

Murray Goulburn didn't get a chance to compete fairly against Saputo

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As Canada's Saputo marches towards control of Warrnambool Cheese & Butter, it is worth considering whether the process, rather than the outcome, revealed shortcomings in the regulatory environment within which the bid unfolded.



The outcome was effectively determined by a press release on November 12 last year, when Joe Hockey announced he had approved Saputo's foreign investment application and cleared the way for its bid.

Nearly a month earlier, Victorian dairy co-operative Murray Goulburn had countered the opening offer for WCB by Bega Cheese with a bid of its own and about two weeks later, Murray Goulburn applied to the Australian Competition Tribunal, seeking a competition policy authorisation for its bid.

When Saputo all but wrapped up control of WCB last week, Murray Goulburn was still tied up in the ACT process, with the earliest possible date for a clearance still more than a month away. Effectively, it was unable to compete with Saputo for control of WCB.

So one regulatory process, the foreign investment authorisation process, cleared the way for a foreign bid in a very timely fashion while another, the competition policy process, kept the most viable local bidder from competing.

In isolation both processes were reasonable. There was no obvious reason why Saputo's ability to bid for WCB should have been frustrated on foreign investment grounds. Equally, given that Murray Goulburn and WCB both operate within the domestic dairy sector and both have significant operations in the same region of western Victoria, there were obvious competition policy issues to be evaluated.

The crude outcome, however, where the local bidder was unable to compete with

the foreigner because it was tied up in the regulatory process and therefore was unable to pursue a strategy that may have had positive national interest implications, appears unfair.

Given the chance, it may have been able to create a vehicle with the scale, synergies and corporate structure to pursue the opportunity for the dairy sector in Asia.

It could be that the WCB situation was unique. With the global agricultural sector rapidly consolidating and Australia's agricultural industries seen as strategic platforms for the global push into Asian markets, however, it is conceivable that analogous situations could recur.

Ideally, there should be a level playing field for local and foreign bidders where the foreign company clears the national interest tests within the Foreign Takeovers regime.

The Treasurer could have levelled the playing field by delaying the approval of Saputo's application and aligning the timeline for that approval with that of the outcome of Murray Goulburn's competition policy process.

He has the discretion to extend the review process, which is something that has been done, formally and informally, quite regularly in the past. (There were a number of Chinese state-owned entities that have been repeatedly asked to re-submit their applications, restarting the timetable for approval, during the resources boom years).

There has been a suspicion that Hockey rushed the Saputo decision out to blunt the

accusation that the Abbott government, influenced by the Nationals, was opposed to foreign investment in agribusiness that flowed from its controversial blocking of Archer Daniels Midland's agreed bid for GrainCorp.

Whatever the reality, no one has questioned that he, advised by the Foreign Investment Review Board, made the right decision on Saputo's application. The debate is about its timing and the interaction between the foreign investment approval process and the competition policy process.

It is an unfortunate fact of life for companies trying to consolidate their sectors in order to create platforms to expand offshore -- and the agriculture sector is probably the most obvious -- that they are going to have to overcome competition policy obstacles.

Any merger of significant players within a sector will trigger competition policy issues.

With the Australian Competition & Consumer Commission defining markets quite narrowly and looking at the impact of mergers on domestic competition and consumers, obtaining approval can be a protracted and difficult process.

Murray Goulburn bypassed the ACCC and went straight to the Competition Tribunal to try to truncate the process and in order to be able to more easily argue the net national interest in allowing its acquisition of WCB even if there were some potential negative impacts on the market for milk in western Victoria.

In the end that still didn't get it clear of the regulatory process in time to compete freely with Saputo, which may be a unique opportunity lost for the dairy sector and for the national interest.

It would appear obvious that if a similar situation recurred in future it would be preferable if the regulatory processes didn't gravely disadvantage the local bidder or, as has occurred in the WCB takeover, prevent them from competing. That's not an argument for tilting the playing field against foreign bidders but for levelling it for local players.

It could be done by directing the Foreign Investment Review Board to align the timetable for foreign investment approval with that of the competition policy timeline where an Australian company has announced an offer conditional on ACCC or ACT approval. It might also be possible to create accelerated timetables for the competition policy processes.

However it were done, it would be preferable for the various regulatory processes to be co-ordinated so that they don't disadvantage either foreign or domestic bidders and also give the shareholders of the target companies the best opportunity to maximise their outcomes.

Whether or not Murray Goulburn would have cleared the competition policy hurdles and whether or not it would have been able to successfully out-bid Saputo in a fair contest is beside the point. Australian companies in future ought to at least have the opportunity to compete fairly.

The different timelines for the foreign investment and competition policy processes denied Murray Goulburn that opportunity and will continue to discriminate against aspiring local offerors unless the policy framework is changed to create some co-ordination of their timelines.

