



**BEGA CHEESE**

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20 July 2022

Ms Melissa Kostopoulos  
Compliance Adviser, Listings Compliance (Melbourne)  
[ListingsComplianceMelbourne@asx.com.au](mailto:ListingsComplianceMelbourne@asx.com.au)

Dear Melissa

Bega Cheese Limited (BGA) – Response to Aware Query

### **Background**

Bega Cheese Limited (BGA) refers to your letter of 18 July 2022.

In that letter you refer to BGA's announcement titled "Trading Update FY2023" released on the ASX Market Announcements Platform on 13 July 2022 (**July Update**). The July Update referred to a previous ASX announcement made by BGA titled "Trading Update FY2023" (**April Update**) in which BGA:

- Gave an update on various disruptions to its business, including the continuing impact of COVID-19, floods in various regions around Australia, the war in Ukraine and lockdowns in Shanghai, and the extent to which these disruptions would add additional costs to the BGA business.
- Noted the strengthening of international dairy prices and the increased competition for milk in Australia being reflected in the payment by the majority of dairy companies, including BGA, of higher farm gate milk prices.
- Provided guidance of normalised EBITDA for FY2022 of \$175 to \$190 million.

The July Update provided a further update on these matters:

- Commenting that BGA has been able "to pass through many of the increased business costs it experienced in FY2022 in the form of higher wholesale and retail prices or mitigate the impact through various initiatives."
- Noting that there is "ongoing cost pressure of robust competition amongst dairy processors for milk referred to in the April Update."
- Providing guidance of normalised EBITDA for FY2023 of \$160 to \$190 million.

BGA manufactures and sells a range of food products including dairy products, peanut butter, Vegemite and fruit juice. Raw cow's milk purchased from Australian farmers is a major raw material of the dairy sector of the business, with that milk being processed into a range of commodity, wholesale and retail products. Retail dairy products are primarily sold through major retail stores, convenience stores and cafes. The acquisition of raw milk in a competitive market is ordinary course

**BEGA CHEESE LIMITED ACN 008 358 503**

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of business for BGA, which must meet the market to acquire the volume of milk it requires to support its customers and dairy brands.

The price that BGA pays for raw milk is one of many costs associated with BGA's business and, as noted in the July Update, the company has been successful in passing through many of the increased costs it experienced in the form of higher wholesale or retail prices. In the broader Australian market, the increased farm-gate prices for milk has translated into recently publicised price increases by the major Australian retailers for white milk products.

BGA's ability to realise, pass on or otherwise internally manage price increases in its business, including the price for raw milk, will be reflected in its earnings and profitability. This is a process that entails an ongoing assessment of the competitive positioning and pricing of our broad range of products across numerous channels and markets both domestically and abroad. It is part of the overall management of the business and therefore separation of individual cost items in assessing the performance of the business is not appropriate.

It is also worth noting that, since 2020, the manner in which dairy processors including BGA acquire milk from Australian farmers has been regulated by the Competition and Consumer (Industry Codes – Dairy) Regulation 2019 (**Dairy Code**). That Code includes a requirement that dairy processors publish on their web sites standard form agreements under which they will acquire milk from farmers in a financial year. These standard form agreements, including the prices offered for milk, must be published by 1 June prior to the commencement of the financial year. If prices are increased, revised versions of the standard form agreements are published on the processor's web site. This information is generally available to the public. Milk price increases are also communicated to the farmers in relevant region as part of the competitive process associated with milk procurement.

In accordance with the Dairy Code, dairy processors including BGA published their standard milk supply agreements and initial pricing for FY2023 on their websites on 1 June 2022. This was followed by vigorous competition amongst processors to acquire milk resulting in a number of farm gate milk price increases by BGA and its competitors. That competition continued into July, with BGA's prices changing in response to market conditions on numerous occasions.

Each time milk price changes were made BGA went through its internal management and Board processes. This includes a consideration of the overall impact of the proposed milk price rise on the earnings of BGA and the ability to pass through the milk price rise to customers in various markets. Of course, this is part of a broader ongoing monitoring of the BGA business as a whole.



