SUBMISSION TO SENATE ECONOMIC REFERENCES COMMITTEE

"INQUIRY INTO THE IMPACTS OF SUPERMARKET PRICE DECISIONS ON THE DAIRY INDUSTRY"

Supplementary Submission

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Dear Chair Eggleston and Senators of the Committee

Thank you for taking evidence from me in writing by fax on 28 February 2011 and in person in Canberra on 10 March 2011 from my perspective both as an individual dairy farmer in South Australia and as a Member of Legislative Council (MLC) in the South Australian State Parliament.

I am also grateful to be offered the opportunity to provide supplementary evidence as to the following matters:

- the duration of Coles' 'Down Down' campaign and if it becomes permanent; and
- the outcome of renegotiated contracts with the processors and impact on farmgate prices.

I will address each matter in turn.

1. **Duration of Coles' 'Down Down' campaign and if it becomes permanent**

At the simplest level, the best evidence that can be given on this subject will be from Coles themselves. However, they might not have made their own mind up as to how long to run the campaign for.

At a more relevant level, I submit, is to consider the market forces and activity that will influence whether or not Coles will cease the campaign. I have been quite vocal in saying that Coles should not have started the campaign, and need to end it immediately. I certainly hope it does not become, as you pose in the question, "permanent". Woolworths and other retailers have followed the pricing out of competitive necessity. I was concerned through March 2011 to hear that Coles might have sought prior approval from the Australian Competition and Consumer Commission (ACCC) before embarking upon the campaign.

The single strongest determinant of whether Coles will continue or cease its campaign, I believe, is the stance of the ACCC. In that context I am both informed and disappointed by the Release issued by the ACCC on Friday 22 July 2011 which states:

> "there is no evidence that Coles has acted in breach of the Competition and Consumer Act 2010 (CCA)"

The Release further explains section 46(1AA) prohibitions on selling below the cost of supply for a sustained period, with the proviso that the business had to be acting with an anti-competitive purpose. The Release then states:

> "It is important to note that anti-competitive purpose is the key factor here. Price cutting, or underselling competitors, does not necessarily constitute predatory pricing. Businesses often legitimately reduce their prices, and this is good for consumers and for competition in markets", Mr Samuel said

Given the ACCC's decision not to act, I think the anti-competitive purpose was not the *key* factor in the ACCC's mind, it was the *only* factor. <u>No consideration</u> has been given to farmers' economic and social wellbeing, their ability to draw a reasonable income (by contrast to the earnings of directors implementing the present 'Down Down' campaign) and the national interest. The ACCC's failure to see the market behaviour as anti-competitive also suggests to me that the ACCC have only very short memory and short vision into the future. The supermarket duopoly has grown like it has under the nose of the ACCC by incremental steps to the internationally unprecedented joint market share in supermarket retail that we see in Australia today.

2. **Outcome of renegotiatied contracts with processors and impact on farmgate prices**

I note at page 48 of your May 2011 Second Interim Report you cited my evidence, which I stand by, that it is very difficult for dairyfarmers to collectively bargain and get a good price without transparency. As I said, we are bargaining pretty much blind. The ACCC said on 22 July 2011:

> "the ACCC has recently issued a draft decision proposing to allow dairy farmers associated with Australian Dairy Farmers Ltd to continue to collectively bargain with milk processors for

a further 10 years. This strengthens the position for farmers when negotiating with processors over milk prices"

The ACCC went on to say that it was inclined to allow a ten (10) year continuation of dairyfarmers approval to collectively bargain. Firstly, the industry would have been shocked if this was revoked in any event. Secondly, this is cold comfort and tantamount to inaction by the ACCC if that is all they propose to do about the situation. The supermarket duopoly and to a lesser extent the processors hold the whip hand in negotiating new contracts and farmgate prices.

I have no confidence that anything is going to improve in this regard without

(a) the ACCC electing to force transparency in the negotiation process or – given what I see as the very remote chance that will happen; and –

(b) reforming the law to enforce paddock-to-place supply chain transparency so that processors and farmers can bargain on a level playing field with other participants in the supply chain. One such reform would be to introduce, as CHOICE proposed, a Supermarket Ombudsman. This would go far beyond the existing (and I have to say, nearly anonymous) Produce and Groceries Industry Ombudsman and the types of mechanisms once contemplated by the Rudd Government's "Price Watch" website. My awareness of the PGIO - a creature of a voluntary and generic commercial Code of Conduct concurs with that of the SA Dairyfarmers Association who in their evidence stated that they were unaware this Ombudsman existed. Anything short of direct, transparent and fully independent market oversight via a proper statutory Ombudsman will play into the hands of the internationally unequalled strength of the Australian supermarket duopoly.