Stephen Bartholomeusz is a columnist for Business Spectator. www.businessspectator.com.au

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WCB Bidding Timeline

September 12: Bega Cheese makes an offer of 1.2 Bega Cheese shares plus \$2 cash for each Warrnambool share

September 26: WCB board advises shareholders to reject Bega's offer

October 8: Saputo offers \$7 cash per share

October 8: WCB board unanimously recommend Saputo's offer

October 11: Bega Cheese submits supplementary bidder's statement

October 14: WCB board issues statement stating that Bega's offer is neither fair nor reasonable

October 16: WCB board unanimously reject Bega's offer

October 18: Murray Goulburn offers \$7.50 cash per share

October 18: WCB board advises shareholders to take no action on MG offer

October 25: Saputo's second bid of \$8 cash per share

October 25: WCB board unanimously recommend Saputo's offer

October 29: Lion purchases 9.9 per cent stake in WCB

October 31: Bega Cheese receives clearance by the Australian Competition and Consumer Commission (ACCC)

November 1: Fonterra announces it has bought a 6 per cent stake in Bega Cheese

November 12: Saputo receives Federal Government permission to bid for WCB

November 13: Murray Goulburn increases its bid to \$9 per share

November 13: WCB board advises shareholders to take no action on MG offer

November 14: Bega Cheese increases its bid to 1.5 Bega shares and \$2 cash for each Warrnambool share

November 14: WCB board advises shareholders to take no action on Bega's offer

November 15: WCB requests a trading halt while it negotiates revised offer from Saputo

November 15: Saputo matches the highest cash bid at \$9 cash per share and removes conditions

November 15: WCB board recommends Saputo's offer

November 18: WCB board sends letter to all shareholders recommending Saputo's offer

November 25: Saputo increases offer to \$9.20 if more than 50 per cent of WCB shareholders accept the offer

November 25: WCB board recommend improved and simplified Saputo offer

November 27: Murray Goulburn lodge complaint with the Takeover Panel regarding Saputo's revised offer

November 28: Murray Goulburn increases its bid to \$9.50 per share

November 28: Bega Cheese entered an appearance to the Takeovers Panel in respect of Murray Goulburn's complaint

November 29: Murray Goulburn files a merger authorisation with The Competition Tribunal to gain clearance for its takeover bid

November 29: Saputo increases share ownership to 9.6%

December 11: Bega extends offer until 20 December

December 13: Saputo extends offer until 20 December

December 17: WCB issues a trading halt until 19 December or before

December 17: Saputo extends offer to January 10 and increases offer to \$9.40 if more than 75% of WCB shareholders accept the offer and \$9.60 if over 90% accept

December 18: Bega announces it will not extend offer on 20 December, effectively withdrawing its takeover bid

December 20: WCB board recommends shareholders accept Saputo's offer

December 20: WCB board recommends shareholders reject Murray Goulburn's offer

December 24: Saputo increases share ownership to 17.9%

January 7: WCB Directors unanimously recommend shareholders reject Murray Goulburn's offer in its target statement

January 10: Saputo extends offer to January 22 and states it is the final extension

January 13: Saputo increases share ownership to 26.5%

January 16: Bega Cheese announces sale of its 18.8% share to Saputo, gaining a profit of over \$61m

January 17: Saputo's stake in WCB jumps to 46%

January 22: The bidding war ends with Saputo gaining 52.7% of WCB and its share offer extended to February 4

January 23: Murray Goulburn sells its stake to Saputo for \$92.9m

January 28: Murray Goulburn officially withdraws its bid for WCB



Conference 2014

26th - 27th March

Draft Agenda Day 1

Wednesday March 26, 2014

9.00am Registration

10.00am General Meeting

- Opening
- President's report
- Manager's report
- Financial report

Key Issues for the Dairy Industry

11.00am The Future of Herd Improvement

11.30am Australian Owned Milk Processing

12.00pm The Future of Funding for DEPI

12.30pm Lunch

Looking to the Future

1.30pm - 2.00pm Producing 12 Billion Litres by 2020 – An Industry Vision

2.00pm - 3.00pm Lessons from Industry Plans

- Taking Responsibility for the Future
- Horizon 2020

3.00pm Afternoon Tea

3.30pm Hypothetical

It's 2025, the industry is producing 15 billion litres and is profitable. Farmer investment has increased, the manufacturing sector is producing at world's best practice and Australian dairy is a major player in the export market. How did we get there?

5.30pm Meeting Close

6.30pm Dinner

10.00pm Close

Draft Agenda Day 2

Thursday March 27, 2014

8.30am Farmer Finance and the Future

8.50am 2014 Victorian Election – the UDV Approach

9.15am Milk Price Structure – Review and Next Steps

10.00am Morning Tea

10.30am UDV Elections and Conference Resolutions Meeting

12.15pm Summary

12.45pm Close

Early Bird Registration

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