



Regulatory Impact And Business Compliance Costs Statement:

Dairy Industry (Application Fees And Fonterra Levy)
Regulations 2004

May 2004



Ministry of Agriculture and Forestry
Te Manatū Ahuwhenua, Ngāherehere

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Statement of the nature and magnitude of the problem and the need for government action

1. The dairy industry merger, as facilitated by the authorisation under the Dairy Industry Restructuring Act 2001 (the Act), created an entity (Fonterra Co-operative Group Limited (Fonterra)) with overwhelming dominance in a number of important domestic markets. To mitigate the risks that would otherwise be present in this situation the Act included a comprehensive regulatory package.
2. This package provided that the Commerce Commission (the Commission) would be empowered to enforce the Act and its regulatory provisions. Fonterra should bear the majority of the costs of enforcing the necessary legislative package, given it is the dominant entity and prime beneficiary of the Commerce Act 1986 authorisation.
3. The costs that the Commission has attributed to enforcing the Act are \$1.3 million in 2001/02 and \$715,000 in 2002/03. In addition the Commission has estimated that the cost of enforcing the Act in 2003/04 will be \$833,000. It is proposed that Fonterra be required to contribute \$490,106.25 towards the Commission's costs in 2002/03 and \$393,750 toward the Commission's estimated costs in 2003/04. In the absence of a levy on the industry the Crown will bear all the costs.

Statement of the public policy objective(s)

4. The policy objective of the proposed levy order is to enable the Commission to recover its costs of enforcing the Act intended to limit the potential for Fonterra as the dominant player to use its market power to the detriment of the New Zealand economy as a whole.
5. A second level objective is to impose the majority of the costs of the Commission on Fonterra as the primary beneficiary of the legislation.
6. Cabinet agreed in 2001 the basis on which Fonterra should meet the majority of the Commission's costs of enforcing the Act (CAB Min (01) 19/7 and CAB Min (01) 22/6 refer).

Statement of feasible options (regulatory and/or non-regulatory) that may constitute viable means for achieving the desired objective(s)

Status Quo

7. In the absence of regulations there has been no levy imposed on Fonterra and no application fee imposed on those seeking determinations. Therefore, in the interim the costs of the Commission have been carried by the Crown.
8. Section 120 (1) of the Act allows a person to apply to the Commission for a determination if the person has a dispute with Fonterra. Section 145 of the Act empowers the Commission to prescribe a form for applications for determinations. The Commission has prescribed a form that applicants for a determination must complete.

Preferred Option

9. Section 134 of the Act provides for regulations to recover costs, as outlined in s 134 and incurred by the Commission, by requiring Fonterra to pay a levy to the Minister of Agriculture in each financial year.
10. It is proposed that the regulations will require Fonterra to contribute \$490,106.25 towards the Commission's costs in 2002/03 and \$393,750 toward the Commission's estimated costs in 2003/04.
11. Section 119 of the Act provides for regulations prescribing fees for applications to the Commission under section 120 (determination to resolve conflict). It is proposed that applicants for a determination will pay a fee of \$500 plus GST and this fee will be attached to the application form for each determination is sought.

Statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

12. The summary of Commission's costs for enforcing dairy industry legislation to be borne by Fonterra (under the levy) and by the Crown respectively is as follows:

	\$m-increase/(decrease)			
	2001/02	2002/03	2003/04	GST
Commerce Commission's costs of enforcing the Act	1.300	0.715	0.833*	Incl
Crown contribution	1.300	0.225	0.439*	-
Proposed levy on Fonterra	0	0.490	0.394*	Incl
For determinations		0.300	0.169*	Incl
For investigations		0.190	0.225*	Incl

*budgeted

Note: The figures for 2003/04 are based on the Commission's full year budget, adjusted for the lower level of activity in the first half of the 2003/04 year. Therefore, it is proposed that the levy on Fonterra for the current year should be set at half the Commission's original budget.

Government

13. The benefit of the proposed levy, under which Fonterra will fund the majority of the Commission's cost of enforcing the Act, is that the exacerbator (rather than the taxpayer) will bear this cost and will also have some ability and incentive to minimise the cost of the regulatory regime.
14. As the market dominant entity, Fonterra's behaviour will largely drive the volume of complaints and determinations. By bearing the Commission's costs for the investigation of complaints, Fonterra will face a financial incentive to curb anti-competitive behaviour and to limit its potential abuse of monopoly power.
15. Because of the then incomplete awareness of the implications of s 134 of the Act and the features of the Commission's cost allocation model being used at that time, no levy will be imposed on Fonterra in respect of 2001/02.

Industry

16. Fonterra will contribute \$490,106.25 towards the Commission's costs in 2002/03 and \$393,750 toward the Commission's estimated costs in 2003/04.
17. The proposed application fee is set at a level that will not deter genuine complaints but which would deter vexatious or frivolous complaints.
18. There are no compliance costs on business as a result of this proposal.

Consultation

19. As required by subsection 134 (8) of the Act, Fonterra has been consulted on the proposed levy amounts for the three year period. Fonterra has replied agreeing to the proposal.
20. Fonterra, Dairy Farmers of New Zealand, Sharemilkers Section of Federated Farmers, Tatua, Westland, Foodstuffs, Jatra, North Island Dairy Company, Kapiti Cheese and New Zealand Dairy Foods were consulted by letter on the proposed application fee of \$500 plus GST. Sharemilkers Section of Federated Farmers, Kapiti Cheese and Foodstuffs responded in support of the application fee at this level. No other responses were received.
21. The Ministry of Economic Development, the Treasury, and the Department of the Prime Minister and Cabinet, have been consulted on this paper and did not have any concerns with the proposal.

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