COMMONWEALTH OF AUSTRALIA

Competition and Consumer Act 2010 (Cth)

IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 4 of 2013
Re: Application for Merger Authorisation of Warrnambool Cheese and Butter Factory Company Holdings Limited
Applicant: Murray Goulburn Co-operative Co Limited
Date: 11 December 2013

PROVISIONAL ISSUES LIST

Likely future without the proposed acquisition

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

Public benefits

Murray Goulburn’s application contends that public benefits are likely to arise from:

- the substantial increase to the milk pool available to Murray Goulburn;
- securing substantial synergies and efficiency gains;
- enhancing the standing and international competitiveness of Australia’s dairy industry in global trade through the efficiencies that will strengthen Australia’s largest dairy producer, Murray Goulburn;
- the likely flow-on of benefits to Murray Goulburn in returns to farmers and multiplier effects in rural communities.

The specific public benefits claimed to arise include:

- a reduction of incremental costs from increased milk volumes;
- increased efficiency of milk collection from increased milk volumes;
- increased return from processing increased milk volumes, enabling Murray Goulburn to diversify its production capabilities for cheese and upgrade its facilities to produce more ‘high value’ ingredients products;
• operational synergies;
• assisting Murray Goulburn to leverage its customer relationships to offer higher value products and to fully take advantage of growth in the Nutritionals sector;
• significantly improving Murray Goulburn’s international competitiveness via increased scale, a greater ability to diversify its production and the ability to leverage its existing relationships with premium customers to offer more innovative products;
• achieving the necessary scale, market reach and efficiencies so as to capture the benefits of an historic growth opportunity for exports created by the emerging affluence of Asian consumers;
• due to its cooperative structure, increased profitability from the proposed acquisition leading to significantly higher milk prices for Murray Goulburn’s farmer suppliers than would otherwise be the case.

2. For each of these claimed public benefits:
   a. What is the nature and extent of the claimed public benefit? Is it tangible, credible and real? Is it enduring and of substance?
   b. Is it distinct from other public benefits claimed or does it overlap with one or more of the other public benefits claimed?
   c. 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?
   d. Would the proposed acquirer or others incur costs in achieving the claimed benefit? If so, what is the magnitude of such costs?
   e. Has the claimed public benefit been quantified or readily capable of quantification? If the claimed public benefit has been quantified, are the methodology and assumptions that have been adopted reasonable?
   f. Who are the beneficiaries of the claimed public benefit? Will the benefits flow through to the broader community?
   g. Are there public detriments intrinsic to the claimed public benefit?

3. Will the proposed acquisition result, or be likely to result, in a significant increase in the real value of exports?

4. Will the proposed acquisition result, or be likely to result, in a significant substitution of domestic products for imported goods?
5. What other matters that relate to the international competitiveness of the Australian dairy industry (or any other industry) should the Tribunal take into account in assessing the benefits to the public likely to result from the proposed acquisition?

6. What is the magnitude of the public benefits identified as resulting from the proposed acquisition?

7. What is the impact, if any, of Murray Goulburn’s proposed capital restructure on the benefits likely to result from the proposed acquisition?

Other public benefits

8. Is there a real chance that any other public benefits will result from the proposed acquisition?

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

Public detriments

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

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

a. Is there a single market for acquisition of raw milk in Victoria, South Australia and the Riverina region of New South Wales? Or are there separate regional markets for the acquisition of raw milk?

b. Is the market or markets in which dairy processors acquire raw milk from farmers distinct from the market or markets in which dairy processors supply bulk raw milk to food manufacturers? If so, what is the geographic scope of the market or markets for supply of bulk raw milk to dairy product manufacturers?

c. Is there a single market for the supply of processed and semi-processed dairy products that is at least state wide, and is probably national? Or are there separate markets, predominantly national, for the manufacture and supply or wholesale supply of each of the following products: pasteurised milk, flavoured milk, powdered milk products, bulk cream, packaged cream, packaged and bulk cheese, packaged and bulk butter and whey products? If there are separate markets, what is their geographic dimension?

d. Is there a separate market, or markets, for the supply of high margin dairy ingredients, such as nutritional products and lactoferrin?

e. Is there a market or markets for the supply of ancillary services to dairy farmers, such as sales of supplies, equipment and technical advice?
The competitive effects of the proposed acquisition

Acquisition of raw milk

11. What are the nature and extent of existing rivalry or competition between Murray Goulburn and WCB in the market(s) for the acquisition of raw milk?

12. To what extent do farmers currently benefit from the price and non-price competition between Murray Goulburn, WCB and other competitors to acquire raw milk?

13. Will the remaining competitors in the market(s) for the acquisition of raw milk exert a strong competitive constraint on the merged entity?

14. Does Murray Goulburn’s cooperative status impact on the way it is likely to act in the future in the market(s) for the acquisition of raw milk, in particular in relation to prices paid for raw milk? If so, how and to what extent?

15. Will the removal of WCB from the market(s) for the acquisition of raw milk increase the likelihood of coordinated effects in the market(s) for the acquisition of raw milk?

16. What are the nature and extent of barriers to entry and expansion in the market(s) for the acquisition of raw milk?

17. Is the proposed acquisition likely to have the effect of lessening competition in the market(s) for the acquisition of raw milk?

Supply of bulk raw milk

18. What are the nature and extent of existing rivalry or competition between Murray Goulburn and WCB in the market(s) in which they supply bulk raw milk to food manufacturers?

19. Will the remaining competitors in the market(s) for the supply of raw milk to food manufacturers place a strong competitive constraint on the merged entity?

20. What is the extent of countervailing power on the part of food manufacturers that acquire bulk raw milk?

21. To what extent can customers of bulk raw milk in central and south east South Australia, and south west Victoria economically acquire milk from outside these regions? Is the proposed acquisition likely to have the effect of lessening competition in the market(s) in which the merger parties supply bulk raw milk?

Bulk cream

22. What are the nature and extent of existing competition between Murray Goulburn and WCB in the market(s) for the supply of bulk cream, particularly in Victoria and South Australia?
23. To what extent would the merged entity have the ability to raise the price of bulk cream to customers in Victoria and South Australia?

24. Is the proposed acquisition likely to have the effect of lessening competition in the market(s) in which the merger parties supply bulk cream?

**Other products**

25. For all other products, compared with the likely future without the proposed acquisition, is the proposed acquisition likely to lessen competition in the relevant markets? In particular:
   a. What are the nature and extent of existing rivalry or competition between Murray Goulburn and WCB in relation to the supply or acquisition of the relevant products?
   b. How significant are Murray Goulburn and WCB’s competitors likely to be in constraining the merged entity in relation to the supply or acquisition of the relevant products?
   c. What are the nature and extent of barriers to entry to, and expansion in, the supply or acquisition of the relevant products?

**General**

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

27. What is the impact, if any, of Murray Goulburn’s proposed capital restructure on the competitive effects of the proposed acquisition?

**Other detriments**

28. Are there any other public detriments that are likely to result from the proposed acquisition?

29. What is the magnitude of any such detriments?

**Weighing the benefits and detriments**

30. After weighing the public benefits against the public detriments, is there a net public benefit such that the proposed acquisition should be allowed to occur? Over what period of time should public benefits and public detriments be measured?

**Period of authorisation**

31. Should any authorisation granted for Murray Goulburn to acquire WCB be expressed to be in force for a specified time period?
32. If so, what time period is appropriate?

Dated 4 December 2013

[Signature]

President
Australian Competition Tribunal