

**Senate Economics Legislation Committee**  
ANSWERS TO QUESTIONS ON NOTICE

**Treasury Portfolio**

Budget Estimates

2017 - 2018

**Division/Agency:** Australian Competition and Consumer Commission

**Question No:** 46

**Topic:** Fonterra

**Reference:** Hansard page 128-129 (30 May 2017)

**Senator:** Rice, Janet

**Question:**

Senator RICE: Why you are not pursuing Fonterra over their May 2016 step down?

Mr Sims: The big difference was that Fonterra kept saying, through that period, that the prices were too high and they would not last. The key bit of background is that there is an agreement, which I guess we are also looking at, but that is something for the future, between where Fonterra had its prices linked to that of Murray Goulburn. Through that contractual engagement, it actually could not lower its prices, so it was out in the market telling its farmers that the prices were too high and that they would not last but there was nothing they could do about it. So we judge that there was no misleading conduct there.

Senator RICE: I presume that you have got the emails that they sent to their suppliers about their prices throughout that time.

Mr Sims: We have certainly looked at a number of those.

Senator RICE: I have been forwarded them from one supplier. There was one line in an August letter that said that there would be a potential step down in price. But, after that, in September, November, February and, again, April, they were basically saying, 'We are going to hold our prices at \$5.60.' I want to know your reasoning for why that was, given that, right up until the month before the step down, the April email said, 'Following our March price review, Fonterra Australia is holding its current farm gate price for season 2015-16 at \$5.60.' They were basically saying, 'This is what it's going to be.'

Mr Sims: It would be helpful to see that. Certainly the impression I had formed was slightly different to that, so I am happy to take that on notice.

**Answer:**

After careful consideration, the ACCC decided not to take further action against Fonterra Australia Pty Ltd in relation to the step-down of its farmgate milk price (FMP) in May 2016, announced one week after Murray Goulburn Cooperative Co Limited's step-down. A key reason for the ACCC in deciding not to take further action was that Fonterra provided more information to farmers about the risks and potential for a reduction in the FMP from quite early on in the season.

The ACCC reviewed a number of emails and other documentation provided to Fonterra suppliers during the 2015/16 season, which include the following announcements:

- In August 2015, Fonterra flagged concerns its full year FMP was under pressure due to challenging domestic and global dairy market conditions. Fonterra placed its FMP under review and cautioned farmers to prepare for the possibility of a step down.
- In October 2015, Fonterra held its FMP at \$5.60 per kilogram of milk solids (kgms). Fonterra noted that "given ongoing volatility in the market, we're not yet able to

provide an updated closing range. However suppliers should continue to budget conservatively, using your opening price as a guide.”

- Fonterra continued to hold its FMP at \$5.60/kgms until May 2016. During this period Fonterra regularly expressed concerns to farmers about the “volatility” of the domestic and global dairy markets and noted farmers should “budget conservatively.”
- In May 2016, Fonterra revised its full year FMP from \$5.60/kgms to \$5.00/kgms. This meant the average May and June FMP paid to farmers was \$1.91/kgms (\$1.16 fat & \$2.89 protein plus production and quality incentives).

The ACCC is continuing to conduct a broader inquiry into the competitiveness, trading practices, and transparency of the Australian dairy industry. Through the Dairy Inquiry, the ACCC will examine contracting practices and the clarity of price information provided to dairy farmers. The ACCC’s consideration of these issues in the Dairy Inquiry is not confined to whether a breach of the *Competition and Consumer Act 2010* has occurred. The ACCC’s report is due to the Treasurer before 1 November 2017.