



Australian Government

Takeovers Panel

MEDIA RELEASE

No: TP13/69

Tuesday, 17 December 2013

Warrnambool Cheese and Butter Factory Company Holdings Limited Panel Decision

In response to an application dated 26 November 2013 from Murray Goulburn Co-operative Co. Limited in relation to the affairs of Warrnambool Cheese and Butter Factory Company Holdings Limited (see [TP13/63](#)), the Panel was strongly of the view that unacceptable circumstances had occurred in relation to the announcements of 15 November 2013 and 25 November 2013 by both Saputo Dairy Australia Pty Ltd and Warrnambool.

On 15 November 2013, Warrnambool announced that it intended to declare special dividends (with associated franking credits) with a record date of 26 November, subject to Saputo's bid reaching certain thresholds.¹ Saputo announced on the same day that, subject to certain thresholds being reached, accepting shareholders would be able to receive part of their consideration in the form of franked dividends, and that some shareholders would benefit from the associated franking credits. The Panel considers that Saputo and Warrnambool were bound by these statements under the truth in takeovers policy (see [RG 25](#)).

However the structure as announced was essentially unworkable, and on 25 November 2013 Warrnambool announced that it revoked its previous intention to declare the dividends. Saputo announced on the same day its intention to revert to takeover consideration which did not include franked dividends and associated franking credits. The Panel considers these announcements represented a departure from the previous statements to which the parties were bound.

¹ On 15 November 2013, Saputo and Warrnambool each announced an increase in the consideration under Saputo's bid to \$9.00 per share and a proposed intention by Warrnambool to declare fully franked special dividends of:

- \$0.46 per share (with a franking credit of \$0.20 per share), subject to Saputo obtaining a relevant interest in at least 50.1% of Warrnambool shares and
- a further \$0.85 per share (with a franking credit of \$0.36 per share), subject to Saputo obtaining a relevant interest in at least 90% of Warrnambool shares.

The special dividends record date was to be 26 November 2013 (and the ex-dividend date 20 November 2013). On 20 November 2013, ASX decided not to establish ex dividend trading. Saputo intended to declare its bid unconditional by 28 November 2013, after the record date.

Accordingly, the Panel was minded to make a declaration of unacceptable circumstances.

Notwithstanding this, the Panel has accepted undertakings from Saputo and Warrnambool (see Annexures A and B), and declined to make a declaration of unacceptable circumstances.

The Panel considers that the undertakings address the circumstances by offering all shareholders at least as much value (including full allowance for franking credits) as would have been received under the special dividends proposal announced on 15 November 2013.

In agreeing to accept the undertakings, the Panel was concerned to ensure a satisfactory practical outcome. Reinstatement of the 15 November 2013 proposal would not have been practicable as the proposal was essentially unworkable. Moreover, it is Panel policy that the public interest is generally served by accepting undertakings that address the unacceptable circumstances to the Panel's satisfaction (see [Guidance Note 4: Remedies General](#)).

The Panel is of the opinion that Warrnambool's intention to declare special dividends and set a record date ahead of any certainty of the dividends becoming payable, caused confusion and disruption to the market for Warrnambool shares. This was even more problematic in the context of the competing bids for Warrnambool. The announcements put into place arrangements that were complex, created uncertainty and were most undesirable. The Panel would not want to see similar arrangements in future.

The Panel considers that it is not against the public interest to decline to make a declaration of unacceptable circumstances.

The undertakings include:

- Saputo extending its offer period and increasing the consideration offered
- Saputo offering shareholders withdrawal rights and
- Warrnambool making an announcement outlining the status of the three bids currently being made in relation to its shares.

As acceptance of the undertakings ends the proceedings, the interim orders are now at an end.

The sitting Panel was Rod Halstead, Mike Roche and Andrew Sisson (sitting President). The Panel will publish its reasons for the decision in due course on its website www.takeovers.gov.au.

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ANNEXURE A

**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A
UNDERTAKING**

WARRNAMBOOL CHEESE AND BUTTER FACTORY COMPANY HOLDINGS LTD

Saputo Dairy Australia Pty Ltd (**Saputo**) undertakes to the Panel that it will:

In relation to the proposed acquisition of Warrnambool Cheese and Butter Factory Company Holdings Limited (**Warrnambool**) by Saputo (**Offer**):

