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19 December 2016

Mr Rod Sims
Chairman
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By email: dairyinquiry@accc.gov.au

Dear Chairman,

Re: 'Australian Competition and Consumer Commission Inquiry into the Competitiveness of Prices, Trading Practices and the Supply Chain in the Australian Dairy Industry'

I am pleased to provide the following comments below to the Australian Competition and Consumer Commission (ACCC) on behalf of Dairy Connect in response to the Issues Paper released by the ACCC in November 2016 in relation to its Inquiry into the Australian dairy industry.

By way of background, Dairy Connect is an industry body representing the value chain in the dairy industry, including but not limited to dairy farmers, processors and vendors. Dairy Connect has separate groups representing producers and processors in the industry. We also work cooperatively and collaboratively with other agricultural and dairy bodies to ensure that the best outcome is obtained for the dairy industry in Australia.

As such, Dairy Connect is pleased to present feedback and provide positive suggestions and possible solutions to the ACCC regarding their Issues Paper. Senior elected representatives of Dairy Connect will also be pleased to augment these comments and expand upon them, if invited to appear before the ACCC in its public and/or private hearings.

In its Issues Paper, the ACCC has provided 5 core issues that are invited for comment and also noted a number of questions that the issues have raised. In this response, Dairy Connect provides the following comments as a summation of our stance and would be open to provide examples of our suggestions during the ACCC hearings.

As you are also aware, the Australian Senate has referred Terms of Reference to its Senate Standing Committees on Economics (Senate Committee) for an inquiry into the Australian dairy industry. In that regard, and so as to not repeat the comments in that submission, I attach a copy of the letter to the Senate Committee dated 14 November 2016 providing comments in relation to the UK Voluntary Code of Conduct (UK Code).

Representatives of Dairy Connect would be pleased to expand upon the issues that relate to our proposal of the UK Code as a basis for a possible solution for the issues confronting the producers, processors and indeed to retailers.

We provide the following additional comments:

Issue 1 - Competition for milk

- This is a vital issue as it is extremely relevant to the diary 'crisis' that arose during 2016, and typically acts as a catalyst for the other issues mentioned.
- Currently the use of restrictive contracting has meant that the competitiveness (and hence durability) of the Australian dairy industry has been greatly compromised.
- Dairy Connect feels that re-establishing an effectively functioning marketplace for Australian dairy, which is openly bound to supply/demand market principles, will be the only way to integrate longevity into our industry.
- This is particularly critical given the scale of Australia's industry, which has naturally led to the formation of only a handful of processors and retailers, meaning that our dairy farmers are already being posed with limited competitive selling outlets, even in the absence of standard form contracting (expanded in Issue 2).
- Opportunities for overseas markets and international opportunities provides a mechanism for increased growth of the Australian dairy market (expanded in Issue 5).

Issue 2 - Contracting practices

- It has been the experience of our dairy farmer members that the current terms of producer/processor milk supply agreements may be considered overly restrictive in nature, and in many cases, may span for extended periods (>12 months) with minimal room for price step ups.

- Dairy Connect submits that the allocation of risk in dairy supply chains is disproportionately weighted towards the dairy farmers. Improved mechanisms for an even dispersal of risk across the chain should be considered in the recommendations of the ACCC to the Federal Government at the conclusion of its inquiry.
- Representatives of Dairy Connect would be pleased to provide dairy farmer experiences of difficulties in undertaking, for instance, collective bargaining with other parties in the supply chain, where the inequity in bargaining power has prevented them from acquiring positive dairy industry outcomes.
- You will also note that we have provided further information regarding the milk supply agreements in the attachment to this submission.

Issue 3 - Transparency and price signals

- The issue with transparency in the dairy industry perhaps exists as the flow on effect from the first two issues that were raised in the Issues Paper. Dairy Connect has formed the considered view that transparency and price signals act as important markers of whether or not market competition and supply contracts are at the standard that they should be to facilitate a viable industry.
- After consultation with our farmer members it appears that the levels of communication between producers and processors have 'room for improvement', particularly in relation to pricing structures and future market signals. This breakdown in information flow and feedback has only added to the unnecessarily confused state of Australia's dairy farmers during this time of uncertainty and crisis.
- Re-establishing relationships and trust between farmers and processors must be a critical outcome from any hearings and investigations by the ACCC.
- Not only would this achieve greater resilience to Australia's dairy industry in the future, it would also open up avenues for greater collaboration and feedback to shorten the gap between Australian farmers and the consumers of Australian dairy.

