

Chapter 5

Negotiations between farmers and processors

5.1 The Committee heard during the hearings in Tasmania about the fraught negotiations between Tasmanian dairy farmers and National Foods in 2009. While this particular matter has now been settled, it raises broader issues of how negotiations between farmers and processors could best be structured.

Farmers' cooperatives

5.2 As noted earlier, the Australian dairy industry has moved from a position where many processors were farmers' cooperatives (acting in the interests of farmers) to the current situation where most processors are subsidiaries of foreign corporations.

5.3 This has made negotiations on prices much harder work for the farmers:

...we are dealing with a multinational corporation whose executives get paid bonuses for keeping prices down, so it is hard yakka.¹

5.4 While cooperatives are somewhat out of fashion, the Committee heard evidence that with good management they can work well:

...cooperatives work like any other business—if they do not have a proper business model they will fall over. Again, it is the Europeans, the Canadians and the US based cooperatives which have shown how good business models can produce value adding because of the obvious advantages that collaborative business models have for the value adding of the operation. It allows individual milk suppliers to continue to do what they have done.²

Committee view

5.5 The interests of farmers would be better served if there were more processors and preferably more of them in the form of cooperatives.

Recommendation 11

5.6 The Committee recommends that the Federal Government commissions an independent report into the main impediments to the establishment of new processors owned by farmer cooperatives and how these impediments could best be overcome and requests that the report be tabled by 30 April 2011.

1 Mr Grant Rogers, *Committee Hansard*, 5 November 2009, p. 5.

2 Dr Tony McCall, *Committee Hansard*, 5 November 2009, p. 50.

Collective bargaining groups

5.7 When large multinational companies negotiate with individual farmers, particularly small family farms, there is obviously a marked imbalance in bargaining power. This is especially the case when there is only one processor in the area. The Committee heard, for example, that in southern Tasmania the only buyer of milk is National Foods. A farmer there described the negotiation process:

Until we formed the collective bargaining group, every year we basically were given a contract and they said: 'This is what we are going to pay you. Sign it.'³

5.8 In an attempt to improve their comparative bargaining position, some farmers have sought to engage in collective bargaining with processors.

5.9 Collective bargaining arrangements⁴ are available to dairy farmers pursuant to section 93AB of the *Trade Practices Act 1974*, which enables those involved to seek authorisation from the ACCC.

5.10 Within the Australian dairy industry there are 16 collective bargaining groups operating, representing approximately 530 farmers.⁵ Collective bargaining extends beyond price, also including transport arrangements, quality and supply. The results of these negotiations remain confidential between the groups and processor.⁶

5.11 A Tasmanian farmer described how the group there works:

Initially we had a vote to elect six members of an executive...Obviously you cannot have 91 people negotiating...so we have gone into the negotiations representing our members and then we have gone back to the members in a full meeting and have said, 'This is what we have been negotiating about. These are the terms that we have been offered. We believe it is a fair offer, but it is up to you to vote on it.'⁷

5.12 The attitude of processors towards collective bargaining is unclear. National Foods submitted that:

3 Mr Rogers, *Committee Hansard*, 5 November 2009, p. 4.

4 Collective bargaining – where two or more competitors in an industry come together to negotiate terms and conditions with a supplier or customer – behaviour would, if not authorised by section 93AB, raise concerns under the competition provisions of the *Trade Practices Act 1974*.

5 Australian Dairy Farmers, Additional Information, 29 January 2010, p. 1.

6 Australian Dairy Farmers, Additional Information, 29 January 2010, p. 2.

7 Mr Phil Beattie, Tasmanian Suppliers Collective Bargaining Group, *Committee Hansard*, 5 November 2009, p. 20.

National Foods believes these arrangements are appropriate and has worked cooperatively with collective bargaining groups...⁸

National Foods welcomes working with collective bargaining groups.⁹

5.13 On the other hand, another submission stated that when the ACCC granted authorisation for their formation, National Foods appealed against the decision.¹⁰

Tasmanian experience in 2009

5.14 The Tasmanian Suppliers Collective Bargaining Group is a collective of 86 dairy farmers supplying milk to National Foods. It was established and registered with the ACCC in 2006.

5.15 In 2009 National Foods offered the Group a price of 29 cpl, later increased to 33 cpl. This compared to 49 cpl the previous year and average costs for farmers of around 40 cpl (see Chapter 3).

5.16 In October 2009 National Foods announced that negotiations had broken down and they would bargain only with individual farmers.

