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Rural Women New Zealand Submission on changes to the Dairy Industry Restructuring Act 2001 and Regulations

Introduction

1. Rural Women New Zealand (“RWNZ”) is a charitable member-based organisation that reaches into all rural communities and advocates on issues that impact on those communities. We welcome the opportunity to provide a submission to the Ministry for Primary Industries (“MPI”) on the proposed changes to the Dairy Industry Restructuring Act 2001 (“DIRA”) and the Dairy Industry Restructuring (Raw Milk) Regulations 2012 (“the Regulations”). The rural communities we represent survive on and are driven by the strength and success of the dairy sector. Additionally, many of our members are dairy farmers, directly involved in the supply of milk at the farm-gate.

RWNZ support removal of the current sunset provisions (option 2): DIRA should continue to apply in the South Island

2. RWNZ support the findings in the Commerce Commission’s (“the Commission”) report that the farm gate and factory gate markets are not yet ready for de-regulation at this time.¹ While, competition has increased in certain parts of the South Island, the reality for most farmers is that they remain heavily reliant on supply agreements with Fonterra which is still the dominant market player. These farmers have strong concerns that if Fonterra were de-regulated it would be in a position to place anti-competitive switching restrictions, limiting their ability to supply to independent processors. Accordingly, we agree with MPI that the current DIRA rules relating to open entry and exit and non-discrimination continue to serve an important purpose and should continue to apply in the South Island. We therefore support removal and amendment of the sunset provisions from the Act (as per option 2 in the paper).
3. We note that MPI is proposing to amend the sunset provisions so that there would be another review of the state of competition in the NZ dairy industry either when independent processors achieve a 25% market share in the North Island or South Island, or after 5 years (the end of the 2021/22 season). While we support MPI commissioning a further review in 5 years-time we question the value in having a 25% market share threshold as an additional means of triggering a review. Our preference would be for the DIRA to be left alone for at least the next five years to give the sector a chance to settle. The dairy industry and sector as a whole is already in a state of significant instability due to volatile offshore dairy markets. Leaving the door open for a review earlier than this will only serve to exacerbate this

¹ Review of the state of competition in the New Zealand Dairy Industry dated 6 November 2015

uncertainty. That being said, if there is to be a market threshold test in the DIRA, we think that it should be at least 30% as was recommended in the Commission's report.

Proposal to amend the open entry provisions to allow Fonterra to refuse to collect milk from 'new conversions'

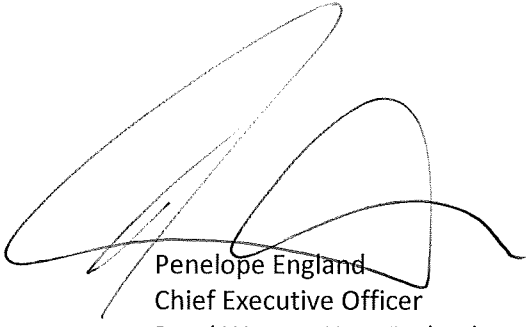
4. Given the current state of the market, we think that there may be circumstances in which Fonterra should be able to refuse to collect milk from new conversions. We agree that forcing Fonterra to be the processor of last resort for all new conversions, could be contributing to excess capacity in the current market. We accept that this could be negatively impacting upon Fonterra's ability to maximise returns for its existing shareholding farmers.
5. However, we think Fonterra's ability to refuse new conversions, should not be an absolute right. It should be subject to conditions under the DIRA and perhaps some form of regulatory oversight. For example, the DIRA could impose a positive obligation on Fonterra to notify and/or seek approval from the regulator when refusing new conversions. An additional requirement could be for Fonterra to provide evidence of a commercial detriment when seeking approval for refusal. Another option would be to allow Fonterra to impose further costs onto these new suppliers, rather than refusing them outright.
6. If the proposal to remove the open entry rules for new conversions, were to proceed there appropriate transitional arrangements must be in place, so that dairy conversions that are already underway (and which have invested in reliance of the current rules) would still benefit from open entry.
7. While, MPI's proposed definition of 'new dairy conversions' appears reasonable. We recommend that MPI carry out some analysis on the number and types of existing farming operations that could potentially be captured by the proposed definition. MPI should consult further with the industry on its findings, before putting forward a proposed definition to the Minister.

Proposal to amend the regulations so that large, export-focused processors are no longer eligible for regulated raw milk.

8. RWNZ support the removal of eligibility for large export-focused producers. We agree that the current Regulations should not be used to provide an entrance pathway for these types of producers. We also think this change could go some way towards encouraging large producers to invest in sourcing milk directly from farmers, thereby enhancing competition at the farm-gate.

Provisions where amendments are not recommended

9. RWNZ are in strong agreement with MPI that the milk price monitoring regime should not be subject to legislative change at this time. The transparency benefits of this regime are highly valued by dairy farmers. We think that this regime also provides an important discipline on Fonterra to set prices efficiently.
10. Thank you for the opportunity to submit. We would be pleased to discuss our submission you.



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