Issue 4 - Domestic retail markets

- Throughout the milk pricing "crisis", Dairy Connect has consistently questioned the viability of the sale of $1/L retail milk, and we have indicated that such a price is a factor that has led the dairy industry to be in its current state.
- It must be recognised that the issue of $1/Litre milk represents a further breakdown in communication, trust and respect between farmers, processors and retailers in Australian dairy.
- However, the price per litre of milk may be more of a symptom than a cause, as in reality it is the farm gate price that is provided to producers that is more important to the ongoing viability of the Australian dairy industry.

- Where the farm gate price is consistently below the cost of inputs for producers, issues arise for farmers in their ability to repay the most basic of bills and invoices, let alone grow their farming enterprise.
- Resulting impact upon issues associated with mental health amongst dairy farmers is of grave concern.
- This low farm gate price, and the decision of processors such as Murray Goulburn in April 2016 to clawback their price after farmers had relied upon that pricing for virtually the entire dairy season was unconscionable. We await the ACCC report in relation to this matter.
- However, we have recently applauded Harris Farm Markets for their recent decision to increase their home brand milk price and to ensure that 95% of their cost is returned to the farmer co-operative with which they deal. It will be important for the co-operative to ensure that the farm gate price that is paid to its suppliers reflects the increased price being provided to them.
- We acknowledge the difficulties in dealing with the retailers and supermarkets, however one retailer has provided an opportunity for other retailers and supermarkets to move likewise.
- Dairy Connect also acknowledges the support of Australian consumers in relation to their buying of branded milk during the decisions of Murray Goulburn and Fonterra to drop its farm gate price to producers in mid-2016, their response was greatly encouraging. However Dairy Connect also feels that perhaps more could be done to try and enhance the wider consumer perceptions of the Australian dairy industry. It is our view that changing the consumers may prove the most effective way to obtain change on the supermarket chains.

Issue 5 - Global markets

- In relation to global markets, the opportunity for Australian producers and processors to tap into overseas markets remains extremely viable and opportune.
- As identified above, the UK Code provides a platform for open and transparent discussions between producers and processors; this is expanded upon in our attached letter to the Australian Senate.
- A number of processors in NSW are examining ways in which to provide liquid milk and other dairy produce to overseas markets in our surrounding regions and elsewhere throughout the world.
- Dairy Connect will continue to work with our members to provide mechanisms by which companies may be able to access these markets, by joint ventures through to providing the product direct to third parties in the international market.
- Opportunities remain for overseas investment into the Australian economy and to help grow the dairy industry in this country, however, the milk supply

agreements must be reformed so as to provide a level playing field for producers who wish to grow the dairy industry by increased milk production.

- Nevertheless, great challenges remain for the Australian dairy industry in competing with overseas markets, as demonstrated by the recent global dairy oversupply of milk and in markets being closed to Australian products.

Dairy Connect is pleased to provide the above comments as well as the attachments. We trust that these comments to the ACCC acts as the basis for further engagement with the dairy industry as a whole. We look forward to working with the ACCC for a positive, transparent, open and collaborative outcome.

As mentioned, we would be pleased for representatives of Dairy Connect to appear before the ACCC during its hearings in 2017.

Yours faithfully,

Shaughn Morgan
Chief Executive Officer

Our united positive future.

ATTACHMENT 'A'

14 November 2016

Mr Mark Fitt
Committee Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

By email: economics.sen@aph.gov.au

Dear Mr Fitt,

RE: SENATE INQUIRY INTO THE AUSTRALIAN DAIRY INDUSTRY

I would like to express our appreciation to the Senate Standing Committees on Economics for undertaking the Inquiry into the Australian Dairy Industry (the 'Inquiry').

This is particularly so for the interest of the Senate (as well as the sponsors of the referral, Senator the Hon Jacqui Lambie and Senator the Hon Nick Xenophon) in bringing the issue of farm-gate milk pricing back into the forefront of the national political environment.

