Submission to the ACCC

by

Concerned Dairy Farmers of Central & East Gippsland

Response to the ACCC Issues Paper – 23rd December 2013

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1. BACKGROUND:

Our group was initially formed on the 29th November 2013 following a meeting of concerned dairy farmers in the office of The Hon Darren Chester MP, Member for Gippsland. We discussed numerous issues associated with the take-over of Warnnambool Cheese & Butter (WCB) by Saputo.

After our meeting with Mr Chester, we formalized our views in a letter. A copy of this letter is included in our ACT Submission Appendix, as is a copy of correspondence received from Mr Chester outlining the representations he made on our behalf to Mr Rodney Simm, Chairman of the ACCC.

Subsequently, we compiled our concerns which are outlined in our Submission to the Australian Competition Tribunal, which was submitted on the 18th December. Copies of the submission and appendix were forwarded to the ACCC and we refer you to these documents.

We explain the effect of competition in Central and East Gippsland, and why the proposed merger between Murray Goulburn Co-operative (Murray Goulburn) and Warnambool Cheese and Butter (WCB) would lead to significant public benefits for both dairy farmers, farming communities and consumers.

Our decision to participate as an interested party in the process before the Australian Competition Tribunal (Tribunal) and again in response to the ACCC Provisional Issue List is motivated by our concern that the voice of dairy farmers is under-represented and misunderstood in present and complex regulatory proceedings.

This Submission to the ACCC is our best attempt to redress our concerns and clarify important issues prior to the compilation of the ACCC’s report to the Australian Competition Tribunal due on the 28th February.

We note, our experience, whilst potentially lacking rigorous economic evidence, has been gained through our collective experience of 400+ years of dairy-farming and living in dairy farming communities.

Our group of concerned farmers believes that an Australian-owned Murray Goulburn should be given the same right to engage in a takeover bid as any other Australian or foreign company.

In this Submission, we seek to clarify the issues raised by ACCC in respect to net public benefits, public detriments, competition and term of authorization from a farmers perspective.
Historically, Murray Goulburn’s prior attempt to acquire WCB in 2010 was the subject of a preliminary ‘Statement of Issues’ by the ACCC, which indicated preliminary concerns particularly about a lack of ‘competition’ at the farm-gate in limited ‘geographic regions’.

In our meeting with the ACCC in Elizabeth Street on 8th January 2014, we explained that the ACCC previous concerns in 2010 didn’t apply. Whilst we understand the intention of the ACCC is to protect farmers, we explained both in our meeting and subsequent correspondence that ‘competition’ doesn’t necessarily improve farm-gate milk price basically due to;

- The priority of proprietary companies is to maximize investor’s profits, using whatever means possible.

- MG’s co-operative strategy to repatriate maximum profit back to farmers.

Pure competition, in its most simple economic theory, does not exist in this industry. On one hand you have excess competition, such as in Central Gippsland, which leads to factories operating under capacity. On the other hand, just three hours further east there are 70+ suppliers who have no competition, yet are paid the same price for there milk and are loyal to MG because of the stability they provide.

Competition between milk processors does not drive up the milk price for farmers. They simply wait for MG to announce its milk price. They add a small margin, traditionally 2c more. Certainly in Central Gippsland, where there are many milk processors, there is no true dynamic to drive up milk price beyond a small margin.

In respect to geographic regions, the area which ACCC reviewed in 2010 are adequately serviced by several milk processors. The boundaries are larger than previously assessed, because milk can be stored in large vats and travel in B-double trucks to factories many hours away. Traditionally, ‘regions’ were used to describe factory locations, but with factory consolidation and closures, improved transport and milk storage, these old geographic locations are not relevant.

**Statutory Framework:**

- **The Proposed Acquisition**

Murray Goulburn’s application for authorization to merge with Warrnambool Cheese & Butter is the subject matter of this Submission. It is important to note that it does not mean that Murray Goulburn will necessarily acquire the company nor pay higher milk prices if they lose the bid to Saputo. The acquisition is ‘strategically motivated’, and some proprietary companies may collaborate to
prevent MG from securing the merger, so they can benefit by paying less for milk in future.

**Likely Future With & Without the Proposed Acquisition**

**Issue 1A – What is the likely future with the proposed acquisition? How should the Tribunal make this assessment in light of the potential for MG to acquire less than 90% of share in WCB.**

We understand that MG may not acquire more than 90% of shares. However, we contest your statement that at the time of the Tribunals determination that it may be more apparent. In fact, it is more likely that the result will be unknown. Historically, dairy take-overs take time. In this case, there may be more bidders yet to make an offer, such as a Chinese, NZ or USA company or co-operative. Similarly, there may be negotiations between bidders who have existing supply contracts and this may lead to delayed bidding activity as behind-the-scenes commercial arrangements take place.

In respect to the scenario of MG Partial Ownership, it is important to take a long view of take-over activity. MG may not achieve more than 75% or 90% in a short-time frame. We urge you to take a long term view of MG being able to secure at least 75% over time. They will then be able to implement operational & synergistic measures. From a farmers perspective, similar to the Chinese Governments, we take a long-term view of investment. We therefore urge you to overlook Point 1.

**Issue 2. Would MG Partial Ownership impact on the anti-competitive detriments, if any, from the proposed acquisition.**

We do not believe that ‘pure competition' exists in the dairy industry. Therefore, any claim to public detriment should be overlooked. Our position on ‘competition' is adequately explained in our Submission to the ACT, this submission, in our meeting and subsequent letter to the ACCC on Thursday 9th January 2014.

**Issue 1B: What is the likely future without the proposed acquisition? How should the Tribunal make this assessment in light of competing bids to acquire WCB by Saputo and Bega?**

Over the last 13 years, the Australian dairy industry has been steadily shrinking both in terms of the number of dairy herds and total volume of milk produced per annum. Milk production per annum has fallen from a peak of 10,847 billion litres in 1999-2000, down to a projected 9,200 billion litres in 2013/14. This is unlike the New Zealand dairy industry, which has grown – perhaps in part because of their strong, farmer owned co-operative. Fonterra has aggressively targeted, pursued and profited from export markets.
Unless there is consolidation and the formation of a strong, farmer-owned co-operative, we believe the decline in the Australian dairy industry will continue. This is because we are united in our belief that the only way to reverse the decline is to pay farmers more for their milk. We do not believe a fragmented, overcrowded industry marked by small players, will lead to higher milk prices for farmers. We therefore ask the ACCC to take into consideration the important role of the Co-operative structure in assessing competing bids from non-co-operative structures for WCB.