I also consider it relevant, given your second interim report's statements about needing to consider the local distinctive factors of the industry, to explain the state that the South Australian dairy industry is presently in. I appreciated the support of the South Australian Rann Labor Government gave to my motion calling upon the Commonwealth Gillard Labor Government to have the ACCC act on the price war. Having said that, I attribute the figures set out in the article at the conclusion of this submission (namely statistics showing South Australian dairyfarmers' lower than national average confidence and investment in dairy) as falling to a large extent at the Rann Government's feet for failing to prepare a successor to the bipartisan 2002-2010 State Dairy Plan.

In that regard and in closing I refer to a story published in the July 23 edition of the Adelaide Advertiser to assist you in your deliberations. Please feel free to contact me if you require further information or wish for me to give further evidence to the Inquiry. I wish you well with your deliberations.

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Less than half of SA dairy farmers are confident of future

- Special Report David Jean

ALMOST one in 10 of the state's 1840 dairy farmers doubt they will be in the industry within two years, as confidence in the $1 billion dairy industry slumps to a new low.

The Coles-Woolworths price war, carbon tax, and debt associated with drought and the global financial crisis are being blamed for the woes of SA's industry, which supplies 20 per cent of national milk output.

The latest Dairy Australia figures, obtained by The Advertiser, show 45 per cent of SA farmers remain positive about the industry's future, compared with 69 per cent nationally. Eight per cent believe they will leave the industry by 2013, a figure that could have widespread ramifications on an industry that employs 8650 people.

The South Australian Dairy Farmers' Association and Family First MP Robert Brokenshire have warned farmers will continue to leave the land, costing hundreds of jobs, if the State Government doesn't inject more confidence into the industry.

The warning comes as one of the state's biggest dairy farmers, Lee McKenzie, moves to slash his herd by more than half and sell off huge slabs of land to service debt.

Association president David Basham said statewide confidence had hit rock bottom.

"Confidence is bad," Mr Basham said. "Certainly the last couple of years there have been significant losses made on farms.

"There is a need for that to reverse so we can repay those debts.

"The drought and low milk prices have really hurt."

SA farmers had hoped for at least 45c a litre this financial year. However, early indications are the price will remain at 42c a litre. If they produce another 1.85 billion litres as they did last year, that will mean $55.5 million off their bottom line.

Mr McKenzie produces more than eight million litres at his Adelaide Hills farm, meaning each extra cent is worth about $80,000.

He has production costs of around 37c a litre.

"We didn't make any money last year at 42c, so we were hoping that the figure was more like 45 to 50c," he said. "For us to survive under that regime with a high debt, which a lot of farmers are, is tough."

After more than doubling his herd size over the past decade, Mr McKenzie, a second-generation farmer, said farmers with debt would struggle to survive.

"There is still a huge future for the family farm, as long as you haven't got any debt," he said. "I want my grandson to have the option of farming here if he wants to."

Farmers also are bracing to take a financial hit from the carbon tax, with Dairy Australia predicting it will cost an average of $8000 a year in SA, almost double the national average.

Mr Basham said the true cost of the Coles-Woolworths price war also would hit home in the coming months, as farmers negotiated contracts for the coming year. Mr Brokenshire, a dairy farmer for almost 30 years, said a number of other factors, including the State Government's lack of a dairy plan, had hit confidence.

"That sends concerning signals to dairy farmers because where is the commitment from government to our industry," Mr Brokenshire said.

He also said the pending sale of the Flaxley research centre and Jervois and Murray Bridge processing plants had dented confidence.

Agriculture Minister Michael O'Brien blamed low commodity prices for stifling investment and causing hardship for people who borrowed at the top of the cycle.

"I want to revisit the state's dairy plan to make it more focused on how we can stimulate private investment to drive growth," he said.

"I'll be seeking advice from the Agribusiness Council on developing a strategic approach to these issues."

- *with Ken McGregor*