## Responses to Your Questions

BGA provides the following responses to the numbered questions in your letter of 18 July 2022.

1. Does BGA consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities? “Information” is defined in paragraph A of your letter as “farm gate milk prices for FY2023 are expected to be approximately 30% higher than FY2022 prices, as compared to a previously expected increase of 15%-20%”.

### **BGA Response**

No. Milk procurement has always been an aspect of BGA’s business and the prices paid for milk in any particular year vary depending on local and international returns for dairy products. Providing a commentary on milk prices without a thorough assessment of the returns that can be achieved from milk acquired from farmers would only tell one part of BGA’s business. As such, an increase in farm gate milk prices for FY2023 is not, in itself, information that a reasonable person would expect to have a material effect on the price or value of BGA securities. The July Update was marked as “market sensitive” on the basis that it included market guidance on BGA’s earnings for FY2023.

2. If the answer to question 1 is ‘no’, please advise the basis for that view.

### **BGA Response**

As outlined in the Background section of this letter, farm gate milk price is one of many costs in the BGA business. BGA manages these costs and the extent to which it can realise, pass on or otherwise address them is reflected in the earnings and profitability of BGA. The increases in farm gate milk prices payable in FY2023 were formulated on the back of higher international dairy commodity prices and a competitive Australian milk procurement market. Those higher raw milk prices have already been reflected in higher prices for dairy products. However, as noted in the July Update, a delay in the timing of price increases for retail products can impact on earnings. Yet while the ability to pass through milk procurement prices lags behind actual procurement outcomes, there is an expectation that some pass through will be possible given that other dairy processors and some retailers were acquiring raw milk in the same market. Accordingly, BGA provided early guidance to its FY2023 earnings in the July Update. The formulation of earnings guidance (as noted in section 7 of ASX Guidance Note 8) requires proper consideration of relevant matters, which could only occur once some clarity around BGA’s milk procurement prices and volumes became evident and other relevant business costs and strategies were properly considered, including:

- Potential for further selling price increases and timing of their implementation in both domestic and international markets across numerous channels and countries with consideration for competitors’ selling price increases and the response from customers and consumers.
- Potential for further increase in competitor farm gate milk prices.
- Final milk volumes procured by BGA for FY2023.



- Movements in commodity prices incorporating further assessment of global demand and supply issues.
- Any expected increases in other key inputs including packaging and freight.

BGA provided earnings guidance for FY2023 as soon as the forecast modelling process was completed and considered in accordance with BGA's Continuous Disclosure Policy to provide investors with information on the company's business early in FY2023 that was formulated on the basis of reasonable and properly considered assumptions. However, as noted in the July Update that guidance was provided on the basis that "market pricing and milk procurement outcomes are still ongoing".

3. When did BGA first become aware of the Information?

**BGA Response**

As outlined in the Background section of this letter, vigorous competition for milk continued through June and July 2022. From an operational perspective, BGA was assessing and responding to the market dynamics throughout this period. Increases in BGA's prices, in response to this competition, were published on its web site in accordance with the Dairy Code. This information is generally available to the public. Further, as noted above, BGA took the earliest opportunity to assess the impact of the higher milk prices on its earnings for FY2023 and provide guidance to the market on those earnings.

4. If the answer to question 1 is 'yes' and BGA first became aware of the Information before the relevant date (13 July 2022), did BGA make any announcement prior to the relevant date which disclosed the Information? If so, please provide details. If not, please explain why this Information was not released to the market at an earlier time, commenting specifically on when you believe BGA was obliged to release the Information under Listing Rules 3.1 and 3.1A, including in light of media speculation and analyst reports in respect of the Information and ASX guidance on responding to speculation in media or analyst reports, and what steps BGA took to ensure that the Information was released promptly and without delay.

**BGA Response**

Not applicable.

5. Please confirm that BGA is complying with the Listing Rules and, in particular, Listing Rule 3.1.

**BGA Response**

BGA confirms that it is complying with the Listing Rules and, in particular, Listing Rule 3.1.



