

## Annex D: Schedule Raw Milk

### Scope of the Divestment Business

- (113) The Parties submit two cumulating commitments with regard to the market for the procurement of raw milk. The first commitment provides existing members of FC in the Netherlands a financial incentive to leave FC and to enter into a supply arrangement of any kind (either on a contractual basis or as member of a cooperative) with a certain minimum duration with a buyer of raw milk in the Netherlands.
- (114) The second commitment aims to make raw milk available for plants of dairy processing companies ("**DPC plants**") that are registered with the Dutch Dairy Board ("**Productschap Zuivel**") as processor of raw milk in the Netherlands and that are or will become downstream competitors of the merged entity. The raw milk will be made available by FC through an independent body (the Dutch Milk Foundation ("**DMF**")) by granting "drawing rights" to owners of DPC plants;
- (115) The two commitments will be referred to as "**Raw Milk Remedy 1**" and "**Raw Milk Remedy 2**" and collectively as the "**Raw Milk Remedies**". The Raw Milk Remedies should be seen in conjunction with the sourcing arrangements that are offered in the context of the remedies for fresh dairy products and Dutch type cheese. These sourcing arrangements are meant for a transitional period not exceeding two years, after which the buyers of the divestment businesses in the markets for fresh dairy products and Dutch type cheese will be in a position to attract former members as suppliers (Raw Milk Remedy 1) or enter into supply agreements under Raw Milk Remedy 2.
- (116) Raw milk as referred to in the Raw Milk Remedies ("**Raw Milk**") is untreated conventional raw milk produced in the Netherlands. For the purpose of Raw Milk Remedy 2, the following categories of Raw Milk are excluded:
- Organic raw milk;
  - Specialty raw milk ("**CLA**") used for Campina's branded fresh dairy products;
  - Milk used for the production of PDO (Noord-Holland) cheese;
  - "Weidemelk" (to the extent used for other than fresh dairy applications).
- (117) The Raw Milk covered by the Raw Milk Remedies meets all the EU hygiene and quality requirements controlled by an independent accredited quality control organisation, also known as Qlip.
- (118) Raw Milk Remedy 1 provides for the grant of a lump sum to dairy farmers that leave FC as a member (the "**Start Up Payment**"). The amount of the Start Up Payment is 5 EUR per 100 kg raw milk delivered in the year immediately preceding the year in which the application for the Start Up Payment is made. Thus, the aggregate Start Up Payment to a dairy holding of average size in the Netherlands (500,000 kg/year) will be in the range of the average net yearly income of a dairy farmer (EUR 25,000).

- (119) Any member of FC may apply for the Start Up Payment by giving three months written notice to FC, provided it becomes a supplier to any buyer of Raw Milk in the Netherlands ("**Buyer**"). After the three months notice period the applicant farmer may start supplying a Buyer forthwith. The membership of the applicant farmer of FC is terminated automatically at the end of the first calendar year following the expiration of the three months notice period. Upon termination, applicant farmers may sell their Member Certificates and/or Member Bonds to FC or to remaining members at normal (=nominal) value. For an average farmer, the value of these Certificates and/or Bonds will be in the range of EUR 28,500 (EUR 6 per 105 kg of raw milk).
- (120) The Start Up Payment will be financed by FC and granted by DMF directly to the dairy farmer concerned on a case by case basis. DMF will monitor and supervise the application of Raw Milk Remedy 1, including verification that the applicant farmer concerned has indeed started supplying Raw Milk to a Buyer following termination of his supply obligations towards FC. DMF will pay out the Start Up Payment as soon as it has made the afore-mentioned verification, but in any event not later than two months from the date the applicant farmer has started supplying the Buyer.
- (121) A dairy farmer that has been granted a Start Up Payment under Raw Milk Remedy 1 may rejoin FC as a member. However, if a member re-accedes to FC or definitively stops supplying Raw Milk altogether within three years from the date he ceases supplying Raw Milk to FC, he will have to repay the exit fee on a pro rata basis. The applicable entrance fee will be increased with the difference between the Start UP Payment and pro rata paid back amount on a per KG basis. After three years from exit FC may apply the then applicable entrance fee to such former member who may wish to re-accede to FC. FC shall not offer terms to former members more attractive than those offered to new members applicable at the relevant time.
- (122) The total raw milk volume to which the Raw Milk Remedies apply is 1.2 billion kg. Before the end of each calendar quarter, the DMF will calculate the aggregate volume of raw milk for which applications have been made under Raw Milk Remedy 1. This aggregate volume will be deducted from the absolute total volume of raw milk that will have to be made available by FC under Raw Milk Remedy 2 as from the next calendar quarter until the Raw Milk Remedies will expire. However, if a member re-accedes to FC or definitively stops supplying Raw Milk altogether within three years from the date he ceases supplying raw milk to FC, the raw milk volume for which the Start Up Payment was paid is added to the volume that should be made available by FC through DMF from the date the re-accession becomes effective.
- (123) Raw Milk Remedy 1 will remain effective until members representing a volume of 1.2 billion have left FC (taking into account paragraph 122 above), or until the Raw Milk Remedies have been withdrawn as a result of a review carried out by the Commission (cf. paragraph 124).

