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Attention: Matthew Clark
Acting Manager, Regulatory Developments, Regulation Branch
Commerce Commission
WELLINGTON
By email: regulation.branch@comcom.govt.nz

Dear Sir,

Re: **SUBMISSION ON THE COMMISSION'S DRAFT REPORT ON ITS REVIEW OF FONTERRA'S 2019/20 MILK PRICE MANUAL**

This submission sets out Fonterra's response to the Commission's draft report on its *Review of Fonterra's 2019/20 Milk Price Manual: Dairy Industry Restructuring Act 2001*, released on 15 October 2019 (the Draft Report).

Please contact me if you have any questions or would like further information.

Yours sincerely,

A handwritten signature in blue ink, appearing to be "AC", written over a light blue horizontal line.

Andrew Cordner
Director Legal
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Introduction

We set out below Fonterra's submissions on the Commerce Commission's draft report on Fonterra's Milk Price Manual (the Manual) for the 2019/20 Season, prepared in accordance with section 150I of the Dairy Industry Restructuring Act 2001 (DIRA). This submission is intended to satisfy Fonterra's obligations under section 150M(2) of DIRA. The submission has been prepared under the oversight of the Milk Price Panel, and where relevant reflects the Panel's views.

We note the Commission's overall draft conclusion is that the Manual is largely consistent with the section 150A purpose statement.

The submission is organised as follows:

- In the first section, we comment on the matters identified by the Commission as its key areas of focus for the current review. Our substantive comments in this section relate to the Commission's comments on materiality.
- In the second section, we comment on farmer support payments.

Commission's key focus areas

The Commission explains that its key focus areas for the current review relate to:

- The application of the Qualifying Outlier Sales provision and the consistency of the provision with s 150A of DIRA.
- Materiality, in the context of changes to the Manual.

We note the Commission's conclusion that the definition of Qualifying Reference Sales is consistent with s 150A, and have no other comments on this matter, other than to confirm that the provision has not been utilised since 2009/10.¹

With respect to materiality, the Commission concludes that:

55. Fonterra's explanation suggests that there are many situations whereby changes can be made to the Manual that do not give rise to costs through the milk price. It is not clear, however, what materiality considerations would apply to a decision that may have a cost or revenue impact or to a decision that no change is needed.

56. We consider it would improve transparency if the Manual defined a threshold or set of criteria that would be used by Fonterra to categorise amendments to the Manual (for example, improvements in transparency, addressing matters where the Manual was incomplete and correction of errors), but Fonterra otherwise retained the discretion to make any changes to the Manual.

57. Therefore, our draft conclusion continues to be that disclosure of what constitutes a 'material change' in this context will provide greater transparency.

¹ Draft Report, para 45.

We have the following comments:

- As we explained to the Commission, and as summarised in paragraphs 53 and 54 of the Draft Report, we have not in recent years made any amendments with a primary (or sole) purpose of changing the quantum of costs or revenue provided for in the Milk Price. Consequently, we have not had cause to consider the relevant materiality considerations, and do not consider it desirable to attempt to codify potential materiality considerations in the abstract.
- More generally, we consider it likely that all future changes to the Manual will be for the one of the purposes listed by the Commission in paragraphs 53 and 54 of the Draft Report; i.e., to improve transparency, amend process requirements, address areas where the Manual is incomplete, better align the Manual to subpart 5A, address errors, or to better align the detailed rules to the Milk Price Principles. We generally classify changes under these (or similar) headings in our relevant reasons paper, but do not see any advantage in making these criteria explicit in the Manual. And because the factors underpinning decisions to make changes falling under these headings are generally qualitative, we do not believe it would be feasible (or helpful) to articulate associated materiality principles.

Other matters

In Table B1 on p.22 of the Draft Report the Commission restates its position that costs associated with the farmer support programme implemented by Fonterra in 2015/16 should be deducted in the calculation of the Milk Price.

For the purposes of this submission, we draw the Commission's attention to the fact that the loans provided under the farmer support programme have all been repaid and the scheme is therefore no longer operational. We therefore submit that it is no longer appropriate to maintain this as an 'open issue'.