In respect to competition in the Western District; more processors acquiring raw milk at the farm-gate is not the solution because it will only draw milk from MG’s Koroit Factory. The Koroit Factory could operate under-capacity which would affect the milk price paid by MG to all its suppliers State-wide.

Similar to Central Gippsland, where there is ample competition, Proprietary companies will base their price around Murray Goulburn’s lower price by matching, pre-empting or paying a slight margin above Murray Goulburn. This is because Murray Goulburn is the industry price-setter. We refer you to rare and unusual admissions by proprietary company executive, in Australian Financial Review on 8th January 2014. Mr Esposito, owner of United Dairy Power admits;

“The Whole industry follows the leader, and the leader is called Murray Goulburn, and its inefficient. The industry is just adding 1 cent more to the milk price, not because its all they can afford but because its all they have to do”


We also note that the company makes approximately $15 million profit per annum. These profits are made at the expense of the dairy farmer who are only paid 1 cent above MG. If the company is sold to a Chinese company, as indicated in this article, these profits will be repatriated overseas – not to dairy farmers nor dairy farming communities.

As discussed in our meeting with the ACCC on Wed 8th, we explained how it is in the interests of proprietary milk processors to aggressively attack Murray Goulburn so they in turn can pay farmers less for milk.

In respect of the likely future without the proposed acquisition, it is likely that the Western District will become fragmented like Gippsland. Over the long-term, this will lead to overall low milk prices for all dairy farmers and a loss of opportunity if Murray Goulburn does not merge with the only dairy company capable of delivering incrementally greater returns that will push up farm-gate milk prices and deliver much needed confidence and stability to the industry.

We are united in the opinion that The Australian Competition Tribunal should make this assessment as a matter of urgency to allow Murray Goulburn to bid
unconditionally and equally against competing bidders. Murray Goulburn has effectively had its hands tied in this bidding process, which has been manifestly unfair as we feel the Murray Goulburn merger is the best outcome for the industry. The conditions, to gain regulatory approval, has created confusion and skewed the take-over activity. It is therefore critical, in our view, that the Tribunal deal with this application as quickly as possible and certainly within the 3 month period we understand is stated in the legislation.

D PUBLIC BENEFITS

30. In addition to MG’s public benefits, we contend that there five additional public benefits which have not yet been considered by the ACCC.

1) Lack of industry fragmentation, leading to more profitable, efficient factories.

2) This leads to increased confidence of farmers across the State and beyond to invest in on-farm improvements and expansion.

3) Higher farm-gate milk price – statewide, not just in limited geographic areas.

4) Higher efficiencies mean cheaper products for consumers eg. Coles MG $1 per litre milk deal.

5) Farmers in remote areas, such as East Gippsland, can benefit from the same high prices as farmers near Warrnambool, whose land is more likely to be subdivided or used for more higher value crop or commercial land-use.

30. a) A significant increase in the real value of exports (issue 3).
As dairy farmers, we strongly support the public benefit claimed by MG of a significant increase in the real value of exports (see also Point 92). If there is a strong, efficient co-operative, farmers across the State are more likely to invest in farm expansion, pasture, fertilizer, irrigation infrastructure and herd improvements, re-enter the industry, enter new country etc. This is not just limited to MG farmers, but all farmers, as they will realize a higher milk price as Proprietary Companies match MG’s milk-price. Extra production will lead to real volume increases of high quality milk and a significant increase in real value of exports. This is because over 50% of Australia’s milk is exported.

Without a strong, merged Co-operative, there is little incentive, and significant risk to invest in dairy, especially in regions beyond the geography of Warrnambool. We remind the ACCC that the co-operative operates across the state. MG has a long-standing philosophy of picking up milk, regardless location. They do not cherry pick suppliers, nor charge freight premiums, or lock suppliers into lengthy contracts, unlike some proprietary companies. In many ways, the
large, diverse spread of the Co-operative hedges against the frequent weather events such as floods, fires, drought, extreme hot/cold and storm etc. Historically, these events have lead to sudden exists of Proprietary Companies, leaving farmers stranded and left to fend for themselves (Godbod, 1989).

37. As discussed earlier, it is not possible to pre-empt results from partial or full ownership due to the fact that the take-over activity may be on-going for some time. Companies such as Allied Associated, who owned Pura Milk Brand, was stealthily acquired by a private Melbourne family over a number of years. Murray Goulburn supplied the milk and also had a 15% stake in the business. Similarly, Bonlacs full purchase by Fonterra took 2-3 years from its initial stake of 25% in 2001. Ownership and processing contracts are strategic by nature. Therefore synergies may not occur in the short-term. As co-operative members, we are not highly concerned by this as we typically think long-term.

38. **Synergies & Cost Controls.**
We agree with the ACCC that synergies rely on the premise that MG needs vigilance over costs in order to realize synergies. Consistent with our argument that regional boundaries are not relevant, strong competition for milk in Gippsland and Northern regions will continue to drive the co-operative to seek out and fulfill all possible efficiencies.

After the days of Jack McGuire, MG’s MD who oversaw over 60 of MG’s mergers and acquisitions, a younger, less experienced staff spent $22,000,000 in a matter of months. The Co-operative was in trouble. Farmers, took action and bought Jack McGuire out of retirement. In his first day, he cut costs by locking the cheque-book in his safe, recalled 22 open credit cards and impounded 22 brand new cars (3). Whilst this is reflective of the past, we now expect cost savings to be gained through the efficient, automated technology, supply-chain and labor savings.


41. We agree that any cost saving achieved through increased bargaining power is an ‘public benefit’ because it translates to higher farm-gate milk prices which puts real money into farmers pockets and into farming communities. We welcome any cost saving achieved through increased bargaining power with companies that supply logistics, energy, processing, marketing, advertising and packaging services. Eg. Visy – Volume savings achieved through a merged entity would mean more money for farmers. Increased bargaining power is more than just “improvements in efficiencies”, they are cost saving strategies that do not harm the farmer or farming communities.
42. A merged entity, irrespective of ownership, will always be driven to reduce costs in the pursuit of profit. Even with MG in partial ownership, the co-operative will use its experience of cost-cutting everything other than the farm-gate milk price. This is advantageous for all farmers.

Issues for further consideration

4. To what extent would the size of MG’s claimed public benefits arising from the proposed acquisition be diminished due to any reduction in competitive discipline on it to contain its costs (see Issue 17)?

Lack of cost control is an issue for Murray Goulburn. The co-operative structure, with its legal and constitutional obligations, regional and independent directors and regular supplier meetings means that farmers have the means to bring any cost issues to the attention of directors or vote out poor performing management at the AGM. We believe the risk of lost opportunity is significantly greater than the risk of cost blow-out.

