

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Originating Application

File Number: ACT 2 of 2021

File Title: APPLICATION FOR REVIEW LODGED BY QUEENSLAND
DAIRYFARMERS' ORGANISATION IN RESPECT OF A
LICENSING SCHEME FOR THE USE OF THE 'FAIR GO
DAIRY' LOGO, AND THE DETERMINATION MADE BY THE
AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION (ACCC) ON 12 MARCH 2021

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 6/04/2021 3:15 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

FORM I



APPLICATION TO TRIBUNAL FOR REVIEW

Re Application for authorisation AA1000530 lodged by Queensland Dairyfarmers' Organisation (QDO) on 25 September 2020 in respect of a licensing scheme for the use of the 'Fair Go Dairy' logo, and the determination made by the Australian Competition and Consumer Commission (ACCC) on 12 March 2021

1. Australian Dairy Products Federation Inc. (**ADPF**) hereby applies to the Australian Competition Tribunal pursuant to section 101 of the *Competition and Consumer Act 2010* (Cth) (**Act**) for review of the determination of the ACCC dated the 12th day of March 2021 (Commission file no. AA1000530) (**Determination**).

2. (a) ADPF was not the applicant for the authorisation to which the Determination relates.

(b) ADPF's interest in the Determination is as follows:
 - (i) ADPF is the national peak policy body representing commercial, post farm-gate members of the Australian dairy industry, including processors, traders and marketers of Australian dairy products. For the past 30 years, ADPF has worked to represent the interests of members in promoting and protecting dairy products through advocating for improvements in the manufacturing, marketing and trading of dairy. ADPF's members process more than 90% of Australian milk volumes and provide dairy products for both domestic and export markets.

 - (ii) ADPF has a sufficient interest in the Determination by reason that ADPF's members (particularly in Queensland) will be directly affected by the licensing scheme for processors of milk and dairy products to apply a 'Fair Go Dairy' logo to the processor's dairy products. The logo is intended to signal to consumers that the products bearing the logo are made from milk for which farmers have been paid a minimum farmgate price ('Sustainable and Fair Farmgate Price' or **SFFP**).

Consequently, the impact of the scheme as authorised by the ACCC is that it will directly affect the feasibility of ADPF's members ability to process and provide dairy products, which includes:

- a. restricting the ability of ADPF's members in Queensland to offer dairy products to customers;
 - b. misleading the consumer as to what is a fair price for a dairy product; and
 - c. impacting competition between processors and could distort the dairy market in Queensland and Australia more broadly (including consumer and retailer choice of dairy products).
- (iii) ADPF has actively participated throughout the consultation conducted by the ACCC since 26 September 2020. It provided three written submissions dated 26 September 2020, 29 January 2021, and 5 February 2021.

3. ADPF is dissatisfied with the Determination in the following respects:

- (a) The grant of authorisation AA1000530 in respect of proposed conduct set out at paragraphs 1.7 to 1.10 of the Determination (**Proposed Conduct**) (Determination, paragraphs 5.5 to 5.8);
- (b) Each of the following findings of the ACCC:
 - (i) that the subject trade mark is so general in nature that it is unlikely to mislead consumers about the qualities of products bearing the trade mark, or create misleading impressions about products without it (Determination, paragraph 4.73)
 - (ii) that the relevant scheme is unlikely to reduce competition, increase retail prices for dairy products or create inefficiency (Determination, paragraph 4.74)
 - (iii) that the Proposed Conduct is unlikely to result in any significant public detriments (Determination, paragraph 4.75)
 - (iv) that the relevant proposed conduct is likely to result in some public benefit and that this public benefit would outweigh any likely

detriment to the public from the proposed conduct (Determination, paragraphs 4.76 and 5.4)

4. The determination that ADPF is seeking from the Tribunal is as follows:
 - (a) The whole of the Determination be set aside.

5. ADPF's address for service for the purpose of regulation 21 of the Competition and Consumer Regulations 2010 is 164 Waverly Road, Malvern East, Victoria 3145 and info@adpf.org.au.

Dated this 1st day of April 2021.

Signed on behalf of the applicant



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Janine Waller
Executive Director, ADPF

History

Form I amended by SR No 330 of 1995, reg 10.1 and 10.2, effective 6 November 1995; SR No 20 of 1996, reg 10.2, effective 31 January 1996; SR No 280 of 2010, Sch 1, effective 1 January 2011 (as amended by SR No 337 of 2010).