1. extend the Offer period so that the Offer will not close before 7.00pm on a date which is not earlier than 5 business days after the End Date (as defined below)
2. if Saputo obtains a relevant interest in greater than 50% of issued Warrnambool shares during the Offer period, increase its offer price from \$9.00 to \$9.20 cash per Warrnambool share
3. if Saputo obtains a relevant interest in greater than 75% of issued Warrnambool shares during the Offer period, increase its offer price to \$9.40 cash per Warrnambool share
4. if Saputo obtains a relevant interest in greater than 90% of issued Warrnambool shares during the Offer period, increase its offer price to \$9.60 cash per Warrnambool share
5. offer the withdrawal right set out in paragraphs 6 and 7 below (**Withdrawal Right**) to each Warrnambool shareholder who has accepted the Offer:
 - 5.1. on or before the Modification Date (as defined below) by CHESSE or
 - 5.2. by fax, or by hand, or by mail post where the Acceptance and Transfer Form is dated (or was otherwise received) on or before the Modification Date,

(Relevant Warrnambool Shareholder)

6. send a notice to each Relevant Warrnambool Shareholder advising them of their right to withdraw their acceptance together with a form (**Election Form**) providing each Relevant Warrnambool Shareholder with the option of either withdrawing their acceptance or of affirming their acceptance of the Offer. The notice and Election Form will be despatched to all Relevant Warrnambool Shareholders whose acceptances were received on or before the Modification Date by no later than the end of the business day following the Modification Date. Saputo will despatch the notice and the Election Form to each Relevant Warrnambool Shareholder whose acceptances were not

received on or before the Modification Date, by no later than the end of the business day following the receipt of the acceptance

7. allow each Relevant Warrnambool Shareholder until 7.00pm on the End Date the opportunity to exercise the Withdrawal Right by returning to Saputo the duly completed Election Form indicating that the Relevant Warrnambool Shareholder wishes to withdraw its acceptance. Saputo will ensure that the Withdrawal Right remains on foot and does not lapse before 7.00pm on the End Date
8. in the event that a Relevant Warrnambool Shareholder returns a duly completed Election Form, on or before the End Date, indicating that the Relevant Warrnambool Shareholder wishes to affirm its acceptance of the Offer, pay the Offer consideration to the Relevant Warrnambool Shareholder within 5 business days of receipt by Saputo of the Election Form
9. in the event that a Relevant Warrnambool Shareholder does not return an Election Form, pay the Offer consideration to that Relevant Warrnambool Shareholder within 5 business days after the End Date
10. take all reasonable steps necessary to promptly give effect to the exercise of a Withdrawal Right by a Relevant Warrnambool Shareholder and
11. prepare, lodge and dispatch a supplementary bidder's statement and provide an announcement to Warrnambool (both in a form approved by the Panel), for immediate lodgement and release to the market, that it has provided this undertaking, formally announcing the changes to the Offer outlined in paragraphs 1 to 9 of this undertaking and advising that the variations to the Offer price referred to in paragraphs 2,3 and 4 is a "last and final" statement as to the Offer price for the purposes of ASIC Regulatory Guide 25.
12. In this undertaking:

"**Modification Date**" is the business day after the date on which Australian Securities & Investments Commission provides modification of the *Corporations Act 2001 (Cth) (Act)* under section 655A of the Act to enable Saputo to give effect to the Withdrawal Right and

"**End Date**" is the date 10 business days after the Modification Date.

Saputo agrees to confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

**Signed by Louis-Philippe Carrière, director
with the authority, and on behalf, of Saputo**

Dated 16 December 2013



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ANNEXURE B

**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION ACT 2001 (CTH) SECTION 201A
UNDERTAKING**

WARRNAMBOOL CHEESE AND BUTTER FACTORY COMPANY HOLDINGS LTD

Warrnambool Cheese and Butter Factory Company Holdings Ltd (**Warrnambool**) undertakes to the Panel that it will, as soon as practicable, release to ASX:

1. an announcement (in a form approved by the Panel) outlining the status of the 3 takeover bids being made in relation to Warrnambool shares; and
2. the announcement provided to it by Saputo Dairy Australia Pty Ltd (**Saputo**) pursuant to Saputo's undertaking to the Panel.

Warrnambool further undertakes to the Panel that, as soon as reasonably practicable after Saputo issues a supplementary bidder's statement in accordance with Saputo's undertaking to the Panel, it will issue a supplementary target's statement in response to that supplementary bidder's statement.

Warrnambool agrees to confirm in writing to the Panel when it has satisfied its obligations under this undertaking.

**Signed by Paul Maloney, Company Secretary of Warrnambool Cheese and Butter
Factory Company Holdings Limited
with the authority, and on behalf, of Warrnambool Cheese and Butter Factory Company
Holdings Limited
Dated 17 December 2013**