Issue 2 (c): In relation to the claimed synergies: Does the claimed public benefit result from the proposed acquisition or is there a real chance that it would eventuate in the future without the proposed acquisition?

It is very unlikely the ‘public benefits’ will eventuate in the future without the proposed acquisition. This is the very last opportunity to acquire an operating dairy processor which processes 900 million litres of milk and has extensive export knowledge, synergies and scale. There is a very real risk of public detriment if the merger doesn’t proceed and Saputo gains ownership. They will offer incentives to lure MG suppliers which will pull milk out of the Koroit factory, which is currently operating at capacity and propping up farm-gate milk price across Victoria. If Koroit is operating under capacity, MG will be less profitable and the price paid to farmers will be lower. This ‘collusion effect’ is what Proprietary Companies want as MG is the milk price setter, Proprietary Companies in turn, pay less for their milk.

52 a) The proposed acquisition will increase MG’s milk pool, not only by the amount supplied by WCB suppliers, but through suppliers across other areas of Victoria who have more confidence to invest in on-farm productivity improvements or expansion. This will result in increased overall milk volume above and beyond that acquired through WCB.

Conversely, if the co-operative is subject to competitive attack and industry fragmentation by Saputo, there will be little incentive to invest in areas away from Warrnambool and the WCB region. Under this scenario, the dairy industry will continue to decline and we will lose the opportunity to collectively embrace Chinese, Asean and Middle Eastern markets.
52 b) It would be very difficult to achieve scale without the acquisition. A possible 900 million litres, plus extra production from other areas, means that MG can claim the public benefit of scale.

52 c) It would be difficult to obtain operational efficiencies in a fragmented market with many small inefficient factories operating under capacity. Increasing fixed costs, energy and labor costs means the only realistic way forward is for the industry to consolidate and build factories that operate at high capacity, or the milk price will be cut, which is not the result we desire for our industry.

54 – We understand some suppliers may not wish to supply MG based on principle, history, old grudges, religion, financial reasons or for the individual pursuit of niche markets such as biodynamic, organic, Jersey milk, free-range, specialty milks and cheeses or goat or sheeps milk etc.

Certainly, in the Western District, there are adequate established factories servicing the region. There are also new entrants who have not been considered by the ACCC in 2010. This includes a new milk powder plants being constructed near Warrnambool. It has been financed by a Chinese Australian Venture Capital with milk powder sold to China like Iron Ore agreements in the form of ‘off-take agreements’. The issue with supplying this Venture, is that the VC fund is part-owner of the farm, and imposes strict profitability guidelines on the farmer, which given the many externalities such as drought, flood, feed shortages, natural disasters, bushfire etc, means farm ownership could well end up in the hands of the VC fund.

Similarly, in 2011 Aussie Farmers Direct established its own milk processing facilities in Camperdown. This was assisted by a $1 million State Government Grant and various grant of approximately $610k from Wannon Water and Corangamite Shire Council. This factory supplies its many franchises, but it is unlikely to be a leading price setter for raw milk acquisition, despite claiming to ‘support Australian Farmers’.

We expect most farmers will stay with MG because it is 100% ‘Australian Owned’ and a stable co-operative. Through improved scope, scale and drive for export opportunities, MG should be capable in time of delivering the highest price. This should prove attractive to most suppliers.

56. Proprietary companies often use rhetoric which diminishes the reputation of MG in the eyes of their suppliers. This has been a long used promotional strategy used by dairy companies ever since competition between factories began, although it has become increasingly apparent over the last 10-15 years.

We discussed this at length in our meeting with ACCC on the 8th January. Noise and rhetoric is employed by factory executives to secure milk supply and generate loyalty. The acrimonious voice is present in the current take-over activity. For example, the WCB
board has dismissed MG’s bid, despite Saputo offering a lower ‘real’ share-price. It is evident that the Board is not representing the interests of all share-holders – especially farmers who may be possibly mislead by the WCB Board’s agenda to appease institutional investors &/or secure their own jobs.

There may also be a hidden agenda for WCB’s acrimony towards MG, despite having the highest bid of $9.50. We know from previous experience, that Proprietary Companies have such hidden agendas – as discussed at our meeting, we highlighted how a Parmalat sale of $35 million was accepted over a $70 million bid from MG. The current antics of the WCB Board defies economic theory. We suspect this may be explained by self interest, collusion or possible corruption. In any case, we support the ACT’s Justice Mansfields comments in the first Case Management Conference “the more bids the better”.

We suspect that once the ownership of WCB is ascertained, the acrimonious voices will cease. Dairy farmers will more willingly supply MG, especially if the milk price is strong and the efficiencies, synergies and cost savings are implemented expediently.

**Issue 2 (F): In relation to the claimed synergies: Who are the beneficiaries of the claimed public benefit? Will the benefits flow through the broader community?**

As discussed above, we believe all Australian Dairy Farmers will benefit from improved financial returns because Murray Goulburn is the farm-gate price setter.

In addition, all Murray Goulburn suppliers across Victoria will receive a higher farm-gate price through increased profit from Murray Goulburn’s claimed public benefits. This is because Murray Goulburn’s aim is to maximise farmer returns, as opposed to companies like Bega, Saputo and WCB, whose goal is to maximise investor returns.

The goal of non-farmer owned companies is to only pay the minimum amount necessary to farmers to ensure milk supply. Thereafter, profits from milk processing are distributed to investors/owners.

In Saputo’s case, this means that profits are repatriated to Canada as opposed to staying in Australia. Publicly listed companies like Bega and WCB, distribute funds to investors/shareholders and hedge funds, wherever they are in the world. This is very different to Murray Goulburn, which distributes the profits to farmers in farming communities. Dividends given to institutional funds or other private investors are unlikely to be reinvested back into the dairy industry or spent in dairy farming communities, unlike Murray Goulburns profits which are more self-sustaining for our Industry.
There are obvious multiplier effects of repatriating profits into regional dairy communities. Dairy farms are businesses that require professional services, equipment, finance, contracting, farm supplies, hospitality, health and retail businesses to support them. These businesses generate further economic activity and contribute significantly to the economic and social fabric of rural communities.

81. We strongly agree with MG’s claim that profitability, which is likely to be achieved through the proposed acquisition, will be passed on to all suppliers of the combined entity including WCB’s current 500 suppliers. Critically, is that the combined processing assets can direct output with scale into markets. This in time will result in a profitable model. This contrasts with Saputo potentially growing its factory capacity through paying short term loss-making milk prices, reducing MG’s throughput in Koroit and its ability to pay more for milk.

