9 May 2011

Senator Alan Eggleston
Chairman
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Senator Eggleston,

Re: Inquiry into the impacts of supermarket price decisions on the dairy industry

I am writing regarding the current unsustainable price cuts on milk by Wesfarmers' subsidiary Coles and the response by Coles to the Senate's Questions on Notice and the provision of additional information in the form of a consultancy report commissioned by Coles.

Firstly we appreciate that the Committee has had to deal with a large number of submissions and understand that further time is required to analyse all of this information. The Committee's task was also not helped at all by the response from Coles to questions on notice from the Committee being only provided on 19 April, one day before the report on the inquiry was due.

We are disgusted that Coles has continued to show contempt for, and delay the progression of, the Inquiry in this manner. These stalling tactics are delaying the implementation of a solution to the problem and allowing dairy farmers in areas such as Queensland to continue to be directly affected by lower returns that are due to the ongoing discounting of milk initiated by Coles.

As presented to the Committee at the hearing of 29 March, Coles Managing Director has admitted that Wesfarmers oversees Coles' business strategies and corporate plans. As such ADF believes that Wesfarmers needs to take an active role in ensuring its subsidiary, Coles, treats consumers, dairy farmers and the Senate with respect. Coles must treat this issue with the seriousness it deserves and be transparent, honest and open in their answers.

Coles has hidden behind claims that information is 'commercial-in-confidence' or was provided behind closed doors 'in-camera' over a dozen times in their 'answers' to the Senate Committees Questions on Notice. Coles has also repeatedly been disingenuous in presenting selective statistics and data that suit their argument that they are 'doing no wrong', but do not present the full truth of the situation.

This is hardly the transparent behaviour that Coles is so fond of advocating. They seem to believe that transparency is okay for everyone else but not for themselves. With this attitude and approach it is Coles' reputation that is going 'Down Down and Staying Down'.

One of the questions asked of Coles related to what happened to the price of all the other products that Coles has not cut the price on – approximately 15,000 products in a typical supermarket. Cole's representatives refused to answer the question.

ADF believes this is a damning indictment of Coles. All along ADF has said that dairy farmers do not believe that Coles would absorb the cost of its unsustainable price cuts and that they would be passed on to dairy farmers and Coles' customers. Coles' failure to publicly answer this question can only lead to the logical conclusion that they have something to hide and that they have increased the price of some of the 15,000 other products to offset the cost of their unsustainable milk price cut.

It is also worth noting that Coles' competitors have stated repeatedly that these price cuts are unsustainable.

Coles' representatives have also repeatedly refused to answer questions or even acknowledge the fact that many Queensland dairy farmers' milk payments are being affected right now, sometimes by thousands of dollars, because of Coles' cutthroat discounting of milk. They wilfully ignore the fact that increased sales of supermarket branded milk have reduced some Queensland farmers' monthly milk cheques by several thousand dollars and in response to questions Coles repeatedly attempts to deflect the blame to processors for the impact that Coles has caused.

Coles has been misleading and deceptive in their advertising campaign, where they have promoted the perception to consumers and government that their price cuts would not affect dairy farmers.

In stark contrast, the head of Woolworths has publicly stated that the discount pricing is not sustainable, whilst also publicly acknowledging that dairy farmers in Queensland are already being impacted and that two major processors may abandon much needed investment in processing facilities as a result of the price war initiated by Coles.

While Coles continues to deny these facts dairy farmers will continue not to trust Coles and neither should consumers or government.

Throughout this debate Coles has knowingly used figures that are deliberately misleading. ADF is now taking the opportunity to correct them, attached is a fact sheet refuting many of Cole's myths.

Coles was also asked in the questions on notice 'What is the gross cost to checkouts to acquire, distribute, refrigerate, display and retail milk? How does this differ in each state?'

Coles' representatives have responded by claiming that "Coles does not capture or measure these costs at a product level", which is very surprising.

ADF believes this is yet another deliberate attempt to avoid answering an important question that goes to the heart of the issue – is Coles selling milk below cost as a loss leader with predatory intent?

Coles are willing to repeatedly say they have raised the contract price to processors, yet they refuse to release any information on other aspects of their contract arrangements, claiming they are commercial in confidence. Coles also refuses to acknowledge that they have not provided increases to cover all impacts, as is currently happening in Queensland.

This again highlights Coles' selective use of information and contempt for farmers, consumers and the Senate.

Coles attempts to clarify "for the avoidance of doubt" that "statements that prices are staying down reflects an intention that (subject to certain specified conditions) prices will stay down for at least six months if not longer compared with the weekly catalogue discount specials commonplace in the supermarket industry."

