

Punches keep flying in dairy dispute

It's a battle of David and Goliath, but sorting out the good and the evil in this battle is not easy

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It is a battle of David and Goliath.

But unlike the biblical story, sorting out the good and the evil in this battle is not easy.

Fonterra's dairy farmers are seething at Open Country's crusade to test the dairy industry regulations.

They accuse the Waharoa company of undermining Fonterra's cooperative status.

However, Open Country believes that all it is fighting for is a fair interpretation of the Dairy Industry Restructuring Act.

As the Commerce Commission prepared its final determination on a dispute on milk transport charges, Open Country filed another salvo last month.

The latest dispute is over the way Fonterra calculates its regulatory milk price.

Open Country claims that while calculating the milk price, Fonterra includes capital gains and this "increases raw milk to a price that does not allow independent producers to compete in dairy markets".

Documents filed with the Commerce Commission reveal that the situation came to a head two months ago when Fonterra threatened to terminate milk supply to Open Country unless a payment of \$1.14 million was made.

Open Country agreed to pay \$740,000 but withheld payment of \$400,000, pending the commission's decision.

Under the regulations, Open Country buys up to 50 million litres of milk from Fonterra each season.

Dairy industry commentator Tony Baldwin says the stand-off "comes down to interpretation of regulations".

Baldwin says Fonterra's monopoly on the milk market means the no one really knows what is the milk price.

Under the regulations, the regulatory milk price is calculated based on the payout, profits retained by Fonterra and the capital return of shareholder funds.

A higher retention of profits by Fonterra will mean a higher milk price for independent producers.

Open Country argues that for the purposes of calculating the default milk price, Fonterra includes all after-tax profits as retention.

Baldwin says the Act provides "a very artificial arrangement" for calculating the regulatory milk price.

"It's open to game playing with each party interpreting the regulations for their own benefit.

Fonterra chairman Henry van der Heyden says their interpretation is correct and Open Country is "playing games" to delay payment.

"We think they should write their cheque out and get on with life," he says.

Fonterra is charging interest from September 20 on unpaid amounts.

Open Country director Wyatt Creech thinks Fonterra is trying to stifle competition.

"This recent sudden and substantial financial demand on Open Country is but another example of the way Fonterra responds to those endeavouring to enter the dairy industry," he says.

"We see it as part of an ongoing, deliberate and calculated approach by Fonterra to frustrate competition."

Farmers back Fonterra and blame the dairy industry regulations for the impasse.

Federated Farmers Waikato president Peter Buckley says farmers are unhappy with "the cost of litigation and time-wasting" resulting from the Commerce Commission hearings.

"We think that disputes of this nature should have never surfaced as the act should have been written correctly in the first place," he says.

"It appears to me that this piece of legislation should be reviewed and be written with more care so we do not have to waste good money after good money to find out right from wrong."

However, Baldwin supports Open Country's decision to refer the dispute to the commission.

"It means Fonterra cannot just dictate how things work out," he says.

"It is also fair to shareholders that another firm is putting pressure and holding Fonterra accountable."

Baldwin believes Fonterra is wrong to treat Open Country as competition because of the size difference between the two companies.

"It is like comparing Telecom and Woosh," he says.

"Open Country is a minnow.

"Fonterra should not bully Open Country otherwise it will not be seen in good light by the Government and other authorities."

Van der Heyden refused to comment on the milk transport case before the commission saying a final ruling was expected soon.

Fonterra is expected to appeal if the commission upholds its earlier decision on the milk transport charges.

Farmers pay the national average transport cost irrespective of their location.

However, Open Country argues that it is not a shareholder and should only pay the actual cost of transporting milk from farms to its factory.

Baldwin says Fonterra fears that the ruling may put its monopoly status at risk.

"If a business enjoys a monopoly, it will always like to keep its monopoly," he says.

If the commission rules that transport charges should be calculated on a regional basis, then farmers living near Fonterra factories in Taranaki, Waikato and Canterbury stand to gain.

However, farmers living in remote areas will face a reduction in returns.

Baldwin says Fonterra is worried that Open Country will "cherry pick" big farmers living near factories and leave it to transport milk from farmers in remote areas.

"They fear fragmentation of its supply base and eventually lead to a break-up of the cooperative," he says.

"They see this as a crack in the door".

Baldwin predicts that transport charges will be calculated on a regional basis "within 5-10 years".

Farmers see the unfolding battle as "one of one-upmanship by Open Country over Fonterra".

Buckley says because Fonterra is a cooperative, milk transport charges are equally divided irrespective of the location of farms and factories.

But he admits that despite opposition to Open Country, more farmers are taking up supply contracts with the company.

The company attracted 26 new suppliers this season and has launched another recruitment drive for next season.

It hopes to process 200m litres of milk and produce 20,000 tonnes of cheese and 10,000t of whey powder next season.

Open Country chief executive Alan Walters says farmers do not need to buy shares in the company to become a supplier.

At the same time, sale of their shares in Fonterra can be used to "reduce debt, increase cash flow, purchase additional property, invest elsewhere and improve lifestyle".

"All up the latest player in the dairy industry can offer new suppliers an attractive alternative," says Matthews.

Open Country's plans for next season will be another jab for Fonterra.

And favourable Commerce Commission's ruling will add weight to Open Country's expansion drive.

But with its sheer giant - size operations, Fonterra will not be rocked and is not likely to be worried. Or should they?

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