

## **BETTER SOLUTION TO 2001 IMPASSE BETWEEN NZDG, KIWI AND NZ DAIRY BOARD**

(Suggested before farmers voted on mega merger in June 2001)

- **First, set the framework for a commercial solution, not a political patch-up**
  - **Commerce Act applies:** Let the Commerce Act apply to all aspects of the Better Option. Any robust solution should be consistent with normal anti-monopoly laws, which apply in every developed country in the world.
  - **No statutory exemption:** So no legislated exemption as Global Co negotiated from the Government. If any exemption is required, let the Commerce Commission following its normal 'authorisation' process (as would be the case for business merger in Australia, the US and Europe).
  - **Independent directors:** Give NZ Dairy Group and Kiwi two months to agree on three independent directors for the Dairy Board. If agreement is not reached within two months, the three independent directors are to be appointed by the [President of the NZ Institute of Directors] within 30 days.
  - **Remove single desk powers:** Dairy Board's 'single desk' powers end automatically in 12 months. This cannot be deferred.
  
- **Then give the parties 12 months to agree on a commercial solution**
  - **12 month window to agree:** The two main parties – NZ Dairy Group and Kiwi – then have 12 months to agree on ownership structure for the Dairy Board.
  - **Dairy Board continues:** During that 12 months, the NZ Dairy Board continues to trade as it is now.
  - **No extensions:** If, at the end of the two year period, the parties have not reached an unconditional written agreement within the framework set out above, the following settlement process would apply. An extension would not be possible under any circumstance.
  
- **If agreement is not reached, the following settlement process applies**

*First stage (up to four months)*

  - **NZDG offers to buy:** NZ Dairy Group (as 58% owner of the Dairy Board) could, if it wishes, make an offer within two months to buy Kiwi's [35%] stake of the Dairy Board.

- **Kiwi then decides whether to buy or sell:** Within two months of receiving the NZDG's offer, Kiwi must either (i) accept NZDG's offer and sell its Dairy Board shares to NZDG or (ii) buy NZDG's 58% stake on *exactly* the same terms and conditions as NZDG's offer. Neither party would have *any* other option.

#### *Second stage (up to four months)*

- **Kiwi offers to buy:** If NZDG decides not to make an offer within the two month window, Kiwi can, if it wishes, make an offer in two months to buy NZDG's 58% stake in the Dairy Board.
- **NZDG then decides whether to buy or sell:** Within two months of receiving the offer, NZDG must either (i) accept Kiwi's offer and sell its Dairy Board shares to Kiwi or (ii) buy Kiwi's [35]% stake on exactly the same terms and conditions. Neither party would have *any* other option.
- **Decisions of independent directors:** All decisions of the independent directors would have to be at least by majority.

#### *Third stage (up to 12 months)*

- **Division of Dairy Board:** If neither NZDG or Kiwi make an offer (as provided above), the independent directors of the Dairy Board must divide up the assets and liabilities of the Dairy Board into parcels. The make up of each parcel would be for the independent directors to decide within four months.
- **Tender:** The independent directors must then sell each parcel in a closed tender. The sequence of selling the parcels would be decided by the independent directors.
- **Any NZ dairy co-op may participate:** Only existing NZ dairy co-operatives could make offers. Offers would have to be unconditional. The highest offer would win. The other rules of the tender would be decided by the Dairy Board's independent directors.
- **Completion with 12 months:** The sale of all parcels would have to be completed within 12 months. No extension of time would be possible for any reason.

#### *Disputes resolution*

- **Final decision by arbitrator:** Disputes relating to this settlement process would be *finally* decided by an arbitrator appointed by the independent directors of the Dairy Board.
- **Must be referred by independent directors:** However, *only* the Dairy Board's independent directors may refer a dispute to the arbitrator.
- **30 time limit:** The arbitrator's decision would have to be made within 30 days of a dispute being referred. No extensions would be possible

## Process

- The key elements are:
  - for dairy directors and suppliers to decide how to organise themselves -
  - given a deregulated (no single desk) environment –
  - where whatever outcome they decide on operates within existing laws that apply to every other business in New Zealand (and Australia, the UK and the USA, for that matter).

## Possible outcomes

- The key issue centres around what to do with the Dairy Board when its 'single desk' are removed by the Government. One of four outcomes is likely (with the considerable scope for tailoring the detail):
  - **One main co-operative for NZ:** Merging NZDG, Kiwi and the Dairy Board, but in a manner that is consistent with the Commerce Act (*One '3<sup>rd</sup> Generation' or 'Hybrid' cooperative – similar to 1999 Mega Co-op*); OR
  - **NZDG or Kiwi buys the Dairy Board:** One co-op buys out the other co-op's stake in the Dairy Board. The selling co-op would then pursue its own strategy (*Two 3<sup>rd</sup> Generation or Hybrid Co-ops competing*); OR
  - **Dairy Board is divided:** The Dairy Board's business is divided into parcels which are sold to the highest bidder among all NZ dairy co-ops (*Two 3<sup>rd</sup> Generation or Hybrid Co-ops competing*) ; OR
  - **Dairy Board run as JV:** Kiwi and NZDG run the Board as JV marketing venture with ownership in proportion 1999 shareholding.