On behalf of the members of Dairy Connect, it is my pleasure to put forward to the inquiry some comments in relation to the issues confronting the dairy industry. As you may be aware, Dairy Connect is the leading dairy advocacy body in NSW. It has become apparent to Dairy Connect that the fundamental issues behind the milk pricing crisis are yet to be adequately addressed, so we are strongly encouraged by the commitment of the Senate Standing Committees on Economics to Australia's dairy industry.

We are optimistic that the coming inquiry may provide some guidance to this national issue and deliver sustainable outcomes that achieve mutual benefits for all industry stakeholders in the dairy value chain.

To achieve these desired outcomes there are a number of key issues that are pivotal to ensuring the longevity of any proposed solutions. Dairy Connect would like to take this opportunity to highlight some of these primary drivers of instability in the industry, as any solution that may be proposed should, as a result of the Senate inquiry, tightly incorporate and address these concerns.

Firstly, and perhaps unsurprisingly, the existing instruments driving the pricing of milk acts as the most immediate cause of instability for the broader dairy industry. The extreme retailer-driven downward pressure on farm-gate pricing, which has led to the recent establishment of $1/litre generic milk in some major supermarkets, is unsustainable for dairy producers across the country.

However, the decision by retailers to sell milk at such a low cost (and for producers to provide supply) may be considered a symptom of the current dairy crisis rather than a cause. It is (and has always been) the low cost of the farm-gate price that is paid to dairy farmers that is of most concern and this relates to the current terms and conditions contained in milk supply agreements between dairy producers and processors.

Australian farmers being forced into selling their milk for prices that fall significantly short of operating costs is disastrous for the industry for obvious reasons, and (as a consequence) this is only going to accelerate the incidence of rural & regional unemployment in Australia as small-scale producers are squeezed out of the market. Dairy Connect doesn't see the increase in milk price as a subsidy, instead it is simply an acknowledgement that a high quality, short shelf-life product of immense nutritional value should command a price above the cost of production (and certainly above the price of a bottle of branded water from the retailers).

We additionally consider 'fair' whole milk price is a potential buffer against the inevitable volatility of the world market, and certainly the recent movements in consumer spending, away from $1/litre generic milk, as indicative of a wide-scale acceptance of the need for fairer prices, which are determined in an open and transparent manner.

Secondly, (and as mentioned above) the anti-facilitative nature of milk supply contracts remains a further barrier to established market principles. For instance, exclusivity clauses in these agreements between processors and producers have created a heavily one-sided power bias for dairy supply chains across Australia. In some instances, such agreements may be considered to be unconscionable. Many of these contracts also do not stipulate price negotiations, which leaves room for processors to vary farm-gate prices at will, and even modifying retrospective prices as was seen with decisions by Murray Goulburn and Fonterra earlier this year.

While not always the case, the typically long-term nature of these contracts just further adds to the burden on dairy farmers, removing their ability to influence industry outcomes or to try and adapt terms to the changing global environments. In response, after conversing with many of our industry stakeholders, Dairy Connect would strongly encourage the duration and flexibility of future milk supply contracts to be given as much scrutiny and examination as the price stipulation during the current inquiries. Only through an investigation into the entire nature of dairy supply agreements, will a mutually beneficial outcome be reached.

It should also be noted that associated issues with collective bargaining and the quality of milk testing should also be a part of any recommendations from the Inquiry for consideration of the

Commonwealth Government. As you may be aware, farm-gate milk prices are based on compositional (fat and protein content) and safety and quality parameters such as somatic cells and microbiological tests. These tests are conducted or arranged by processors and dairy farmers have expressed concern about the consistency and reliability of these tests and how processors manage the milk payments based on test results. Such tests should be conducted in a manner that ensures consistency, openness and transparency.

Collective bargaining may also provide a safety net for dairy producers to act in a consistent and pro-active manner in their discussions with processors. This is particularly so where the opportunity to act as a collective group may provide a 'level playing field' in their discussions and negotiations with corporate entities and co-operative organisations.

