



## Consultation on substantive issues – review of competition in the dairy industry

20 July 2015

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### Purpose

1. We have decided to amend the process published in our 12 June 2015 consultation paper. This is because there was some uncertainty as to whether or not we were seeking substantive views on our previous paper (the “process and approach” paper).<sup>1</sup>
2. We invite all interested parties to provide their views on this paper by **5pm, Monday, 17 August 2015**.
3. Cross-submissions are due by **5pm, Monday, 31 August 2015**.

### Background

4. We have been asked by the Minister of Primary Industries to produce a report on the state of competition in the New Zealand dairy industry. We are currently consulting on the process and approach we proposed to follow.
5. We published a process and approach paper on 12 June 2015. That paper indicated that “we are particularly interested in whether or not interested parties agree with our proposed approach and whether we have identified all key issues that should be considered when conducting the review. We have included a number of specific questions in this paper to assist interested parties in providing feedback”.<sup>2</sup> We have received submissions on our process and methodology, and are awaiting cross-submissions, due Friday 24 July 2015.
6. We thank stakeholders for the submissions that have been provided so far.
7. There was some uncertainty as to whether or not that paper was also seeking submitters’ views on substantive views. For example, Fonterra submitted that the

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<sup>1</sup> Commerce Commission, *Review of the state of competition in the New Zealand dairy industry: Consultation paper – process and approach*, 12 June 2015.

<sup>2</sup> Supra n1, Paragraph 21.

current process “does not explicitly envisage interested parties making submissions on substantive issues prior to November 2015.”<sup>3</sup>

8. We would prefer parties to raise any substantive views that they have early in our process, rather than only in response to our draft decision. This will enable us to fully consider these matters prior to us releasing our draft report for consultation.
9. For this reason, we have decided to immediately amend our process and invite submitters to raise substantive issues and views.
10. By way of reminder, we noted in our process and approach paper, that less weight may be given to a statement or submission that a party cannot support with corroborating evidence, than a statement or submission that a party can support with corroborating evidence.

### **We invite your views on all substantive matters**

11. We are keen to hear your views on any matter you consider important for our review of competition in the dairy markets. For example, we would like your views on issues such, as but not limited to:
  - 11.1 the markets upon which we intend to focus, and the relative extent of that focus;
  - 11.2 how we intend to define the farm gate and factory gate markets;
  - 11.3 what the state of competition is at the farm gate, factory gate and downstream markets;
  - 11.4 the evolution of competition in the relevant dairy markets since Fonterra was established and since the Government’s 2010 review of competition in the dairy industry;
  - 11.5 your views on Fonterra’s incentives to, and/or ability to, exercise market power without the regulations;
  - 11.6 the specific changes to the regulations that could make the farm gate and factory gate more efficient and better promote the purpose of the DIRA;
  - 11.7 what economic inefficiencies are caused by existing regulations, and how could these inefficiencies be mitigated;
  - 11.8 whether there are any redundant or ineffective regulations in terms of promoting the efficient operation of the dairy markets;
  - 11.9 the regulations that you would be concerned about being removed or altered, and why;

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<sup>3</sup> Fonterra Co-operative Group Limited, *Submission on review of the state of competition in the New Zealand dairy industry – process and approach*, 10 July 2015, paragraph 4.

- 11.10 how deregulation may potentially impact on downstream markets; and
- 11.11 any other issues you believe that the Commerce Commission should consider.
- 12. For parties that have already presented their substantive views through submissions on the process and approach paper, and have nothing additional that they wish to raise, there is no need to submit again or repeat matters that they have already covered.
- 13. We are still in the process of undertaking interviews with market participants. This is also an opportunity for market participants to raise their views.

**Next steps: Our process for reporting to the Minister**

- 14. Table 1 sets out our updated process steps and indicative dates.

**Table 1: Process steps and indicative dates**

Indicative date	Process step
10 July 2015	Submissions on process and approach were due.
24 July 2015	Cross-submissions on process and approach are due.
June – July 2015	Planned period for interviews with market participants.
17 August 2015	Submissions on this paper are due (substantive matters for consideration).
31 August 2015	Cross -submissions on this paper are due.
Early Nov 2015	Draft report published. This will include our findings on the state of competition, and our initial views on pathways to deregulation and resetting of thresholds. We will be seeking submissions.
Late Nov 2015	Submissions due on draft report. We anticipate providing four weeks for submitters to provide their views.
Mid Dec 2015	Cross-submissions due. We anticipate providing two weeks for cross submissions.
29 Feb 2016	Final report published.

- 15. Our process and indicative dates may change. Any changes to these dates will be posted on our website and advised by email to parties who are on our distribution list for dairy related matters.<sup>4</sup> If you do not receive emails from us, and would like to be on that email distribution list, please let us know.
- 16. If interested parties have any questions about this process, they should contact us at [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

<sup>4</sup> <http://www.comcom.govt.nz/regulated-industries/dairy-industry/report-on-the-state-of-competition-in-the-new-zealand-dairy-industry/>

### **How interested parties can contribute**

17. We invite written submissions on this paper no later than **5pm, Monday, 17 August 2015**.
18. We invite cross-submissions on this paper no later than **5pm, Monday, 31 August 2015**.
19. Submissions on this paper should be addressed to:

Alex Sim  
Chief Adviser, Regulation Branch  
c/o [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

### **Format for responses**

20. Please include "Submission on the Dairy Competition Review Consultation Paper, 20 July 2015" in the subject line of your email. We prefer submissions in both a format suitable for word processing (such as a Microsoft Word doc), and a 'locked' format (such as a PDF) for publication on our website.

### **Disclosure of your submission**

21. We intend to publish all submissions on our website. We encourage full disclosure of submissions so that all information can be tested in an open and transparent manner. However, we offer guidance below where interested parties wish to provide information in confidence.
  - 21.1 Where confidential information is included in a submission, such information should be clearly marked.
  - 21.2 Both confidential and public versions of submissions should be provided.
  - 21.3 The responsibility for ensuring that confidential information is not included in a public version rests on the party providing the submission.
22. Parties providing us with information can request us to make orders under s 100 of the Commerce Act in respect of information that they do not wish to be made public.
23. Any request for a s 100 order must be made when the information is supplied to us, and must identify the reasons why the relevant information should not be made public. We will provide further information on s 100 orders if requested by parties.
24. Any s 100 order will apply for a limited time only. Once an order expires, we will follow our usual process in response to any request for information under the Official Information Act 1982.