ADF believes this is misleading and deceptive as the average consumer would view the words 'staying down' as meaning a permanent discount, not for six months with a large number of caveats.

As Senator Colbeck pointed out at the hearing on Tuesday 29 March, "staying down to me is deceptive. Yet it is not the reality staying down means for about six months, because that is what the Australian consumer expects. Do I have to write a new dictionary based on Coles?"

Lowering the price of milk may initially appear to be good news for Australian consumers but it is ADF's view that Coles' actions will ultimately lessen competition for consumers (due to a reduction in the number of corner stores, independent petrol stations etc), increase prices on non-staples and decrease product choice as the experience in the United Kingdom has shown.

Coles must show the transparency it continually advocates for others and reveal the real numbers, strategy and intent behind its price cuts, if only so their customers have the full story. That is the way to gain the trust they claim they are so keen on getting.

Milk priced at $1 per litre is simply unsustainable for all involved in the fresh milk value chain, including Coles and its customers appear to be paying the price for this cheap marketing tactic on other products.

In addition, Coles has sought to blur the truth even further by commissioning a consultancy report, "An Overview of the Australian Dairy Industry", produced by the Sapere Research group dated March 2011, which utilises selective market theory quotes, outdated information, partial facts and selective, and in some cases out of context or date statements, in an attempt to wrongly proffer a perception that Coles actions are having no impact on the Australian fresh milk supply chain.

The report has ignored a range of factual information and data already presented to the Senate Inquiry showing the current and future impacts of Coles discounting and marketing strategies, which has seen fresh milk used as a 'loss leader' marketing agent to poach customers from competitors whilst at the same time growing their own supermarket store brand market share at the expense of proprietary brands. This situation, if it continues, will lead to ongoing losses to dairy farmers and other businesses in the supply chain and ultimately to less choice and higher prices for consumers, as has been the experience in the United Kingdom.

The consultancy report does not address the key issues currently faced by the Australian fresh drinking milk supply chain and presentation is flawed in a number of areas.

Coles has also gone to the extraordinary length of claiming that their discounting is good for the dairy industry and dairy farmers, which again demonstrates their total lack of understanding and/or arrogance toward the industry. Selling milk at unstainable prices is simply not good for anyone in the fresh milk supply chain and is already affecting processors, vendors, small retailers and dairy farmers. To claim more milk sales will occur also defies the inelastic nature of milk as a basic everyday staple of our society. In fact domestic sales for the month of March 2011 compared to March 2010 were down -0.1 percent, which is the opposite of Coles claims.

The inconsistent arguments from Coles combined with their ongoing unwillingness to present the full truth, attempts to deflect blame and to acknowledge the impacts that they are already causing as a result of their discount driven market growth strategy presents further evidence that there is a real and present need for the Australian Government to intervene.

As such ADF again encourages the Senate Committee to adopt ADF's recommendations presented to the Inquiry on 6 April 2011, including, but not limited to;

- amending the Competition and Consumer Act 2010 to prevent future cases of predatory pricing and abuse of market power,

- introduction of a mandatory Code of Conduct for the whole supply chain with an Ombudsman or Commissioner with the power to apply a sustainability test to proposed contracts in the supply chain and to direct mediation,
- having the ACCC investigate Coles for breaches of the Act in relation to predatory pricing and deceptive and misleading conduct.

We stand ready to provide any further information you, or committee members require, or to discuss any of these matters. As such, if required, please do not hesitate to contact me on (03) 8621 4200.

Yours sincerely,

Adrian Drury
ADF Vice President

9 May 2011

Coles' facts aren't facts – they are deliberately misleading

Coles' claim –

"*Myth One: Coles is refusing to meet with dairy farmers about its milk price cut announcement*

Coles has discussed the price reductions with milk processors and has met with the peak milk industry organisation, Australian Dairy Farmers, and other farmer organisations."

The Facts:

Coles has met with the ADF twice. Even though the ADF, and other industry stakeholders, have pointed out the facts around this issue, Coles continues to peddle the same misleading statements.

We contend that although Coles have met with some industry groups, they have yet to listen and act upon the industry's concerns – and in fact seem to be outright ignoring them.

Coles know that dairy farmers in Queensland and NSW, for example, make about 2 cents a litre farm profit according to official ABARE statistics (ABARE Farm Survey Exercises for 2009-10) and have suffered severe impacts from floods and cyclones and yet they are happy to cut the price of milk by significantly more than this per litre and still try to claim that it is sustainable for dairy farmers.

The meetings could be seen as yet another part of Coles' public relations and marketing strategy. Meeting with industry stakeholders solely for the purpose of being able to say they have met with them, not with any real intention of listening or acting on dairy farmers concerns.

