for a gallon of milk either regular, skim or reduced fat was US$2.79. This is the equivalent of **A$0.76** per litre.[10]

Full Fat Milk

The best price at *Woolworths* in for full fat milk was 'No Name Brand', at $3.19/ 3 litres container. At **$1.06** per litre – this is a massive **39%** higher than from Safeway in California.

Low Fat Milk

The best price at *Woolworths* in Sydney for low fat milk was $3.79/3 litre container, at a **$1.26** per litre – the low price that I can count on everyday from Woolworths' supermarkets, is an incredible **66%** higher than from a Safeway supermarket in California – yet the Australian diary farmer gets paid less that the dairy farming cousins in the USA.

Flavoured Milk

Woolworth's cheapest low fat milk at A$1.26 per litre, was even dearer than Safeway's chocolate flavoured milk at the equivalent of A$1.13 per litre.

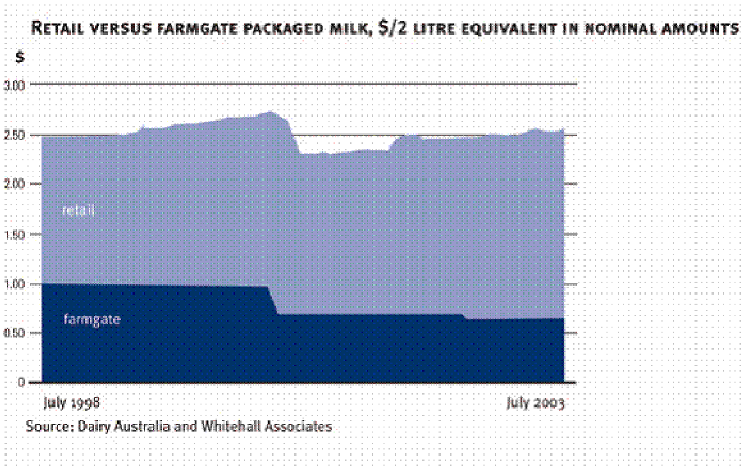
This study has also uncovered that where effective competition operates, that full fat, skim, and low fat milk are all sold at the same price. Yet in Australia, where competition has collapsed, and Woolworths & Coles dominance has perverted the workings of the free market, anyone wanting to buy skim or low fat milk for health reasons is slugged with a substantially higher price.

The Diary Farmers Share of the Retail Price

The collapse of competition in Australia, and Woolworths/Coles' exploitation of both the consumer and the dairy farmer is further evident by the substantial decline in the "farmer's share" of the retail price.

Figures from Dairy Australia and Whitehall Associates show the "farmers share" of the retail price of milk in Australia has collapsed from **40%** in 1998 to around just **24%** in 2003.

The disgraceful exploitation of consumers and farmers in Australia, through the collapse of the "farmers share" of the retail price, is further evident by benchmarking the situation in Australia against that of the USA and Canada.



Source: Dairy Australia and Whitehall Associates

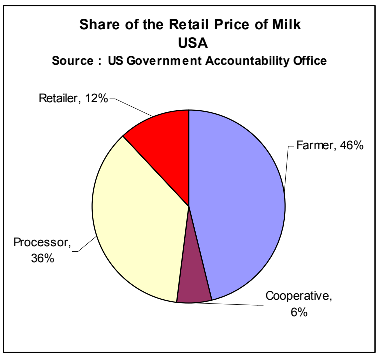
[9] http://shop.safeway.com/superstore/sixframeset.asp?mainurl=http://safeway1.inserts2online.com/storeReview.jsp?drpStoreID=1206
[10] US gallon = 3.78541178 litre. US$1.00 = A$0.93

Canada

In Canada, the "farmer's share" of the retail price has been ***maintained*** between **39% to 40%** between the years 1990-2003[11]. Therefore, in Canada, a competitive retail market has maintained the competitive balance and fair prices for all players.

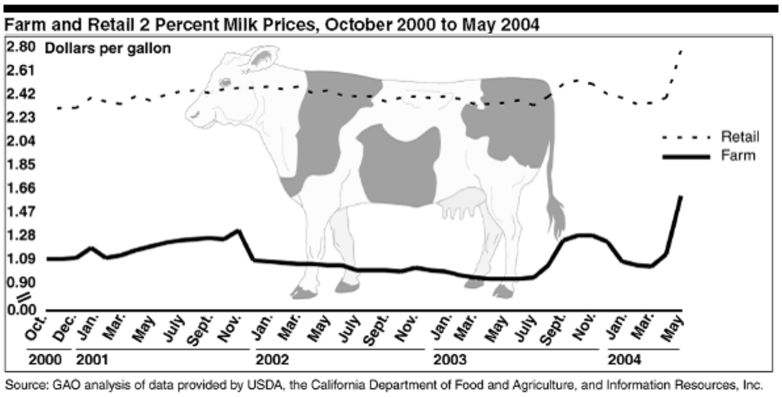
USA

Likewise, in the USA, a report by the Government Accountability Office in 2004 into the US Dairy Industry[12] stated;