II Increase in real value of exports

90. MG claims that the proposed acquisition will significantly increase the real value of exports. MG submits that this will be achieved through allowing it to:

- Leverage its existing relationships with premium customers to offer more innovative products, which attract higher price premiums.

- Use its increased scale to optimize its product mix. This includes producing a greater proportion of higher value products which attract a price premium over base commodities and are less susceptible to price fluctuations in the market. As a result, MG’s exposure to price volatility in commodity markets will be reduced.

We look forward to this outcome, especially in relation to price volatility. This has been a problem for dairy farmers. Wild swings in the milk price significantly impacts on planning, farm budgeting and cash-flow. Whilst there are no guarantee’s in farming, anything that removes the peaks and troughs would be welcome.

91. We strongly agree with Murray Goulburn’s statement.

92. MG has outlined at the AGM its quest for efficiency and expanding its production, especially to export markets. We agree with the ACCC cutting costs and gaining cost savings through synergies will require discipline.

However, we feel that the ACCC has failed to consider the competitive pressure placed on MG from other regions of the state. An enormous incentive for cost discipline will be pressures from Gippsland and Northern. MG knows that it has to seek out every cost saving or predatory pricing in other areas will hurt the co-
operative. MG, as well as wanting to make the WCB acquisition work is also aware of the need to break competitors in Gippsland (as was the case noted in our first submission to the ACT regarding Longwarry Food Park in 2012).

This comes back to a core argument that regional boundaries are not relevant.

MG, being a co-operative, is also the most likely of all milk processors to cut costs that are not directly related to the cost of milk. This is in stark contrast to proprietary companies, who employ strategies that encourage a weak MG so they can capitalize on a lower milk price and pay farmers less.

Given raw milk represents 74-79% of costs, any strategy employed by Proprietary Companies, which cuts the cost of raw milk, will be employed in order to generate profit for investors. As mentioned in our letter dated 9th January, this is not an act of open collusion, but it has the same effect.

93. We agree with this statement.

94. Safe, reputable, green dairy products are sold at a premium in high-end Asian supermarkets. A colleague recently participated on a farmers delegation to Hong Kong. Fresh milk was selling for $8.00 per litre. There was no Australian fresh milk, only NZ. Whilst MG may not cater to the Hong Kong fresh milk market, it demonstrates that Asian and expat consumers are highly suspicious of the milk and dairy products produced in Asia, Europe, Canada and USA.

We are seeing this trend here in Australian supermarkets with the rise of organic, biodynamic and even ‘Free-range Milk’ in everyday supermarkets such as Coles – of course most cows in Australia are free-range - but there is a consumer who will pay extra for the comfort and knowledge that the cows are not grown in cold, dark, dirty barns, like the cold climates of Canada, USA and Europe.

A similar scenario exists for infant milk formula in Asia. It is well known the Asian consumer prefers ‘sealed’ Australian and NZ baby formula over product produced or processed in Asia. We do not need to remind anyone of the melamine scandal in China which was one of the first public examples of contamination for the sake of profit. We assume this is one of the reasons for such high demand from the Chinese and ASEAN nations.

(See Appendix in the ACT Appendix: MILK FOR ASIAN 6 Tigers, Rabobank Agriculture in Focus & Australian Financial Review articles, Fonterra Milks itself Dry, by Tim Binstead, 13th December 2013)

**Issue 3(c):** In relation to the claimed increase in the real value of exports: Does the claimed public benefit result from the proposed without the proposed acquisition?
Without the proposed acquisition, we are extremely doubtful that the claimed public benefit from the proposed acquisition will eventuate. Fragmentation and an extension of the predatory which exists in Gippsland into the Western area will result in a ‘lowering of the bar’ with milk prices ie. Competitors paying a small margin over the weakened MG price. As we have started, the only way to increase exports in Australia is to provide a real price incentive to farmers. That is through a co-operative with scale and scope, as opposed to being bled of milk.

**Expansion in exports of high value products**

96. We agree with this statement.

Murray Goulburn’s proposed capital restructure is designed to raise financial capital for the co-operative to upgrade Murray Goulburn’s factory technology and capacity. This in turn will generate greater returns to farmers through increased farm-gate milk price.

The need for Murray Goulburn to raise equity for investment in modern technologies and infrastructure is indicated by a recent Fonterra announcement in New Zealand. Fonterra will miss both their milk price estimate (by 70c/kg milk solids) and pay only 33% of their estimated share dividend because they did not have sufficient capacity to maximize milk powder production. New Zealand dairy farmers have effectively been squeezed because Fonterra had neither built the infrastructure nor had they invested in technologies that allow flexibility to vary product mix. Under-investment in infrastructure has a very real and significant effect on returns. The lessons of our NZ neighbors have been learnt. Members of the MG Co-operative share MG’s vision for an efficient, highly productive plant producing export quality, premium, high value nutritional products.

97. The benefits of increased real value of exports are highly unlikely to occur without the acquisition because no Australian company will have the adequate size or scale to compete with bigger dairy companies who are already in, or attempting to enter the Asian and Middle Eastern Markets. Most of these points have already been discussed under point 92, 93 and 94. We refer you to UDV and Dairy Australia for further information on foreign markets.

(See ACT Submission Appendix: Size Does Matter: A Globally Competitive Australian Owned Manufacturing Sector is the Key, Vin Delahunty, UDV, Dec 2013.)

103. We are strongly concerned with the ACCC’s assumption that Saputo with its financial backing and size will be able to exploit the benefits of the Asian food boom for its farmers. This idea shows complete misunderstanding of pricing dynamics to farmers in the Victorian dairy industry. We have no doubt that Saputo will exploit growth opportunities in Asia. However, the idea that this will somehow be repatriated to its farmers is ignorant.
The experience of every foreign-backed dairy company in Australia is that they pay as little as possible for their milk. Please note, our first submission to the ACT “The Gippsland Experience”. As we mentioned to the ACCC at our meeting on 8th January, Burra Foods as an example with its 50% ownership by Itichou waits for MG to open its price each year, and then pays a slight margin above this price for the rest of the year.

Why will this not be the case with Saputo?

104. International Sales Offices:

In certain countries, such as The United Arab Emirates, it is necessary to have an in-market presence, especially since MG’s brands are relatively new entrants to the market. Trading in Dubai and across the MENA (Middle East & North Africa) requires local knowledge of Arab business culture and ongoing customer relationship management. There is a lot of competition for dairy products in this region, namely from Europe, USA, NZ and USA. The presence of an office is critical. These offices could be replicated by Saputo. However, as Saputo is Canadian, the increasingly discerning Arab consumer may prefer the clean, green, safe and reputable image of Australian or New Zealand brands. It is possible that Saputo’s origins in may work against them.

