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## **CROSS-SUBMISSION ON REVIEW OF THE STATE OF COMPETITION IN THE NEW ZEALAND DAIRY INDUSTRY – PROCESS AND APPROACH**

### **Introduction and summary**

- 1 Fonterra wishes to thank the New Zealand Commerce Commission (*Commission*) for the opportunity to provide a cross-submission on its “Consultation paper – process and approach”. It also thanks the Commission for recently amending the process for its review of the state of competition in the New Zealand dairy industry (*Review*) in its “Consultation on substantive issues – review of competition in the dairy industry” paper issued on 20 July 2015 (*Issues Paper*) to expressly allow interested parties an opportunity to provide views on substantive issues raised by Review. Fonterra welcomes this change to the process, and the opportunity to contribute to the Review.
- 2 Fonterra reiterates the views expressed in its original submission, acknowledging however that the amended process for the Review responds to Fonterra’s request that there be additional engagement by the Commission with interested parties while it prepares its draft report (see paragraphs four to 6 of Fonterra’s original submission). In this cross-submission, Fonterra corrects an important factual inaccuracy in Westland Co-operative Dairy Company Limited’s (*Westland*) submission, and provides brief additional comments on two issues of methodology raised in other submissions.
- 3 Fonterra notes that a number of the other submissions on the process and approach consultation paper addressed substantive issues; in light of the Commission’s amended process, Fonterra intends to comment on these issues (and the substantive issues specifically identified by the Commission in its Issues Paper) in its substantive submission on the Review.

### **MyMilk – error**

- 4 Fonterra wishes to correct a factual error that appears in Westland’s submission on the process and approach consultation paper. At paragraph 21, Westland notes that “MyMilk offers 5 year supply agreements” and suggests that the purpose is to secure long term

milk supply. In fact, the term of the MyMilk contracts is one year (and Fonterra further understands that other suppliers offer contracts with terms of two to three years).

### Deregulation thresholds

- 5 Goodman Fielder agrees with the Commission's view that a comprehensive competition analysis would be a more appropriate alternative than the current threshold triggers. This analysis should focus on the factory gate market and consider the specific requirements of players in the domestic wholesale milk market (see paragraphs 5.1 to 5.3; see also Miraka's submission at section 4.1).
- 6 As noted in its submission, Fonterra does agree that in the abstract market share information is only one indicator of competition in a market. In contrast, a comprehensive competition assessment is appealing in its potential to take account of complexity, all features of a market that should influence competition, and changing circumstances. However, a deregulation threshold based on a competition assessment also gives rise to uncertainty in relation to when and how the thresholds would be considered met. In contrast, the market share threshold triggers (based on known dairy markets with known competition features and competition dynamics) are relatively certain in their application.
- 7 Accordingly, Fonterra submits market share triggers should not be disregarded, and that the Review should examine whether they might be appropriate at least for some stages of deregulation (for example, earlier-stage deregulation, dealing with provisions that are not considered "core" or "backstop").

### Transition pathway to deregulation

- 8 In its submission, Miraka notes that it considers policy issues and choices should fall within the scope of the Review and recommends, for example, changes that would require a "reshaping of Subpart 5A (Base Milk Price) of the [Dairy Industry Restructuring Act 2001 (DIRA)]". (See also the submissions of Open Country Dairy Limited; Synlait Milk Limited; Tatua Co-operative Dairy Company Limited.)
- 9 In its process and approach consultation paper, the Commission states that it may suggest changes to the existing regulations as part of one "transition pathway option" that could be pursued (see paragraph 13.6), and Fonterra expects the Commission will also consider the order in which regulations would be removed in the context of any staggered deregulation. However, in Fonterra's view the Review will not, and should not, extend to recommendations on detailed policy design. As the Commission notes in the consultation paper, "policy issues and choices on how to best give effect to the objectives of DIRA are outside the scope of our review, and are rather issues for consideration by the Minister" (paragraph 13.7).
- 10 Please contact me if any questions arise in relation to this cross-submission or our earlier submission on the Commission's process and approach consultation paper. We look forward to making our submission on the substantive aspects of the Review and engaging with the Commission on those issues.



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