As a concluding note, Dairy Connect would urge the inquiry to examine the UK dairy industry's response to issues between the producers and processors; in particular their voluntary 'Dairy Industry Code of Best Practice on Contractual Relationships' (the 'Code'). The Code has been advocated by Dairy Connect over the past months as elements of this Code could be invaluable for setting out protocols and ethical practices by parties all along the Australian dairy industry supply chain.

More specifically, the Code acknowledges that a downturn in milk prices is almost always due to volatility in global markets, so in response there should be greater local promotion of dairy produce as well as better facilitated export channels. The support of our export markets may include initiatives such as the simplification of export documentation, or the funding of foreign inspection visits to Australian producers or processors. I attach a copy of the Code, as agreed between Dairy UK, National Farmers Union and NFUScotland.

Representatives of the elected structure of Dairy Connect would be pleased to meet or appear before the Committee to further enhance the views of the members of Dairy Connect to you and the members of the Committee.

Yours faithfully,

Shaughn Morgan
Chief Executive Officer

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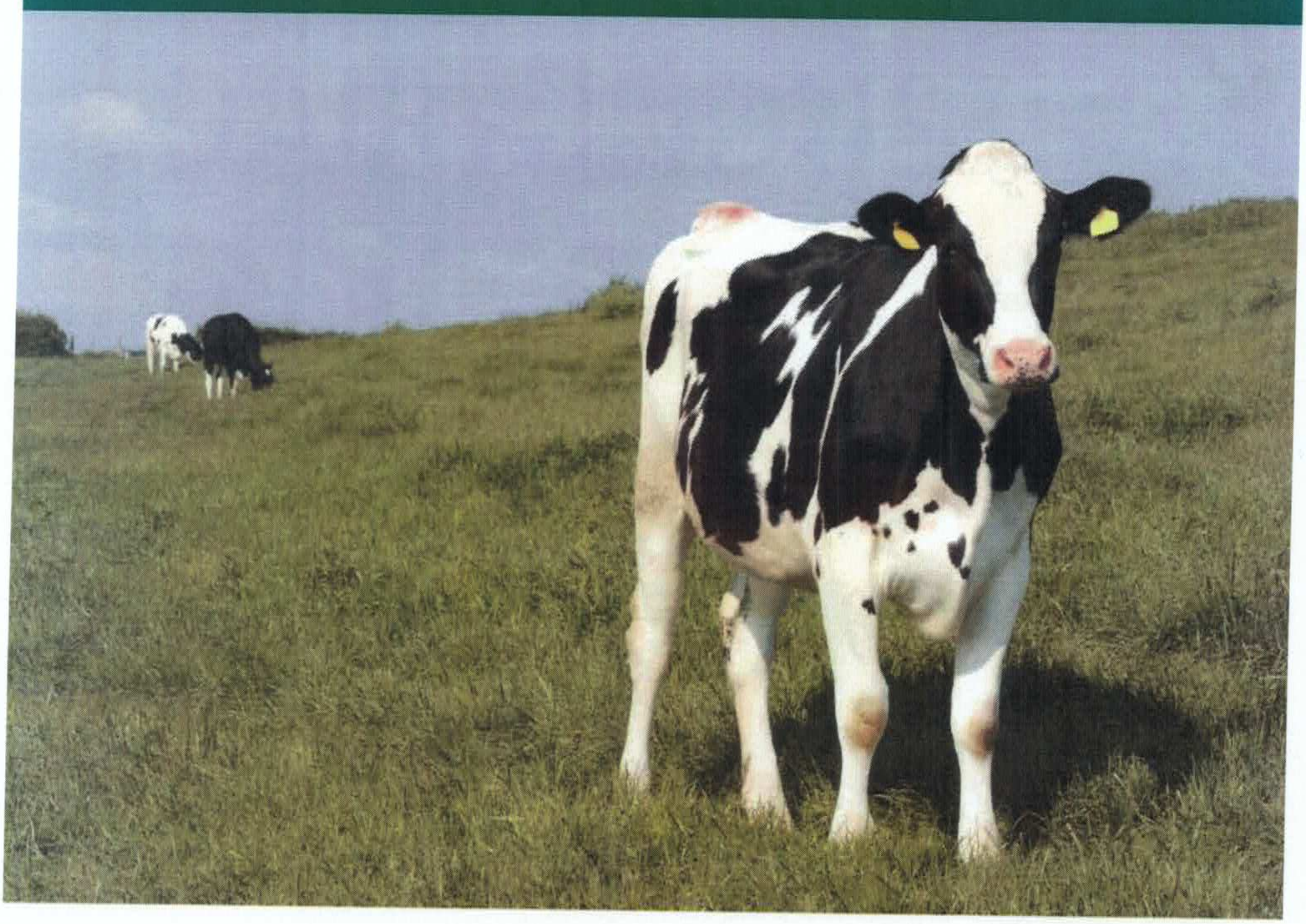
Web: www.dairyconnect.com.au