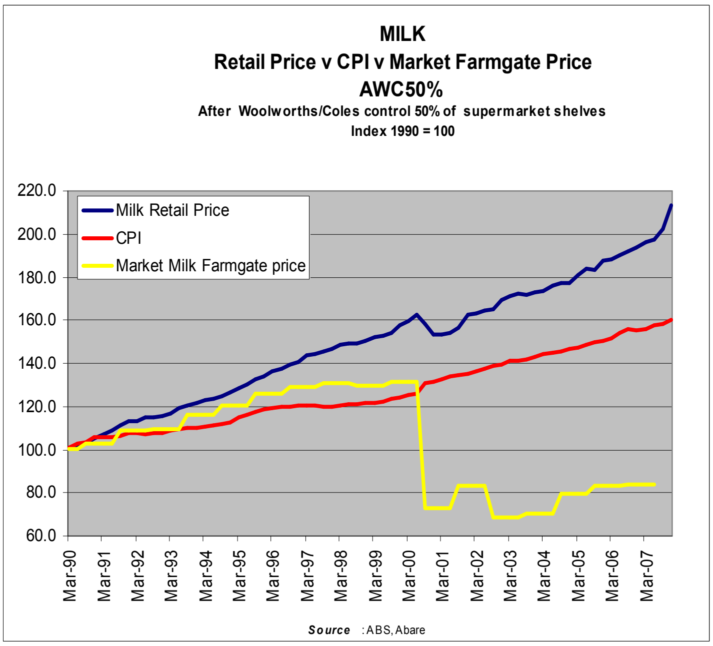
> *"that between 2000 and 2004, on average farmers received about **46%**, cooperatives **6%**, wholesale processors **36%** and retailers over **12%** of the retail price of a gallon of **2%** milk - the most common type of milk purchased"*

As the following chart demonstrates, in the USA the retail price has more or less tracked the farmgate price.



In contrast, in Australia, there has been a complete disconnect between the retail price and the farmgate price.

In Australia, the retail price has surged ahead at almost twice the rate of inflation, yet the farmgate price has actually fallen. Clearly, something is drastically wrong in Australia.



[11] http://nfu.ca/reading/CTSFINAL%202004.pdf
12 Source : http://www.gao.gov/highlights/d0550high.pdf

Unconscionably excessive milk prices

In the USA, several states have “Milk Pricing Gouging Laws”.

For example; section 396-rr of the New York State’s *General Business Law*, provides that if the retail margin of milk is in excess of the equivalent of A$0.22 per litre (for the equivalent of a 2 litre container), then the retail price is deemed to be “unconscionably excessive”. (see attachments).

Under 396-rr of New York State’s *General Business Law,* the price is deemed to be “unconscionably excessive” if the retail price of milk is greater than 3 times the farmgate price. Thus if the farmgate price was say $0.30 per litre, any retail price above $0.90 per litre could be deemed “unconscionably excessive” and the supermarket charging such unfair prices could be fined up to US$5000 per week, and forced to pay “restitution to aggrieved consumers”.

Applying these standards, the only way to describe the retail price paid by Australian consumers in relation to the farmgate price is “grossly unconscionably excessive”.

The Milk Heist : the largest robbery in Australian history

On the 20th Dec 2004, in the worlds’ greatest bank robbery, a gang of bandits stole £26.5 million (**A$58 million**) from the Northern Bank in Belfast, Northern Ireland. However, this robbery was just petty cash in comparison with how Australian consumers are being robbed every time the reach into the dairy cabinet at Woolworths or Coles.

As the old saying goes, “just follow the money”.

The annual per capita consumption of milk in Australia is around 100 litres per person.[13] In June 2007, the average price of milk in Sydney was $1.65 per litre. [14]. Therefore, the annual expenditure on milk per person is around $165.

For a population of 21 million Australians, the total annual expenditure on milk is $3.465 billion.

The evidence is irrefutable. Since 1990 the farmgate price has gone backwards, the CPI has been running at 60% - yet the retail price of milk has increased 113.5% .

“Everyday low prices” or an $868 million annual theft from the consumers ??

On the all the evidence, including international comparisons, the retail price of milk in Australia, at most, should have increased less than the CPI at 60% instead of 113.5%. On these numbers, the theft from the Australian consumer and the Australian dairy farmer is at least an incredible **$868 million** annually.