(Please Note: Jacqueline McKeown served on the Executive Committee of the Australian Arab Chamber of Commerce & Industry (Victorian Chapter) between 2008-2013. She has visited the region many times, and stayed with local diplomatic and business families.

Issue 28. Do dairy processors require scale to have credibility or relevance with international customers? If so, how significant is scale in this regard? We believe scale is necessary to deliver volume which is necessary for negotiations with large, reputable, professional Agents, Distributors or Retailers. As dairy farmers, we do not have evidence of this and refer you to the industry associations of United Dairyfarmers of Australia or Dairy Australia.

29. To the extent that scale is required to have credibility or relevance with international customers, can it be achieved through means other than the proposed acquisition, such as a joint venture? This is possible. However, it is in the interest of the co-operative to control production and quality, and to profit accordingly. It is absolutely essential to ensure consistent and reliable food production standards and milk quality. We do not want to risk damage to our reputation as some joint ventures can not be scrutinized by the same standards. The Melamine scandal was a joint venture which significantly harmed Fonterra.

Issue 3(f) In relation to the claimed increase in the real value of exports: Who are the beneficiaries of the claimed public benefit? Will the benefits flow through to the broader community?
The beneficiaries are the farmers if MG is successful in acquiring WCB. The other beneficiaries will be warehousing, shipping and logistic companies, as well as consumers in foreign countries who have access to clean, safe, healthy, nutritional dairy products.

112. Murray Goulburn submits that this increased profitability will result in it offering higher raw milk prices to farmers than it otherwise would have and that the resulting increase in dairy farming and processing activity will have a multiplier effect on employment and income in regional communities.

We strongly agree with this proposition. History is the ultimate judge and we feel that the ACT should consider the result of MG’s 60 mergers over the past 50 years. The dairy industry would not exist in many parts of the state if, in an era of declining terms of trade, MG did not merge with many smaller companies and co-operatives to build the scale and cost reductions which have led to a successful industry. Would the dairy industry exist in North East Victoria if NEDCO (North East Dairy Co-operative) did not merge into MG in 1985?

113. Issue 3(g): In relation to the claimed increase in the real value of exports: are there public detriments intrinsic to the claimed public benefit?

None to our knowledge.

114. We support ACCC’s position.

120. a) We are heartened to read Philips report is showing signs that national milk production is showing signs of recovery. However, we caution the ACCC to not get too excited about this possible growth and to carefully examine the underlying assumptions in this report. Firstly, there is severe drought in large parts of Australia which will undermine this growth in in-land regions. Secondly, despite the dams being at or near capacity, the price of irrigation water has not been reduced by Government authorities, which normally occurs when adequate water supplies exist. Dairy farmers in Queensland are suffering considerably with lack of competitive processing facilities and are facing an industry exodus.

According to the UDV Gippsland Office, this year over 100 farmers exited from the Gippsland region. This is the highest ever exodus in one year. Whilst there may be other factors other than farm gate price, we expect that low farm gate price and financial pressures are the reason behind this exodus. This exodus occurred in a region where there is ample competition – clearly in-effective competition and lack of support from Government instrumentalities are in part, responsible for our decline.

c) These forecasts are conditional on a strong consolidated industry. With fragmentation a real possibility in the Western District, there will be little incentive to invest in farm improvements to achieve higher milk volumes.
121. We urge the ACCC to reconsider this position. The increase in milk supply is most likely with a merged entity. Milk decline is very likely if a Saputo or other Proprietary Company takes ownership due to the possibility of ‘fragmentation’.

126. We support Murray Goulburn’s position.

131. We support statements made by Murray Goulburn.

132. We support statements made by Murray Goulburn.

134. Decline in milk production in recent years have been attributable to low milk price and extreme volatility. Milk prices swings from 40c per litre to 21c per litre occurred in 2009. This was partially due to all of the items outlined in the Phillips report, but mostly in response to the GFC and low profitability caused by rising Australian dollar and extreme competition from the NZ Co-operative Fonterra.

We note that MG announced its price reduction in December. In contrast, WCB were slow to react and didn’t drop prices until the last Quarter of 2009. As a result the farmers were squeezed down to 15 cents per litre. There was a mass exodus from WCB and the company was in severe financial trouble. MG picked up 120 suppliers. If it wasn’t for the size, scale, commitment to pick-up milk and the long-term view of MG, these suppliers could have been in a much worse position. It demonstrates, that the industry needs a strong co-operative to provide certainty in the face of economic upheavals.

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135. The magnitude of the public benefits arising from the acquisition is hard to access because there are so many advantages across the supply-chain that it is difficult to identify, yet alone quantify them. From a farmer’s point of view, we know intrinsically that efficient factories produce greater profits. For example, Maffra is operating at 50% capacity. If Maffra was operating efficiently and at 100% capacity, the milk price paid to all Murray Goulburn suppliers would increase by at least 2c/litre, as noted by Murray Goulburn executives at a recent meeting in Maffra. If similar increased efficiencies were gained across a larger, efficient operation, then we would expect similar price increases.

Issue 7: What is the impact, if any, of MG’s proposed capital restructure on the benefits identified as resulting from the proposed acquisition?

MG’s proposed capital restructure will have no effect in our view on the benefits identified other than the funds raised will be directed to factory upgrades.

143. To the ACCC’s knowledge, no other public benefits of the proposed acquisition have been identified to date.
A major public benefit that would result from the proposed acquisition is that profits would be distributed to dairy farmer suppliers throughout Victoria and beyond. The benefit is not just be confined to a small geographic region, such as the Western District of Victoria. This is because Murray Goulburn plays the important public benefit of ‘buyer of last resort’ and buyer to ‘distant and remote areas’. There is a philosophy within Murray Goulburn that they will pick up milk State-wide in Victoria. In turn, the dairy farmers are loyal to Murray Goulburn and remote communities are able to invest, produce milk and profit with a sense of security.

For example, of all Victorian dairy processors, Murray Goulburn is the only one that sends tankers on the 10-12 hour return trip to far East Gippsland. This includes remote but productive areas such as Orbost, Cann River and beyond. A farm at Wingan River, 30 km east of Cann River, has recently been given the 'go-ahead' that its milk will be picked up. Notably, this farm, like every other farm across Victoria, will be paid the same milk price. This is a demonstration of public benefit as no other processor in Gippsland is interested in this milk.

