

15 June 2012

Dr Mark Berry
Chair
Commerce Commission

Dear Dr Berry

New Zealand Dairies Limited (In Receivership) (NZDL)

Thank you for meeting with us on Wednesday of this week to discuss the proposal that Fonterra support the operation of NZDL's Studholme milk processing plant on a temporary basis while the Commission considers Fonterra's application for clearance under the Commerce Act to purchase the plant. This letter confirms the matters we discussed at that meeting.

Colin Gower, Stephen Tubbs and I were appointed as receivers of NZDL Group on 17 May 2012. Our objective was and is to ensure that the business continues to operate as a going concern until sold, so as to satisfy our statutory duty to maximise price reasonably obtainable for the assets of the business.

We have conducted a competitive process, seeking offers from a number of parties who have been able to conduct full due diligence on the NZDL Group. As a result of that process, we have entered into a sale and purchase agreement with Fonterra Limited (Fonterra). The sale and purchase agreement is conditional on Fonterra obtaining clearance under the Commerce Act for the acquisition. The sale and purchase agreement provides that Fonterra must submit an application for clearance to the Commission no later than ten business days after the agreement is signed.

It is important to note at this point that, having entered into the sale and purchase agreement, we still face the issue of keeping NZDL's business operating while the Commission considers Fonterra's application. The plant is not currently operating, but will need to resume operation for the 2012/13 dairy season from 1 August. NZDL's 34 current suppliers of milk must have certainty that their milk will be collected and processed from the beginning of the season, and must have that certainty for the whole season, or they will need to make arrangements with an alternative processor. All bids we received for NZDL have been conditional on NZDL's supply arrangements for raw milk remaining in place.

If NZDL was not able to commence processing milk from 1 August, the results would be catastrophic. Not only would suppliers be prejudiced for the 2012/13 season, but they, along with NZDL's other creditors, would be unlikely to be able to recover amounts owed to them. In the case of suppliers, those amounts are very significant.

If the plant does not resume operation, this would result in the loss of NZDL's 46 employees, with obvious further consequences for the value of NZDL.

The receivers are not in a position to operate the plant themselves. We do not have access to funding that would allow us to take on the financial risk that would be involved in allowing the plant to commence operation for the season. This relates not only to direct physical operation of the plant, but also to other costs, such as the hedging of foreign exchange, that would need to be incurred for NZDL to operate prudently.



Accordingly, we have entered into an agreement with Fonterra under which Fonterra will support the operation of NZDL while the Commission considers Fonterra's clearance application. This will involve Fonterra underwriting the operation of NZDL and providing whatever support that is necessary to ensure that NZDL can operate as a going concern in the interim.

The arrangement has been carefully structured so that it is able to be fully unwound in the event that the Commission determines not to grant clearance for the ultimate acquisition. It gives certainty to NZDL's suppliers for the entire 2012/13 season but, in the event that clearance is not granted and another buyer needs to take over before the end of the season, the arrangement may be terminated by the receivers (but not by Fonterra) on one month's notice.

We believe the interim arrangement has been structured with appropriate safeguards so that the Commission need not be concerned that it breaches the Commerce Act. To the limited extent that the operation of NZDL could involve access to confidential information, safeguards will be in place to ensure that no access that could affect competition will occur. We would be happy to answer any questions you may have in this regard at any time.

We therefore consider that the interim arrangements comply with the Commerce Act and there is a strong case for the Commission to grant clearance for Fonterra's ultimate acquisition of NZDL. However, even were the Commission to decline clearance, the effect and purpose of the interim arrangements would be to preserve NZDL as a going concern for another purchaser and allow the Studholme plant to operate for the coming season. We request that the Commission acknowledge that this process is appropriate from its perspective.

We are happy to answer any questions you may have about this matter.

Yours sincerely

A handwritten signature in black ink that reads 'B. Mayo-Smith'.

Brian Mayo-Smith
Receiver