[13] http://www.dairyaustralia.com.au/content/view/41/75/

[14] See : ABS Cat No. 6403.0.55. 001
http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6403.0.55.001Jun%202007?OpenDocument

Attachments

STATE OF NEW YORK
DEPARTMENT OF AGRICULTURE AND MARKETS
10B AIRLINE DRIVE
ALBANY, NEW YORK 12235

DIVISION OF MILK CONTROL AND DAIRY SERVICES
518-457-5731

BACKGROUND INFORMATION JANUARY 2009

Milk Price Gouging Law,
Section 396-rr of the State General Business Law (GBL)

The milk price gouging law applies to the retail sale of fluid milk in consumer packages. The law was enacted in June 1991 at the same time as the legislation that permitted the Commissioner to implement an Interim Milk Pricing Order. At that time farm prices had fallen considerably while retail prices, particularly in the Metropolitan New York area, decreased only a small amount.

Traditionally as a means of administering the law, the Department calculated and announced a "threshold price". It was established for two broad regions of the state for a quart, half gallon, and gallon container. The threshold price generally changed monthly, moving up or down two cents per gallon for every one cent gallon change in the farm price. The threshold price was not a maximum price and was geared to supermarkets.

The Department stopped announcing the monthly threshold price effective November 2008, but continues to look at market price factors such as a store's gross margin as a guide in assessing whether a retail fluid milk price appears "unconscionably excessive" for purposes of GBL §396-rr. In considering whether a retail price appears unconscionably excessive, the Department generally looks at a retail margin standard of $0.58 per gallon, $0.37 per half gallon, and $0.26 per quart. The retail margin standard levels are revised periodically based upon inflation, but do not change monthly. The retail margin standard is intended to approximate total in-store handling costs plus net profit (before taxes) on a per unit basis. If a store's retail price has a gross margin (retail price minus net invoice price) that does not exceed the retail margin standard, the price is considered justified. If the gross margin is greater than the retail margin standard, then unit cost documentation may be necessary to justify the price, unless it is terminated. Justification should factor in the net invoice price paid for the milk item and the actual cost per unit to handle and sell it. If the justification is not accepted by the Commissioner, the case is required by statute to be referred to the Attorney General.

The law is not meant to require retailers to sell milk below cost. Milk handling practices and costs do vary considerably and a higher gross margin than the retail margin reference standard might be justified based upon each retail store's unique circumstance. If you have any questions, please call 518-457-5731.

STATE OF NEW YORK
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BACKGROUND INFORMATION October 2008

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The milk price gouging law applies to the retail sale of fluid milk in consumer packages. The law was enacted in June 1991 at the same time as the legislation that permitted the Commissioner to implement an Interim Milk Pricing Order. At that time farm prices had fallen considerably while retail prices, particularly in the Metropolitan New York area, had fallen only a small amount.

Traditionally as a means of administering and enforcing the law, the Department calculated and announced an enforcement measure known as the "threshold price". It was established for two broad regions of the state for a quart, half gallon, and gallon container. The threshold price generally changed monthly, moving up or down two cents per gallon for every one cent gallon change in the farm price. The threshold price was not a maximum price and was geared to supermarkets.

Effective November 2008, the Department will discontinue announcing the monthly threshold price and will focus on the store's gross margin to determine compliance with the Milk Price Gouging Law. In considering whether a retail price appears unconscionably excessive, the Department uses a retail margin standard of $0.58 per gallon, $0.37 per half gallon, and $0.26 per quart. Retail margin standard equals total in-store handling costs plus net profit (before taxes). If a retail price has a gross margin (retail price minus net invoice price) that does not exceed the retail margin standard, the price is considered justified. If the gross margin is greater than the retail margin standard, then unit cost documentation is required to justify the price, unless it is terminated. Justification must be in light of the net invoice price paid for the milk item and the actual cost per unit to handle and sell it. If the justification is not accepted by the Commissioner, the case is required by statute to be referred to the Attorney General.

If you have any questions, please call 518-457-5731.

NEW YORK STATE GENERAL BUSINESS LAW
ARTICLE 26 MISCELLANOUS - PRICE GOUGING; MILK

S 396-rr. Price gouging; milk. 1. Definitions. For the purposes of this section, the following terms shall have the following meanings:
(a) "Person" shall mean the owner or owners, including any individual, partnership, association, firm, or corporation, of an establishment engaged in the retail sale of milk;
(b) "Commissioner" shall mean the commissioner of agriculture and markets; and
(c) "Fluid milk" shall mean milk, skim milk or lowfat milk in consumer sized packages sold or offered for sale for off premise consumption.
2. Whenever the commissioner has established a minimum price for milk paid to producers pursuant to section two hundred fifty-eight-m of the agriculture and markets law and such state ordered minimum price is higher than the price set for milk within the state pursuant to the New York-New Jersey milk marketing order, or at any time when the retail price of fluid milk exceeds two hundred percent of the price for class I fluid milk, it shall be the responsibility of the commissioner in consultation with state and local agencies as the commissioner deems appropriate, to examine the price of fluid milk at retail to determine
if the prices of fluid milk sold or offered for sale in the state or in any area thereof appear to the commissioner unconscionably excessive.