Under the co-operative payment policy, all farmers are paid the same milk price structure.

Another public benefit is that farmers do not compete directly with one-another. They are more likely to collaborate and to help each other. This is very important and is unlike most other agricultural pursuits where farmer is pitted against farmer. This collaboration, helps farmers reduce costs, helps younger farmers get a start, and helps neighbor maintain friendships.

9. If so, what is the nature and extent of those public benefits?

In respect of the East Gippsland region, public benefits derive from over 100 million litres of milk, which has a gross value of $45,000,000 circulating through the region. If not for Murray Goulburn, this amount of milk and money would not otherwise be circulating.

We do not know how much East Gippsland supply can grow as this is unknowable. On a personal level, Jacqueline McKeown, co-author of this submission, would purchase an additional farm in East Gippsland and aim to produce an extra 1.5 million litres. This alone represents an extra $720,000 of income which would be mostly spent locally on farm, finance, herd and dairy expenses. I am aware of several other dairy farmers who would also expand if the Co-operative secured WCB. Jacqueline, is unlikely to invest if there is a risk that Saputo will gauge the profitability out of MG.
E: Public Detriments

144. We fully support Murray Goulburn’s position that there are no meaningful public detriments associated with the acquisition.

146. The ACCC is not aware of any basis on which any competitive effects that my result from the proposed acquisition would be different when assessed against a future with Saputo Full Ownership or Saputo Partial Ownership, as opposed to the status quo. We strongly disagree with the ACCC’s proposition that the proposed benefits will be no different if the take-over by Saputo was to eventuate. This indicates a complete mis-understanding by the ACCC on the milk market environment when a co-operative is involved in the mix. The outcomes of an MG and Saputo ownership will be completely different.

Murray Goulburn will have advanced scale and profits will flow to farmers who will produce accordingly. Saputo, using the Burra Foods example, will price in a predatory manner, drawing out milk for MG’s Koroit Factory and ultimately ‘lower the bar’ for milk prices statewide.

The outcomes could not be more different.

I Markets in which to assess the competitive effects of the proposed acquisition.

Issue 10: What are the relevant markets in which to assess the competitive effects of the proposed acquisition?

It is very important that the ACT refer to our first submission regarding “The Gippsland Experience”.

We propose that Western Victoria with Saputo present will mimic the current Gippsland environment. Western Victoria does not pick up Gippsland at present, because in our opinion, WCB in its present state offers ‘no meaningful’ competition to MG. Its pricing activity in recent years is more representative of a company trying to keep up.

However, with strong foreign backing from Saputo, a Burra Foods scenario with predatory behavior is more likely.

Issue 10 (a). Is there a single market for acquisition of raw milk in Victoria, South Australia and the Riverina region of NSW? Or are there separate regional markets for the acquisition of raw milk

We strongly believe that as MG pays the same price right across Victoria, despite the ACCC stating otherwise, the regional boundaries are not relevant.
Market definition – geographic dimension

147. Murray Goulburn submits that the relevant geographic market for the supply and acquisition of raw milk is Victoria, South Australia and the Riverina region.
We support these regions. As mentioned several times in this submission, large, modern vats and transport has widened the geographic regions significantly. Regions no longer revolve around factory locations as processors consolidate and merge in the quest for efficiency, growth, new markets and innovative products.

Issue 44. Do other processors who acquire raw milk in different regions of Victoria, such as Fonterra and Bega, pay different prices for raw milk in those different regions?
Bega and Fonterra pay different prices for milk in different regions. This is for predatory reasons and often to weaken MG where it is vunerable. As discussed during our meeting with the ACCC on the 8th, Fonterra sought to weaken MG during the drought of 2009 by targeting milk with a higher price in Northern Victoria. As these companies do not work on co-operative principles, such predatory pricing is common.

45. Is there any evidence that MG responds to these different prices?
MG’s pricing in all regions since the 1970’s has always been the same. The response to predatory pricing by Fonterra and others was for MG to offer a 3 tiered pricing system. Notably though, this pricing scheme was offered to every farmer across the state demonstrating that there is no differential pricing between regions.

166. We support the position of Murray Goulburn that the geographic region is wide encompassing ‘South East Region’.

167. The perishable nature of raw milk and the transportation costs relative to the value of the product may indicate that the geographic dimension of the market may be confined to a narrower region such as western Victoria and eastern South Australia.
This assumption, as previously discussed, is simply irrelevant. New and larger Vats chill milk to 4 degree’s which means it can be stored without bacteria growth for several days. Milk, in modern tankers, can be transported many hours (see point 143 – 10-12 hour round trip for East Gippsland Milk).

205. We support this Statement from Murray Goulburn.

II The competitive effects of the proposed acquisition.
Acquisition of raw milk.

208. The ACCC suggests the Tribunal consider whether the proposed acquisition will reduce competitive pressure on MG in the acquisition of raw milk and what associated effects this may have on efficiency and welfare.

We completely disagree that the proposed merger will reduce competitive pressure on MG. As a co-operative with farmers on board, there will always be a strongest possible push to improve efficiency and boost milk price.

We re-iterate, that strong competitive pressures from other regions such as Gippsland will provide enough pressure for MG to achieve every possible efficiency.

The fundamental reason for this is that MG over the past 3 decades has always maintained price equality across the state.

209. In particular, the ACCC suggest the Tribunal consider;

a) whether the proposed acquisition will MG the ability and incentive to reduce the prices for raw milk below the competitive level; and

• the potential loss of broader benefits from competition for the acquisition of raw milk

It is a complete misunderstanding of the milk pricing environment to assume that the proposed acquisition will reduce prices paid to below a competitive level and therefore lose the potential benefits from competition.

As we have noted, whatever MG pays its farmers across the state dictates what proprietary companies pay. As an example, if MG was able to pay $7.00/kg milk solids, proprietary companies would match or pay $7.10. If MG was able to pay $10.00 per kg/milk solids, proprietary companies would either match or pay $10.10.

How can ACCC decide what is “below competitive level” when competitive level is always the price which the co-operative decides if can comfortably pay its farmers?

The question itself is misguided and not relevant given pricing activity over many decades.

210. In an effectively competitive acquisition market, the threat of losing suppliers to competitors spurs firms to present high quality offers to their suppliers (in
terms of price, service and innovation), to keep pace with supplier preferences, and to keep costs low (so as to be able to pay market prices). If the removal of WCB as an independent alternative for suppliers were to meaningfully reduce this competitive discipline, then the welfare of farmer suppliers may be reduced.