ATTACHMENT 'B'

DAIRY INDUSTRY

CODE OF BEST PRACTICE ON CONTRACTUAL RELATIONSHIPS



Dairy UK

NFU

NFU Scotland

1 INTRODUCTION

This Code of Good Practice has been drawn up with Dairy UK and NFU and NFUS. It sets out good practice for contracts between producers and purchasers. This Code has been agreed to address a number of long standing issues with dairy contracts, such as those identified by the EU High Level Working Group on the dairy supplychain.

The aim of this Code is to address some of these issues in a way that works for both producers and purchasers. The basis of this code is the Dairy Industry Code of Best Practice on Contractual Relationships, Heads of Agreement document agreed and signed by the NFU, NFUS and Dairy UK, witnessed by the Minister for Agriculture James Paice on 23rd July 2012. Whilst adherence to this Code is voluntary, it is designed to set out minimum good practice in terms of dairy contracts. Purchasers adopting this Code should do so in full, so that they can demonstrate their compliance with good practice on dairy contracts.

The code will be subjected to an annual review process to assess its effectiveness and compliance. Not withstanding the review, the parties may raise concerns regarding the adoption, use or interpretation of the code at any time. If, during the review, either party is dissatisfied with the operation of the code, the review will be extended to cover all aspects of contracts, including the range of pricing mechanisms.

2 PRICING (BASE MILK PRICE)

Contracts between producers and purchasers must set out either a clear price, or a clear pricing mechanism (such as a formula) or a price notification process (the process by which the processor notifies the producer of the price), such that at any given point in time, a producer can be certain of the base milk price that will be paid for the milk produced.
Purchasers should provide contracts which either:

(A) have a price or pricing mechanism that is negotiated and agreed between the producer and the processor; or

(B) have a price, pricing mechanism or price notification process that is at the purchaser's discretion.

Whether the purchaser offers contracts under (A) or (B) above, the contracts should at all times comply with the requirements of this Code for each of these options, set out below.

Large purchasers should offer producers two or more different pricing options to enable producers to adjust better their contract to their preference for risk or security. Large purchasers would be defined as purchasers with over 250 producers contracted to them.

In all circumstances, the contract must provide that producers will be given at least 30 days written notice of any downward change to the price, or pricing mechanism or price notification process, and for the avoidance of doubt, the contract should not permit any changes to the price, pricing mechanism or price notification process to be made retrospectively.

2.1 OPTION A: NEGOTIATED/AGREED PRICING

Under this option, the base milk price, or the base pricing mechanism, is negotiated and agreed between the producer and the purchaser in advance. The contract must set out:

(a) what has been agreed by negotiation at the outset, whether that be a fixed price for a period of time, or a pricing mechanism (such as a formula); and

(b) how variations to the price or pricing mechanism are to be negotiated and agreed (including any dispute resolution process).

A price notification process is incompatible with this option A.
The ways in which producers and purchasers may negotiate and agree pricing, and the requirements of this Code in respect of each option, are set out on the next page.

2.1.1 *Negotiation with Producer Organisations*

The EU Dairy Package now permits the creation of Producer Organisations to undertake pricing negotiations on behalf of dairy farmers. Purchasers may negotiate and agree pricing with recognised Producer Organisations, where the Producer Organisation is recognised by Government, and where the producers have given the Producer Organisation authority to negotiate and agree pricing on their behalf.

It is acknowledged that Producer Organisations must be able to either resign some or all of the producer contracts, or adapt volume sales to alternative purchasers, if the Producer Organisation is not satisfied with the outcome of the negotiation.