Coles' claim –

"*Myth Two: Coles' retail milk price cut will push down the farm gate price of milk.*

The farm gate price dairy farmers receive is set by the world price because most Australian milk products are exported. In any case, Coles buys milk from the major milk processing companies, not direct from the farm gate and Coles paid a higher price to milk processing companies in mid-January. As such, the farm gate price should not be affected by our decision to reduce the retail price."

The Facts:

Coles has consistently claimed that over 50% of all milk production goes overseas as exports. This is just plain wrong and Mr McLeod and his overseas team of executives must be aware of this by now.

Approximately 55% of Australia's milk production is consumed domestically, significantly more in Queensland (95%), Western Australia (70%) and New South Wales (66%). In these states retail sales of drinking milk are the key regional market and farm gate price driver (see table 1).

Coles like to say that farm gate price is set by the world price because they can then absolve themselves of any responsibility for impacting the price of milk. This is poppycock for dairy farmers in Queensland, Western Australia and Northern New South Wales. Coles' actions have a big impact and it is being felt already.

Processors and dairy farmers who supply the drinking milk market rely on the margin from branded milk sales for their profitability. Competition from unsustainably priced Coles home brand milk is taking market share away from branded products.

This reduces the amount farmers receive from processors as an increased share of Coles home brand milk is being sold at little or no margin and less of the more sustainably priced branded milk is being sold.

Many Queensland farmers whose milk payments are linked to branded milk sales have already seen their milk cheques drop this month by thousands of dollars per farmer.

As Coles steals market share away from proprietary branded milk sales these farmers milk cheques go down, down, down. This is a direct result of Coles 'cut throat' discounting.

So it's no wonder dairy farmers are angry when Coles promotes the spin to all Australians that they are not hurting farmers when it is simply not true. And then Coles has the hide to ask Australian consumers to trust them.

What Coles needs to do, is stop being tricky and raise its prices to what is fair and sustainable for its milk suppliers, Australian dairy farmers. We need to focus on sustaining our critically important food producing industries not devaluing their products, which ultimately leads to undermining investment, supply and choice and then ultimately to higher prices for customers.

Coles' claim –

"*Myth Three: Coles' actions are anti-competitive.*

Our intent is to provide lower priced milk for our customers while not adversely affecting our suppliers. Coles increased the price it paid to milk processing companies in mid-January and is fully absorbing the cost of the lower retail price in a lower profit margin. Coles has therefore reduced its own profit margin on milk sales so that it can provide a benefit to its customers."

The Facts:

A representative from Coles gave evidence to a Senate inquiry last year that margins were about 20 percent on the prices then of approximately $1.20 per litre. They have now reduced the price by up to 33 percent to $1 per litre, this would appear to mean that Coles cannot be making a profit on their milk sales and is using the entire category as a loss-leader.

ADF believes there is a prima facie case under section 46, including 46 (1AA) of the Trade Practices Act 1974 (now the Competition and Consumer Act 2010) that Coles' actions constitute predatory pricing.

It is our belief that Coles' actions are designed to steal market share away from, and damage, their competitors, such as other major retailers, corner stores, independent petrol stations and other small retailers of milk, and will lead to a substantial lessening of competition in the market place.

We also believe this action by Coles impacts the viability of branded dairy products and will lead to less product variety on supermarket shelves.

It is our view that these actions will ultimately lessen competition for consumers through increasing prices and decreasing product choice as the experience in the United Kingdom has shown.

Dairy farmers certainly do not believe that Coles is absorbing the cost of these unsustainable price cuts. Who are then – their customers or those at the start of the chain – dairy farmers?

It should also be noted that Coles has repeatedly refused to rule out dropping prices for processors and farmers in future contracts.

Coles' claim –

"Myth Four: Coles funded lower milk prices through higher petrol prices at Coles Express.

Coles does not cross subsidise lower grocery prices through higher petrol prices. Pricing of these products is quite separate. Petrol prices have been rising because of higher global oil prices."

The Facts:

According to the general manager of FUELtrac (a fuel monitoring agency), Geoff Trotter, petrol prices rose by up to 15 cents per litre on the weekend of January 29 and 30, just days after Coles announced its price cut on Australia Day. "I think there is a connection between their grocery activities and their petrol activities," Mr Trotter told AAP. "If there is an opportunity for them to cross-subsidise, if they are giving away margin on bread and milk, fuel is a wonderful way to recover that margin."