We strongly disagree that the removal of WCB from the milk purchasing environment will harm dairy farmers. We reiterate that competition from other regions drives MG efficiency, and as MG pays the same price right across the state, Western district farmers will not be disadvantaged.

As an example, dairy farmers in far East Gippsland, who have no competition for their milk, receive the exact same price as farmers in the Western District.

We also note, with the rise of Milk Brokers and the ease of milk storage and transport, regional boundaries are no longer relevant.

211. In addition to considering the changes in market structure and dynamics that may occur with the proposed acquisition, the ACCC suggest that the Tribunal have regard to whether MG’s co-operative structure will provide an adequate substitute for competition in protecting the interests of suppliers (see issue 14).

Clearly, from both the arguments in our initial submission to the ACT and this submission, the co-operative structure will provide an adequate substitute for competition in protecting the interests of suppliers (See issue 14).

No other company has the aim to pay the highest possible milk price. Farmers as share holders can also use democratic power to place pressure on Directors and management to maintain what they feel is the right direction for the co-operative.

214. In light of this market concentration, if the relevant geographic markets are Western Victoria and South Australia (or narrower), MG and Warrnambool are particularly close competitors in those markets.

Re re-iterate that in our view the market for milk is in fact the whole of South East Australia. We strongly disputed that WCB has applied any competitive pressure on MG in recent years as they have struggled to maintain price parity with MG even though MG pays the same price right across Victoria and South Australia.

216. Further, given factors such as transport costs, processors with factories located close to one another are likely to be closer competitors in the acquisition of raw milk. This means that even if the relevant market is the South East Region, MG and WCB are likely to be particularly close competitors in that market?

We strongly believe that MG and WCB are not strong competitors at the moment. MG can only pay its farmers what it can pay. No competitive pressure can force it
to pay more, especially given the fact that competitive pressures in other regions such as Gippsland already mean MG is operating at high levels of efficiency.

218. Murray Goulburn submits that WCB principally competes for the acquisition of raw milk, but has not specifically addressed the issue of whether WCB should be considered a vigorous and effective competitor in the acquisition of raw milk.

WCB in its current form is not a rigorous competitor for milk in Western Victoria. This is very beneficial to MG farmers across the state as it means MG’s Koroit factory runs at levels above capacity in a highly efficient way. Such efficiency pushes up milk price.

Contrary to this, if Saputo gains control of WCB, they have deep pockets and will very likely be able to pay above the price MG can pay across the state. This will draw milk out of Koroit Factory, as Burra Foods does in Gippsland, and ultimately lead to lower efficiencies. This will simply lead to a lowering of the bar for milk prices across the State.

And notably, the competitive milk price Western Victoria and across the state will still stay within the same dynamic. That is, the milk price in Victoria for ALL farmers are based on a derivative of what MG can afford to pay, whether MG is weak or strong.

221. In the ACCC’s opinion the relative numbers of farmers switching between MG and other processors supports a view that both WCB and Fonterra are close competitors of MG in the acquisition of raw milk.

There may well be small shifts in farmers between the three leading processors in Western Victoria. However, it is notable that Fonterra, as it has done in other regions from time to time, may be using predatory pricing in one particular region. We also note that the fact that farmers may choose to change their supply to another company for a tiny margin of little more than 1 cent per litre. This may be a result of severe drought or hardship. We believe that with a stronger cooperative, milk prices will be fundamentally higher. Some farmers always like to switch their supply between companies, and with the existence of milk brokers, as well as Fonterra, there will still be ample opportunity for them to still do this even after the proposed merger.

55. To what extent does WCB compete vigorously with MG to acquire raw milk, on both price and non-price terms?

WCB have shown no ability to vigorously compete for milk on both price and non-price terms. We view paying little more than 1 cent per litre above MG is merely protecting supply – far from providing meaningful competition. As an example of
meaningful competition and what it looks like, the ACT needs to go back to history and look at Tatura Milk Industries in the mid 1990’s. This was the last time there was real competition for milk in Victoria. They were a co-operative running under the same principles as MG. Prices were consistently $1-1.50 per kg above MG and they had a waiting list of farmers because of this. Unfortunately, prolonged drought in their limited supply area put an end to this. MG’s state size and statewide coverage provides a public benefit by reducing "weather induced" risk.

We do not view ‘merely keeping up’ or predatory margins’ above MG’s price as meaningful competition.

56. Is there a significant proportion of farmers for whom MG and WCB are each others closest competitors in acquiring raw milk??
We maintain it is more parochial reasons for farmers to supply WCB. Competition on price is not different enough for it to be a question of price.

Issue 12. To what extent do farmers currently benefit from the price and non price completion between MG, WCB and other competitors to acquire raw milk.
Farmers do not benefit in any meaningful way. This is evidenced by the fact that farmers in isolated far-east Gippsland are basically getting the same price as WCB farmers.

225. To the extent that WCB offers a different payment structure or different non-price benefits from MG, some farmers may value this because it may enable them to receive greater total value for their raw milk. If MG is likely to cease offering this different payment structure or non-price benefits post-acquisition, and no other processor is likely to provide a replacement, then some farmers may be worse off. This potential competitive detriment exists regardless of whether the evidence indicates that MG currently response to competition from WCV – it is based on the loss of choice for farmers, in circumstances where there are significant barriers to entry and expansion.

We are very disappointed with the ACCC’s proposition that as MG only bought in its current pay structure in 2013, it is likely that it could change ‘back’ to regional pricing.

MG has not had any differential regional pricing since the very early 1970’s. Prices since then have always been the same. The 3 option pricing structure was bought in 2010 as a result of predatory pricing for ‘flat milk’ production by some proprietary companies, notably Fonterra in some regions.
The current pay structure aimed to simplify this.

Any mention of differential regional pricing, is dishonest and deliberately inflaming as it is clearly not co-operative policy.

Statewide equal pricing forms the basis for the co-operative and for our argument that regional boundaries are not relevant.

251. We disagree that the removal of WCB will make it easier for duopoly activity by Fonterra and WCB in milk pricing in Western District.

If anything, Fonterra is likely to try and capitalize on the fact that some suppliers may not want to supply milk to the new combined entity. They will therefore most likely continue to offer a margin above MG.

Other than that, there will be no real difference as Fonterra only pre-empts or matches with a margin MG’s milk price as the moment. We do not see this changing.

Fonterra would defy economic rationality to want to pay more than it has to in order to procure milk in Australia. Nothing will change.

259. MG submits that the proposed acquisition of WCB by MG will not generate any meaningful lessening of competition in the market for the acquisition of raw milk and will be efficiency enhancing relative to counterfactual scenarios.