2.1.2 *Negotiation with individual producers*

Purchasers may negotiate and agree pricing with individual producers. Purchasers using this option must be able to demonstrate that the pricing was individually negotiated, and agreed, with each producer (for example, by maintaining a written record of the negotiation).

2.2 OPTION B: PRICING AT PURCHASER'S DISCRETION

Under this option, the base milk price, or the base pricing mechanism, or the base price notification process, is at the discretion of the purchaser (i.e. the purchaser has the ability to set the price, mechanism, or price notification process.) Contracts under this option must set out clearly at the outset:

(a) the price, pricing mechanism or price notification process that the purchaser has opted for; and
(b) how variations to the price, pricing mechanism or price notification process will be dealt with.

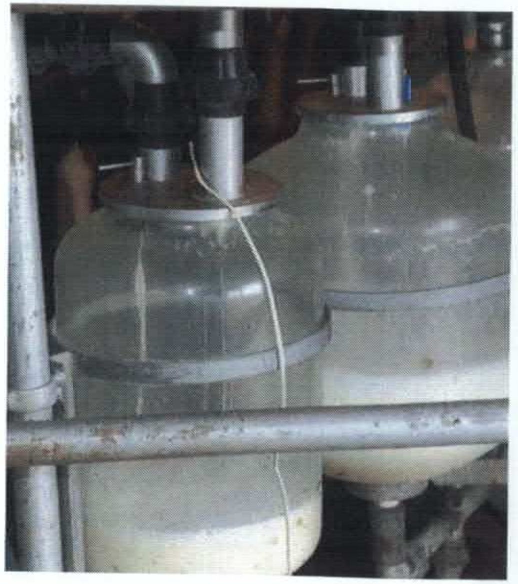
In all cases where the contract is made under this option B, the contract must expressly:

(a) state that no downward variation to the price or to the pricing mechanism or price notification process will be made by the purchaser unless the purchaser has given the producer at least 30 days' written notice of any such changes (and for the avoidance of doubt, no contract should allow the purchaser to make retrospective changes to pricing in any circumstances); and
(b) allow the producer to terminate their contract with the purchaser without penalty on a maximum of 3 months' written notice following notification to the producer of any change made by the purchaser to the price, pricing mechanism or price notification process. Notice by the producer must be submitted within 30 days of receipt of the written notification of any change to the price, pricing mechanism, or price notification process.
(c) state that the purchaser undertakes to put in place a mechanism to engage in dialogue with the producer(s) or the producer's democratically accountable representatives (where such a mechanism has been agreed by the purchaser with those producer representatives), or a mechanism to formally consult with the producer(s) or the producer's democratically accountable representatives (where such mechanism has been agreed by the purchaser with those producer representatives) in advance of any variations to pricing.

In respect of (b) above, producers and purchasers may agree a longer notice period, beyond the 3 month notice period, provided that such longer notice period is agreed through a process of negotiation with properly constituted democratically accountable supply groups.

Specific requirements relating to Co-ops

Co-ops (including non-Co-ops with groups of producers in transition to full Co-op status) who have opted to use contracts under this option B do not have to include clauses covering (b), and (c) above in their contracts with producers who are members of the Co-op, provided that the Co-op can demonstrate that it has governance procedures in place to ensure that the Co-op is under the control of its producer members, and that the Co-op is acting on their behalf (or in the case of transitional Co-ops, that the full Co-op will so demonstrate after the transition. Farmers in transition to full co-op status will be given the option of moving to direct contracts within 9 months of the introduction of the code).



3 PRICING MECHANISMS

Where the contract provides for a pricing mechanism (as opposed to a fixed price or a price notification process), such as a pricing formula, the contract should specify:

(a) the exact pricing mechanism / formula to be used; and
(b) how any variations to the pricing mechanism / formula are to be dealt with; and
(c) the source(s) of any data / indices which will he used in the formula; and
(d) where the source of any data / indices is the purchaser (e.g. purchaser margins), the contract should require the purchaser to make full disclosure* of the data / indices to the producer or the producer's elected representatives.