Associate Professor Frank Zumbo from the School of Business Law and Taxation at the University of New South Wales in an article dated the 16th February titled "Don't be fooled, the supermarkets are milking us", stated that "The sceptical customer will ask if the major supermarket chains are listening to consumers on the price of other products. We have seen petrol prices shoot up opportunistically despite the strong Aussie dollar and the Singapore benchmark price we use to calculate local prices having remained consistent in recent weeks. Yes, international crude oil prices have jumped but local prices are instead linked to the refined price of petrol out of Singapore. So petrol prices have jumped quickly and the major retailers have been able to increase their average retail petrol profits during the past year." And "This is the old "loss leader" trick. Get customers hooked by a super special and then fleece them on other products. It's the oldest trick in the book and consumers shouldn't be fooled."

Coles' claim –

"Myth Five: Lower Coles brand milk prices will result in lower branded milk prices and hurt farmers.

Coles has increased the price we pay the milk processors for Coles brand milk, so they have no reason to reduce farm gate milk prices as a result of the Coles brand retail milk price reduction. Any decision about branded milk prices is a matter for the milk processors."

The Facts:

Coles has admitted that sales of their home brand milk have increased. This alone hurts farmers as there is an immediate impact on farm income. For some dairy farmers when branded milk sales drop their milk income drops by thousands of dollars.

Processors make little or no profit on home brand milk sales. A long-term increase in the sales of home brand milk will see flow-on affects to farmers as Coles, due to its market power, dictates the price at which suppliers sell to them.

As Coles' home brand sales increase, they dominate shelf space and customers have less choice. This vicious cycle continues until in the long-term there is absolute domination by home brands with no customer choice, little product innovation and worst of all for the customer – a likely increase in the price of their home brand milk once Coles' has achieved its goal of market dominance.

Coles claim –

"Myth Six: Lower Coles brand milk prices are part of a plan to replace fresh milk and with long life milk.

Coles' customers want high quality fresh milk at the lowest possible price. To achieve that, Coles' is paying milk processors more for their milk, and fully absorbing lower retail prices. That is a win for the Australian dairy industry and a win for our customers."

The Facts:

Coles plan is to use cutthroat unsustainable milk discounts to steal customers and business away from their competitors, such as other major retailers, corner stores, independent petrol stations and other small retailers of milk to gain more market share. This will ultimately lead to a substantial lessening of competition in the market place.

They also want to squeeze farmers and processors which will damage the dairy industry, particularly in Queensland, Northern NSW and Western Australia.

Coles' claim –

"What drives farm gate milk prices?

The farm gate price dairy farmers receive is set by the world price because a large proportion most Australian milk products are exported. The farm gate price is rising because global demand for milk product is rising (see Dairy Australia press release 14 February 2011)."

The Facts:

Coles have consistently tried to confuse this issue by quoting Victorian price increases of 22% when they know full well that Victoria is chiefly a dairy export market, not a domestic drinking milk production market.

What Coles has repeatedly failed to mention is that milk prices to farmers in the key domestic drinking milk production markets of NSW and Queensland have dropped by more than 15% in Queensland and 10% in NSW in the last 12 months. This includes farmers who supply milk which goes into Coles' home brand milk bottles.

The share of drinking milk production in Queensland is 95%, New South Wales is 66%, Western Australia is 70% and Victoria's share is under 9% (see table 1). Yet Mr McLeod persists in quoting figures from Victoria which is clearly not affected as significantly as the key drinking milk production states of Queensland, New South Wales and Western Australia.

Coles' claim –

"How much milk does Coles sell?

Coles' milk sales (including modified drinking milks) represent less than 5% of Australia's total milk production."

The Facts:

Mr McLeod also consistently tries to downplay Coles' impact on the market by saying that Coles milk sales represent less than 5% of Australia's total milk production.

What he again fails to mention is that only 25% of Australia's total milk production is used as drinking milk in the domestic market. The rest is used in manufacturing cheese, butter, milk powders and other products.

In reality Coles milk sales represent 20% of Australia's drinking milk production, which is a significant percentage in anyone's language and is made even more so by the fact that Coles' competitors have been forced to match them in these unsustainable milk prices.

When coupled with the fact that in recent times Coles has accounted for around 40%* of all domestic supermarket milk sales there is a substantial impact on the drinking milk market and farmers in Queensland, Western Australia and New South Wales in particular.

More broadly Coles action cuts at the heart of all farmers since (whether they supply Coles or not) they are seeing the product they produce "devalued" in the market place.

In a tough production year, that is tough to take and another reason why farmers are so angry about Coles' using them as pawns in its tricky marketing strategies.

*In its response to the Senate Questions on Notice Coles admits to 'approximately one third of supermarket milk sales.'

Table 1