We agree with MG’s scenario.

260. There is unlikely to be reduced competition as small players enter the Western district market, as noted earlier. If suppliers wish to seek higher prices, they could pursue niche markets such as organic or biodynamic where suppliers can be paid by marketing boards up to 73-78c per litre (Peterson Dairy – Nathalia). There are many niche opportunities available, often with costly barriers to entry. Equally, there are many larger competitors seeking milk supply.

320. We agree with the ACCC’s position on barriers to entry & expansion.

321. We agree with the ACCC’s position.

**Issue 26. Does MG’s cooperative structure as a farmer-owned cooperative impact on whether the proposed acquisition would have the likely effect of lessening competition in the relevant markets?**

MG’s co-operative structure would not lead to a lessening of competition. As we have previously argued, a strong co-operative will ‘raise the bar’ for milk prices
not only in Western Victoria, but across the State.

Other competitors will then pay their obligatory margin above MG’s price.

**Issue 27: What impact, if any, of MG’s proposed capital restructure on the competitive effects of the proposed acquisition?**
We do not believe the capital restructure has any competitive detriment on the proposed acquisition.

**III Other detriments**

324. To the ACCC’s knowledge, no other public detriment of the proposed acquisition have been identified to date.
We agree with this statement.

**F Period of Authorization:**

**Issue 31:** Should any authorization granted for MG to acquire WCB be expressed to be in force for a specified time period?
No.

**Issue 32:** If so, what time period is appropriate?
Indefinite, in order to allow the market forces to act. It is unfair, given the time, effort and expense of all involved to expect MG to undergo a further approval process within 12 months.

As an ‘Interested Party’ our group “Concerned Dairy Farmers of Central & East Gippsland” are volunteers. We are not paid for the complex work involved in defending our industry.

Additionally, the co-operative will incur a heavy legal bill from the many hours this process has taken, and the opportunity cost of being unable to work on core business activity.

328. We support MG’s position.

329. We strongly disagree with the position of ACCC. We recommend an indefinite period for of authorization to merge.

We strongly believe that Government should not inflict unnecessary work or cost onto co-operative farmer structures where the farmer, the most vulnerable in the proceedings, inevitably pays a heavy cost both financially and in terms of opportunity cost.

Our secondary reason for an indefinite period, is that these complex mergers
often take time and the regulators should allow market forces and inter and intra company arrangements to take place.

CONCLUSION
The Australian dairy industry should be given every opportunity to grow and prosper with the support of Government regulators and institutions. New Zealand has a successful industry not only because they have a strong Co-operative, but because the Government is strongly behind the industry.

In respect to the ACCC, we note and are troubled by numerous references in the ACCC Issues Statement to Qantas and the airline industry. If Qantas was a co-operative of travellers and had the aim of providing the lowest possible airfares, would the ACCC be so determined to hamper their growth?

This is what they are doing to MG, the only company with the aim to pay the highest milk price. We ask you to see the industry dynamics from the perspective of the dairy farmer and get behind our industry with the minimum of impediment. We have provided adequate information on the realities of the industry from a point of view of competition. We are available for further comments at any time.
Australia's largest privately owned milk processor, United Dairy Power, has backed Canadian dairy giant Saputo's bid for control of Warrembool Cheese & Butter in a fierce $500 million-plus takeover battle with Victorian farmer co-operative Murray Goulburn.

United chief executive Tony Esposito said foreign ownership had been positive for the Australian dairy industry and dismissed Murray Goulburn's claims that the co-operative structure is the best thing for dairy farmers.

Mr Esposito said the battle for WCB will have a big impact on Australian dairy.

"We have to be mindful here of what's happening. We've been watching retirements out of the industry and watching co-ops go broke or sell out like Bonlac, Tatura and Dairy Farmers," Mr Esposito said.

United collects about 350 million litres of milk directly a year and processes about 500 million litres.

Murray Goulburn may still increase its $9.50 a share bid for WCB. However, one source said this was unlikely given Saputo is offering just $9, which would rise to $9.20 if it can secure 50 per cent of the target by January 22, when the offer will close.

Bega Cheese, which holds about 19 per cent of WCB, may ultimately decide the fate of the Saputo offer. Saputo has been pressuring Bega and 10 per cent shareholder Lion into selling their stakes. Rep.'s shareholders may be frustrated if it does not take the near-$70 million in profits it would bank by selling to Saputo.

Once a major force in Australian dairy, Bonlac collapsed under poor management and the weight of too much debt almost a decade ago. Its assets were bought by New Zealand's Fonterra.

Tatura Milk Industries was snapped up by ASX-listed Bega Cheese in two chunks in 2007 and 2011; Dairy Farmers was acquired by National Foods owned by Japan's Kirin--in 2008.

"The consistency there is farmer-owned co-operatives. They're not focused and have bad business plans; corporate companies grow," Mr Esposito says.
UDP is wholly owned by Mr Esposito, who founded the group in 1999. The company has annual sales in excess of $200 million and profits of more than $15 million, and is on the brink of being sold to a Chinese buyer.

For its bid to proceed, Murray Goulburn must persuade the Australian Competition Tribunal the public benefits of its proposed merger with WCB outweigh anti-competitive concerns. The co-operative structure is one of the key pillars in Murray Goulburn's argument before the tribunal.

Farmer co-operatives are owned by their farmer suppliers, and Murray Goulburn is mandated to maximize the milk price it pays to its farmers.

Murray Goulburn is arguing that its structure means reduced competition from its takeover will not be a problem because it will pay the maximum milk price possible anyway.

It is also pointing to the success and scale of New Zealand's giant co-operative Fonterra. Created by an act of Parliament, Fonterra is the world's biggest dairy exporter and a virtual monopoly in New Zealand, collecting more than 95 per cent of the nation's milk.

But sources close to Bega said Murray Goulburn may face an uphill battle at the tribunal. Farmers have a broad range of opinion about whether competition or a large-scale farmer co-operative is best for the industry.

Mr Esposito says rather than maximizing the farm-gate milk price, Murray Goulburn - which collects one third of Australia's annual 9 billion-litre milk pool - is hampering it.

"The whole industry follows the leader, and the leader is called Murray Goulburn, and it is inefficient. [The industry is] just adding 1C more [to the milk price] than Murray Goulburn - not because that's all they can afford, but because it's all they have to do." Rather than consolidating and having one large player like Fonterra, Mr Esposito says the sector needs more competition.

"The highest-paying companies in Australia have been foreigners, whether it be Kirin [through its subsidiary Lion] or Parmalat. Saputo would be a positive thing."