5.17 For reasons never made clear, the Tasmanian Farmers and Graziers Association initially advised farmers to accept National Foods' early offers of prices well below the cost of production, and the Association held negotiations with National Foods in Melbourne without discussing first with the Bargaining Group.¹¹

5.18 The Tasmanian dairy farmers were assisted in their battle by 'people power'. Many of the Tasmanian community rallied behind the farmers and demonstrated their disapproval of National Foods' hardline approach by boycotting their products.

5.19 It appears that the short-term loss of sales, the longer term damage to their brand from the adverse publicity and perhaps fears of further deterioration in their reputation once Senate committees reported, led National Foods to settle with the Group in November 2009. As National Foods themselves put it:

ACTING CHAIR—...the recent dispute with the collective bargaining group in Tasmania was difficult for farmers and not helpful to your business, at least in the short term. Is that right?

8 National Foods, *Submission 11*, p. 11.

9 Mr Conor O'Malley, National Foods, *Committee Hansard*, 18 January 2010, p. 93.

10 Anonymous Queensland dairy farmer, *Submission 9*, p. 3.

11 For an example of the disappointment of farmers with this behaviour, see Mr Rogers, *Committee Hansard*, 5 November 2009, p. 8 and Mr Phil Beattie, Tasmanian Suppliers Collective Bargaining Group, *Committee Hansard*, 5 November 2009, p. 23. The Association's obfuscations about their behaviour are at *Committee Hansard*, 6 November 2009, pp 31-36.

Mr Evans—Yes—particularly the calls from some quarters for product boycotts. That is damage that we are working hard on and making progress—

...Mr Jeffrey—...We as a business have realised that we had an issue in Tasmania...We will put a lot of things in place between now and the next 12 months to get on top of those.¹²

5.20 The Committee heard that National Foods, while negotiating with the Tasmanian Suppliers Collective Bargaining Group in late 2009, had also approached individual farmers in what seemed to be an attempt to undermine the unity of the bargaining group. As the Group asked:

How can farmers negotiate with a giant multinational company if every time the company feels like it they can abandon the process?¹³

Committee view

5.21 Irrespective of the legality of such action, the Committee regards National Foods' approaches to individual farmers while involved in collective bargaining as a breach of good faith negotiating.

Collective bargaining in Queensland

5.22 Farmers' representatives from Queensland told the Committee:

We have some really successful examples of collective bargaining groups in Queensland...not just in terms of working with the processor on the issue of price but on a much broader basis in terms of getting a better understanding between the producer group and the needs of the processor ...They have managed to negotiate not just on price but also on supply conditions, terms of contract and a range of other issues, including transportation, testing et cetera. That relationship has matured over time, and...when they managed to negotiate longer term contracts, it did have a positive effect on arrangements with other producers and processors.¹⁴

Need for larger collective bargaining groups

5.23 As processors merge, there may be a need for bargaining groups to do so too:

...the collective bargaining groups that currently exist with authorisations under the ACCC need to be allowed to expand their farmer base representation and geographic areas to enable them to keep up with what is happening at the next level in the value chain. At the moment there is a

12 Mr Evans and Mr Jeffrey, National Foods, *Committee Hansard*, 18 January 2009, p. 92.

13 Mr Phil Beattie, Tasmanian Suppliers Collective Bargaining Group, *Committee Hansard*, 5 November 2009, pp 17, 25.

14 Mr Robert Peake, Chief Executive Officer, Queensland Dairyfarmers Organisation, *Committee Hansard*, 4 February 2010, pp 44-5.

disparity that has occurred, and there needs to be the opportunity for the collective bargaining groups of farmers to rectify that by being able to expand their representation.¹⁵

5.24 An impediment to this may be the need for ACCC authorisation. The ACCC recently refused to allow a group to expand its regional coverage.¹⁶

Training

5.25 Collective bargaining groups may be more effective with more training, given they are negotiating with large companies with specialised staff:

...we would like to see additional resources provided for training and professional advice to these groups. A lot of these groups are made up of people who are professional farmers but they are not professional negotiators and they are in an environment where they are having to negotiate with highly skilled and very experienced people in the processing sector of the food industry. We have seen the positive results that training and support can provide to collective bargaining groups...¹⁷

From the experience that I have seen in Tasmania, I think that, maybe with training and support earlier on, that situation could have been avoided...from what we have seen of the differences between a number of collective bargaining groups, the ones that have got the professional advice and training have certainly developed a much more professional and effective relationship with their processor than the ones that have not.¹⁸

Committee view

5.26 The Committee is disappointed by the behaviour by National Foods while negotiating with dairy farmers in Tasmania. The Committee is concerned that this behaviour has not been confined to Tasmania but has extended to other dairy regions within Australia.