6. Please confirm that BGA's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of BGA with delegated authority from the board to respond to ASX on disclosure matters.

**BGA Response**

BGA confirms that the response to your letter of 18 July 2022, including the above questions, has been authorised by the BGA Disclosure Committee in accordance with the BGA Disclosure Policy.

Yours sincerely,

A handwritten signature in blue ink that reads "B. Kelly".

Brett Kelly  
Company Secretary  
Bega Cheese Limited



18 July 2022

Reference: 55159

Mr Brett Kelly  
Company Secretary  
Bega Cheese Limited  
23-45 Ridge Street  
Bega NSW 2550

By email: Brett.Kelly@bega.com.au

Dear Mr Kelly

**Bega Cheese Ltd ('BGA'): Aware Query**

ASX Limited ('ASX') refers to the following:

- A. BGA's announcement entitled *'Trading Update FY2023'* released on the ASX Market Announcements Platform on 13 July 2022 (the 'Announcement'), disclosing that farm gate milk prices for FY2023 are expected to be approximately 30% higher than FY2022 prices, as compared to a previously expected increase of 15%-20% ('Information').

ASX notes that the Announcement was marked as 'market sensitive' when it was released by BGA.

- B. An article titled *'Leaked Letter: Farmer's tweet preceded Bega share price rout'* published in the Australian Financial Review on 14 July 2022 regarding:
- (a) a letter from BGA to Southern Victorian and South East South Australian Milk Suppliers dated 16 June 2022, detailing an increase in the opening average milk price to be paid to dairy farmers and providing revised monthly minimum milk prices for the 2022/2023 financial year;
  - (b) subsequent downgrades made by three separate broking firms that occurred on 20 June 2022;
  - (c) the sale of 1.2 million BGA securities by a fund manager between 16 and 20 June 2022; and
  - (d) the decline in the price of BGA's securities since 17 June 2022.
- C. An article titled *'Brokers, Perpetual smell a stink at Bega Cheese'* published in the Australian Financial Review on 8 July 2022 regarding news that BGA wrote to Victorian and South Australian dairy farmers to tell them BGA would increase the average milk price paid by BGA by 30c to \$9.10 per kilogram of milk solids which was purportedly reported by *The Land* on 17 June 2022 and detailing subsequent broker downgrades and a decline in the price of BGA's securities.
- D. The change in the price of BGA's securities from a closing price of \$4.33 on 16 June 2022 to a closing price of \$3.55 on 13 July 2022 prior to the release of the Announcement and further to a closing price of \$3.25 on 14 July 2022 following the release of the Announcement.
- E. Listing Rule 3.1, which requires a listed entity to immediately give ASX any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities.
- F. The definition of 'aware' in Chapter 19 of the Listing Rules, which states that:

*'an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity' and section 4.4*

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*in Guidance Note 8 Continuous Disclosure: Listing Rules 3.1 – 3.1B ‘When does an entity become aware of information.’*

- G. Listing Rule 3.1A, which sets out exceptions from the requirement to make immediate disclosure, provided that each of the following are satisfied.

*‘3.1A Listing rule 3.1 does not apply to particular information while each of the following is satisfied in relation to the information:*

*3.1A.1 One or more of the following applies:*

- It would be a breach of a law to disclose the information;*
- The information concerns an incomplete proposal or negotiation;*
- The information comprises matters of supposition or is insufficiently definite to warrant disclosure;*
- The information is generated for the internal management purposes of the entity; or*
- The information is a trade secret; and*

*3.1A.2 The information is confidential and ASX has not formed the view that the information has ceased to be confidential; and*

*3.1A.3 A reasonable person would not expect the information to be disclosed.’*

- H. ASX’s policy position on the concept of ‘confidentiality’, which is detailed in section 5.8 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. In particular, the Guidance Note states that:

*‘Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.’*

- I. ASX’s policy position on responding to comment or speculation in media or analyst reports and market rumours, which is detailed in section 6.4 of Guidance Note 8 *Continuous Disclosure: Listing Rules 3.1 – 3.1B*. In particular, the Guidance Note states that:

*‘ASX does not expect an entity to respond to every comment concerning it that appears in a media or analyst report or every rumour about it circulating the market. In particular, where a report/rumour:*

- appears to be mere supposition or idle speculation; or*
- simply confirms a matter that is generally understood by the market (eg, because of previous announcements or media or analyst commentary),*

*and, in either case, it does not appear to be having a material effect on the market price or traded volumes of the entity’s securities, then ASX will not generally require the entity to respond to the report/rumour.*

*Where, however, a media or analyst report or market rumour appears to contain or to be based on credible market sensitive information (whether that information is accurate or not) and:*

- there is a material change in the market price or traded volumes of the entity’s securities which appears to be referable to the report/rumour (in the sense that it is not readily explicable by any other event or circumstance);*

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...

*ASX considers that the entity has a responsibility to the market to respond to the report in a timely manner.'*

### **Request for information**

Having regard to the above, ASX asks BGA to respond separately to each of the following questions and requests for information:

1. Does BGA consider the Information to be information that a reasonable person would expect to have a material effect on the price or value of its securities?
2. If the answer to question 1 is 'no', please advise the basis for that view.
3. When did BGA first become aware of the Information?
4. If the answer to question 1 is 'yes' and BGA first became aware of the Information before the relevant date (13 July 2022), did BGA make any announcement prior to the relevant date which disclosed the Information? If so, please provide details. If not, please explain why this Information was not released to the market at an earlier time, commenting specifically on when you believe BGA was obliged to release the Information under Listing Rules 3.1 and 3.1A, including in light of media speculation and analyst reports in respect of the Information and ASX guidance on responding to speculation in media or analyst reports, and what steps BGA took to ensure that the Information was released promptly and without delay.
5. Please confirm that BGA is complying with the Listing Rules and, in particular, Listing Rule 3.1.
6. Please confirm that BGA's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of BGA with delegated authority from the board to respond to ASX on disclosure matters.

### **When and where to send your response**

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **9:30 AM AEST on Thursday, 21 July 2022**. You should note that if the information requested by this letter is information required to be given to ASX under Listing Rule 3.1 and it does not fall within the exceptions mentioned in Listing Rule 3.1A, BGA's obligation is to disclose the information 'immediately'. This may require the information to be disclosed before the deadline set out in the previous paragraph and may require BGA to request a trading halt immediately.

Your response should be sent to me by e-mail at **ListingsComplianceMelbourne@asx.com.au**. It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

### **Trading halt**

If you are unable to respond to this letter by the time specified above, you should discuss with us whether it is appropriate to request a trading halt in BGA's securities under Listing Rule 17.1. If you wish a trading halt, you must tell us:

- the reasons for the trading halt;
- how long you want the trading halt to last;
- the event you expect to happen that will end the trading halt;

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- that you are not aware of any reason why the trading halt should not be granted; and
  - any other information necessary to inform the market about the trading halt, or that we ask for.

We require the request for a trading halt to be in writing. The trading halt cannot extend past the commencement of normal trading on the second day after the day on which it is granted. You can find further information about trading halts in Guidance Note 16 *Trading Halts & Voluntary Suspensions*.

### **Suspension**

If you are unable to respond to this letter by the time specified above, ASX will likely suspend trading in BGA's securities under Listing Rule 17.3.

### **Listing Rules 3.1 and 3.1A**

In responding to this letter, you should have regard to BGA's obligations under Listing Rules 3.1 and 3.1A and also to Guidance Note 8 *Continuous Disclosure*: Listing Rules 3.1 – 3.1B. It should be noted that BGA's obligation to disclose information under Listing Rule 3.1 is not confined to, nor is it necessarily satisfied by, answering the questions set out in this letter.

### **Release of correspondence between ASX and entity**

We reserve the right to release a copy of this letter, your reply and any other related correspondence between us to the market under listing rule 18.7A.

### **Questions**

If you have any questions in relation to the above, please do not hesitate to contact me.

Yours sincerely

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**Melissa Kostopoulos**  
Compliance Adviser, Listings Compliance (Melbourne)