Upon a determination by the commissioner that the price of fluid milk being sold or offered for sale appears unconscionably excessive in a particular area of the state, the commissioner shall, by written notice, provide any person found to be selling or offering for sale fluid milk at such price, an opportunity to discontinue such price levels or to demonstrate that it is not unconscionably excessive. Any person, so notified, who does not submit a written reply within three business days of the receipt of such notice, and who does not within such time satisfy the commissioner that the price level which resulted in the issuance of the notice is justifiable or has been terminated shall be identified in the commissioner`s determination as a person apparently in violation of subdivision three of this section. Following such notice to and opportunity for such person to respond, the commissioner shall forward his or her determination, in writing, together with all supporting evidence, to the attorney general.
3. No person shall sell or offer for sale fluid milk for an amount which represents an unconscionably excessive price.
4. Whether a price is unconscionably excessive is a question of law for the court. Evidence that:
(a) the price charged at retail for fluid milk represents a gross disparity between the raw milk price paid to producers plus a reasonable handler`s processing and distribution charge and the price at retail; or
(b) the price charged at retail for fluid milk increased a greater amount than the price increased for an equivalent volume paid to producers under an order or interim price of the commissioner pursuant to section two hundred fifty-eight-m of the agriculture and markets law; and
(c) in addition to paragraphs (a) and (b) of this subdivision, the increased price charged by the person was not attributable to additional charges imposed by its suppliers, or other charges beyond the control of the person, including the cost of labor, shall constitute

prima facie proof of a violation of this section in any proceeding commenced by the attorney general pursuant to subdivision five of this section.

5. Where a determination and all supporting evidence have been forwarded from the commissioner, the attorney general may apply in the name of the people of the state of New York to the supreme court of the state of New York within the judicial district in which such violations are alleged to have occurred, on notice of five days, for an order enjoining or restraining commission or continuance of the alleged unlawful acts. In any such proceeding, the court shall determine the total excessive charge for fluid milk sold. In such proceeding, the court shall assess a civil penalty in the sum of the total excessive charge for fluid milk sold plus an amount not to exceed:

(a) one thousand dollars, where the aggregate amount of fluid milk sold is one thousand gallons or less per week; or

(b) five thousand dollars, where the aggregate amount of fluid milk sold exceeds one thousand gallons per week; and

(c) in addition to paragraphs (a) and (b) of this subdivision where appropriate, order restitution to aggrieved consumers.

6. The commissioner shall promulgate all rules and regulations to effectuate the purposes of this section.

(Note to reader, this law was passed in 1991 and went into effect in June of that same year. To see a complete history of the threshold retail milk prices established each month by the NYS Dept. of Agriculture and Markets, visit the following websites)

June 1991 to Sept. 2003:
http://www.agmkt.state.ny.us/DI/HistoricalThresholdPrices.PDF

2001 to Current:
http://www.agmkt.state.ny.us/DI/DIHome.html#MiscData

New York State Department of Agriculture and Markets Website:
http://www.agmkt.state.ny.us/

SPITZER SEEKS STRONGER MILK PRICE GOUGING LAW

Proposed Legislation Would Clarify Standards and Strengthen Enforcement

Attorney General Spitzer today proposed new legislation to clarify the state's milk price gouging law and strengthen protections for consumers and farmers.

"When the price of milk rises, consumers think that farmers are receiving more money for their product," Spitzer said. "This is not always true. In fact, it is the middlemen in the distribution chain who often benefit from rising prices -- not the dairy farmer or the consumer."

"With this legislation, we will ensure that there is a fair mark up on farm milk prices, a mark up that more accurately reflects actual costs. In addition, this legislation will give my office the authority to investigate and act on possible milk price gouging." Spitzer made the announcement at the Tunis Sweetman Dairy Farm in Warwick, N.Y.

The proposed legislation would change the way milk price gouging is determined legally and enhance the Attorney General's authority to enforce the statute. Specifically, the proposed legislation would lower the threshold at which an official price gouging examination by the Commissioner of Agriculture and Markets would be triggered.

Current state law provides that the Commissioner must make a determination if a retail price for milk is unconscionably excessive if it is either (1) above the state's established minimum; or (2) 200 percent higher than the price paid to dairy farmers.

Spitzer's bill would reduce that threshold from 200 percent to 150 percent. The proposal also would reform the manner in which unconscionably excessive milk prices are determined by taking into account the costs related strictly to the marketing of milk. In doing so, this bill recognizes that, because milk has a short shelf life and its sales are generally higher volume than other products, basing the calculation of overhead on expenses for a store's entire inventory is unfair. The bill would consider exclusively the marketing costs of milk.

The bill also calls for the independent enforcement of the price gouging law by the Attorney General.