5.27 The Committee considers that the ability of large companies to 'walk away from the table' undermines the collective bargaining provisions of the TPA and enables the more powerful participant in a negotiation to dictate the terms of trade.

An honest broker

5.28 The Committee heard suggestions that negotiations between farmers or bargaining groups and the processors may go better if there is assistance from a

15 Mr Robert Peake, Chief Executive Officer, Queensland Dairyfarmers' Organisation, *Committee Hansard*, 4 February 2010, p. 45.

16 Mr Robert Peake, *Committee Hansard*, 4 February 2010, p. 46.

17 Mr Robert Peake, *Committee Hansard*, 4 February 2010, p. 45.

18 Mr Robert Peake, *Committee Hansard*, 4 February 2010, p. 46.

facilitator, mediator or conciliator; or if agreement cannot be reached the involvement of an arbitrator.

5.29 The Tasmanian Suppliers Collective Bargaining Group commented:

A solution to the problem of having to battle over milk price with National Foods every year is the next thing we are seeking. We suggest this should be through arbitration or mediation, with an independent third party participating.¹⁹

5.30 They warned this may need to be some form of compulsory arbitration:

It is our belief that a previous collective bargaining group in another part of Australia asked for arbitration and National Foods rejected it.²⁰

5.31 A Tasmanian expert, Dr Broad, also supported some compulsory adjudication or arbitration.²¹

5.32 By contrast the Tasmanian Farmers and Graziers Association supported conciliation but not arbitration:

If there was a system of third-party conciliation that is something that intuitively I think is a good idea, but the arbitration issue becomes far more difficult... conciliation would be a wise step. The arbitration thing would worry me, as it would worry a lot of people.²²

5.33 National Foods rejected suggestions that an arbitrator or moderator may have made the process of reaching an agreement with the Tasmanian farmers much easier, and less damaging to the company's brand. The most they would concede was:

...with hindsight, if someone had come in at a point in time and both parties had agreed to that and if there had been a willingness of both parties to accept rules of engagement, both parties would have had to—dare I say it?—almost create something from scratch, and that might have facilitated an outcome. But that is a hypothetical answer I am trying to give.²³

5.34 A Dairy Industry Ombudsman is advocated by Associate Professor Frank Zumbo. He envisages the Ombudsman as a:

...suitable qualified and independent person with specific responsibility for
(i) researching and identifying existing and emerging areas of disputation

19 Mr Phil Beattie, Tasmanian Suppliers Collective Bargaining Group, *Committee Hansard*, 5 November 2009, p. 12.

20 Mr Phil Beattie, Tasmanian Suppliers Collective Bargaining Group, *Committee Hansard*, 5 November 2009, p. 20.

21 Dr Shane Broad, *Committee Hansard*, 6 November 2009, p. 18.

22 Mr Chris Oldfield, Tasmanian Farmers and Graziers, *Committee Hansard*, 6 November 2009, p. 32.

23 Mr Conor O'Malley, National Foods, *Committee Hansard*, 18 January 2010, p. 94.

with a view to identifying strategies, mechanisms or legal options for minimising such disputes; and (ii) assisting industry participants to resolve disputes...who would systematically investigate new and emerging areas of disputation in the Australian dairy industry with a view to seeking to identify strategies, mechanisms or legal options for efficiently and effectively resolving such disputes.²⁴

Recommendation 12

5.35 The Committee recommends that the Government reviews the collective bargaining provisions of the Trade Practices Act with a view to strengthening that framework to create a more equitable balance of power between the negotiating parties and requests that it report by 30 April 2011.

Recommendation 13

5.36 In reviewing the collective bargaining provisions the Committee requests that the Government considers the effectiveness of any existing alternative dispute resolution mechanisms and investigates:

- allowing collective bargaining groups to merge to address imbalances in bargaining power;
- the introduction of a requirement that the ACCC facilitate the timely appointment of a mediator should a party to a negotiation require such assistance; and
- the introduction of a requirement that cooling off periods be mandatory in contracts between dairy farmers and processors.

24 Associate Professor Frank Zumbo, *Submission 34*, p. 4.