*any information disclosed in this manner must be treated as commercially confidential and used solely for the purpose of this provision. None of the documents or information providedmay be disclosed beyond named individuals or Board level individuals within the PO who may use the information solely to verify the price and the price mechanism and who will not disclose the information more widely within the PO other than on a need to know basis.

4 PRICING ADJUSTMENTS

Whether the base milk pricing is dealt with under options (A) or (B) above, the actual price paid to the producer may be subject to adjustments, provided that such adjustments are compliant with the requirements of this Code, set out below.

In all cases, any potential adjustments (or adjustment calculations) to the price paid to the producer must be set out clearly in the contract at the outset. Any changes to such adjustments (or adjustment calculations) cannot be made unless the producer has been given at least 30 days' written notice of any proposed changes and for the avoidance of doubt, no changes should ever be made retrospectively.

The contract may provide for the following adjustments, provided that any calculations pertaining to such adjustments are specified in the contract and are clear at the outset:

(a) pence per percentage of any measurable constituent content (e.g. percentage of butterfat content);
(b) seasonality adjustments designed to incentivise a certain profile of production (e.g. pence per litre deductions / additions by month);
(c) transport payments (e.g. deductions / additions for volume loaded into a tanker at collection);
(d) milk quality payments (e.g. deductions / additions for somatic cell counts), in which case the testing methods for such quality assessments, and appropriate appeal mechanisms, should be clearly specified in the contract;
(e) production methods (e.g. conforming to specified animal welfare requirements); and / or
(f) bonuses for continuity of supply.

The contract must allow the producer (excluding co-op members and producers in transition to co-op status) to terminate their contract with the purchaser without penalty on a maximum of 3 months* written notice from the date of notification to the producer of any change made by the purchaser to the price adjustment(s). Such notice may be served by the producer at any time within 30 days of receipt of notice from the purchaser of any price change. *Producers and purchasers my agree a longer notice period, beyond the 3 month notice period, provided that such longer notice period is agreed through a process of negotiation with properly constituted democratically accountable supply groups.

5 VOLUME / EXCLUSIVITY

The contract must allow the producer to supply milk to other purchasers where the producer wishes to expand their production and the first purchaser does not want to purchase the additional milk under the same terms and conditions. This aspect of the Code is to be reviewed as part of the first year review.

6 CONTRACT DURATION

Contracts maybe for fixed periods or may be rolling contracts (often referred to as 'evergreen' contracts).

6.1 *TERMINATION / NOTICE TO TERMINATE*

The contract should specify the notice period under which either party may terminate the contract. The notice period required from the producer (subject to the other provisions of this Code):

(a) should not exceed 15 months except in cases where the purchaser cannot give notice to terminate (i.e. where the producer has indefinite membership of a Co-op), in which case the producer notice period should not exceed 24 months; and
(b) should not exceed the notice period required from the purchaser; and
(c) should not normally be less than 3 months; and
(d) should not be limited to notice served on particular dates or at particular times so as to effectively extend the notice period beyond the maximum periods set out in this section.

The contract should specify how notice is to be served by either party.

6.2 *TERMINATION ON INSOLVENCY*

The contract should allow either party to terminate the contract with immediate effect in the event that either party is issued with a winding up or administration order, or where either party goes into administration, receivership, liquidation or bankruptcy.

6.3 *EARLY TERMINATION ON PAYMENT OF LIQUIDATED DAMAGES*

The contract should allow either party to terminate the contract on not less than four weeks' written notice, on payment by the terminating party of liquidated damages. The payment to be made in such circumstances should be set out in the contract at the outset, but must in all cases represent a genuine pre-estimate of the other party's losses arising from the early termination. The payment to be made by the producer must not exceed in any case a specified percentage of the value of the producer's estimated annual production.

6.4 *TERMINATION ON FUNDAMENTAL BREACH*

The contract must allow either party to terminate with immediate effect if the other party fundamentally breaches the terms of the contract. The contract may specify what would constitute fundamental breach by either party.

7 VARIATION OF CONTRACT TERMS

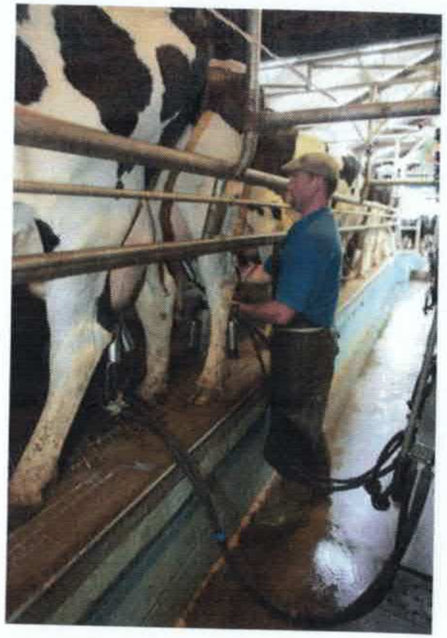
The contract should set out the process by which variations to the terms of the contract can be made. Unless the Code says otherwise, any changes to any term of the contract which is not specifically agreed with the producer (or the producer's democratically accountable representative) cannot be made unless 30 days written notice has been given to the producer of the proposed change.

The contract should also allow the producer (excluding co-op members and producers in transition to co-op status) to terminate on a notice period of not more than 3 months* if any changes to any of the terms of the contract are made which have significant commercial implications for the producer and which have not been specifically agreed with the producer (or the producer's democratically accountable representatives).

*Producers and purchasers my agree a longer notice period, beyond the 3 month notice period, provided that such longer notice period is agreed through a process of negotiation with properly constituted democratically accountable supply groups.

8 PRODUCER INVESTMENT

Producers may have invested money in their purchaser, whether the purchaser is a Co-op,or a private limited company, or a public limited company. The contract should clearly specify whether or not the investment is to be returned if the producer resigns, and if it is to be returned, over what timescale and whether any interest is payable.



9 COMPLIANCE WITH RELEVANT EU LEGISLATION

As a minimum all contracts should be compliant with all applicable and relevant EUlegislation implemented in the UK.

10 OTHER TERMS TO BE SPECIFIED IN THE CONTRACT

The contract should also specify:

(a) parties to the contract: the legal identity of the parties to the contract and their addresses for service;
(b) volume measurement: the method to be used to measure the volume of milk collected;
(c) timing of payment: either monthly or four weekly and the date in the month on which the payment should be made;
(d) sampling process: the method used to take samples from the milk;
(e) legal obligations: compliance with quota regulations and any applicable EU and national regulations;
(f) purchaser obligations: compliance by the producer with purchaser requirements in respect of any applicable schemes or assurance standards;
(g) force majeure: the contract should specify what events constitute events of force majeure, and how such events will be dealt with;
(h) property and risk: point of transfer of ownership of the milk and risk in the milk;
(i) assignment (assignation): the circumstances under which the contract can and cannot be assigned by either party must be specified but in any event neither party should be entitled to assign their rights and obligations under the contract without the other party's written consent;
(j) provision of insurance: any obligations on either party to insure should be specified;
(k) confidentiality: whether any confidentiality obligations apply:
(l) governing law and jurisdiction: these should be specified in the contract.

Supplementary Agreement on the Voluntary Code of Practice between NFU/S and Dairy UK

A *Review Process*

The review process will be undertaken as follows:

- The code will be reviewed after the first year to assess its effectiveness and compliance.
- Continual dialogue and exchange will take place between the Unions and Dairy UK during the course of the year prior to the initiation of the formal review period
- Subject to agreement by both parties an independent chair will be appointed to facilitate the review process
- If requested by both parties the independent chair may be called upon to:
  - Make non binding recommendations
  - And/or mediate

The review will also consider the issue of the independence of democratically accountable supply groups and their role in negotiation and agreeing pricing with the purchaser, insofar as such a role is compatible with competition law provisions. It will also address the detail regarding exclusivity.

It is expressly understood that the UK Government and Devolved Administration reserve the right and willingness to legislate under the EU Dairy Regulation if they so decide after the review. It is acknowledged that the Governments can do this at any time.

B *Guide on Co-op Governance and Democratic Accountability*

NFU/S will establish a best practice guide to good corporate governance for Co-ops and producer group efficacy and democratic accountability.

C *Legal Clearance*

Adoption and implementation of the voluntary code is subject to full legal clearance by Government and OFT.