- (124) DMF will remain in operation until the volume of raw milk to be made available by FC through DMF has been reduced to 0 following the application of Raw Milk Remedy 1. Moreover, the Commission will conduct a review at the request of FC following the abolition of the milk quota regime. The Commission will decide to withdraw the Raw Milk Remedy if it is satisfied that sufficient Dutch raw milk is available to Qualified Buyers as defined below.
- (125) The volume of Raw Milk that will be made available under the Raw Milk Remedies should be more than sufficient (i) to allow access to raw milk for purchasers of the two divestments businesses in the markets for Fresh Basic Dairy Products and Dutch type nature cheese, and (ii) to facilitate access for existing competitors and new entrants that wish to build or increase production capacity in the downstream markets concerned within reasonable limits.
- (126) Raw Milk Remedy 2 will be available to any buyer of Raw Milk that owns a DPC plant (“**Qualified Buyer**”) that produces Fresh Basic Dairy Products, Dutch type nature cheese or one of these products in combination with other dairy products. Qualified Buyers can only buy Raw Milk for the benefit of:
- (i) The DPC plants of the Divested Businesses of FC;
  - (ii) Expansion of production in existing DPC plants;
  - (iii) New DPC plants;
  - (iv) Additional DPC plants meant to increase production of Fresh Dairy Products including but not limited to Fresh Basic Dairy Products.
- (127) The Parties note for the avoidance of doubt that the plants of the Divestment Businesses are within the scope of this category and that traders in raw milk and DPC plants of FC are outside the scope of Raw Milk Remedy 2.
- (128) Fresh Basic Dairy Products as defined in the SO comprise plain milk, plain yoghurt in gabletop packaging and buttermilk and are produced in the Netherlands.

*Raw milk remedy 1 – Incentive to leave*

- (129) Raw Milk Remedy 1 aims to decrease the market share of FC on the market for the procurement of Raw Milk in the Netherlands (expressed by the aggregate milk quotas of its members), by providing members of FC a financial incentive to leave FC and to continue their activities as a supplier of Raw Milk to users in the Netherlands.
- (130) Since a cooperative does not have the statutory means to unilaterally terminate the membership of any members, unless for urgent reasons relating to the conduct of the member concerned, FC is not in a position to reduce its market share by terminating membership relations. FC, however, is not constrained by its statutes to provide financial incentives to its members to terminate their membership. The financial incentive of Raw

Milk Remedy 1 should be sufficient to stimulate a significant number of members, representing a significant volume of Raw Milk, to leave FC as a member.

Raw Milk Remedy 2 - Dutch Milk Fund

- (131) The Dutch Milk Fund ensures the supply of Raw Milk through an independent body (DMF) by granting "drawing rights" to DPC plants. FC will enter into contracts with Qualified Buyers of Raw Milk through the intermediary services of DMF. DMF will remain in operation until the volume of raw milk to be made available by FC through DMF has been reduced to 0 following the application of the Incentive to leave. Moreover, the Commission will conduct a review at the request of FC following the abolition of the milk quota regime. The Commission will decide to withdraw the Raw Milk Remedy if it is satisfied that sufficient Dutch raw milk is available to Qualified Buyers.
- (132) In order to fulfil the role of an agent in the supply of Raw Milk, DMF will be designed as follows:
- (a) DMF will be an independent non-profit organisation (in the form of a foundation -- *stichting*) acting as a contracting agent between FC and the DPC plants in the Netherlands;
  - (b) DMF will be incorporated before 1 July 2009;
  - (c) The costs of incorporation of DMF will be paid by FC;
  - (d) The operational costs of DMF will not be borne by the Qualified Buyers;
  - (e) The board of DMF consists of 3 qualified members, currently not active in the dairy sector and independent from and not related to the Parties, to be appointed by the Minister of Agriculture (*Ministerie van Landbouw, Natuurbeheer en Voedselkwaliteit*) or the Minister of Economic Affairs in the Netherlands;
  - (f) The operational execution of DMF's activities may be outsourced (entirely or partly) by the board (at its discretion) to (i) Productschap Zuivel, a semi-governmental organisation already executing EU market support regulations in the dairy sector (including milk quota system) or (ii) any other independent organisation;
  - (g) DMF will report annually to the Monitoring Trustee on the application of the present remedy.
- (133) The maximum volume of Raw Milk that will be made available by FC in the form of "drawing rights" is 1.2 billion kg per year. Contracts must be for a fixed volume, such volume to be evenly spread over the contract term on a weekly basis plus or minus 5%, also taking into account seasonal fluctuations in raw milk production at normal commercial conditions. This means (in principle):

A is 95 to 105% of B / 52 (+ or – the seasonal fluctuations of the total Raw Milk of FC)

Whereby A = the volume to be delivered to the DPC Plants per week;  
B = the contract volume.

A buyer may request a deviation from the above. FC will accommodate such requests applying a mark up on the guaranteed price. In case of disagreement about the amount of the mark up, DMF may give binding instructions to FC.

- (134) Purchasers of the Divestment Businesses have preferential "drawing rights" up to the volume representing the total production capacity of those businesses. However, FC is not obliged to supply raw milk to the divestment businesses in excess of the volume that should be made available under this Remedy. In case preferential drawing rights exercised by the two divestment business exceed the aforementioned volume, the available volume will be allocated on a pro rata basis.
- (135) These Purchasers may obtain Raw Milk via DMF on the same conditions as those of the supply agreements offered under the remedies for the Fresh Dairy and the Cheese businesses, subject to paragraph 137 below.
- (136) Otherwise, Raw Milk is allocated on a first come, first serve basis. In case of force majeure (including animal diseases), all Raw Milk supplied by FC will be allocated between FC and DPC plants on a pro rata basis (unless prohibited by the competent authorities). In case of disputes, DMF may give binding instructions to FC.
- (137) Contracts will come into existence through DMF acting as agent for FC. DMF will prepare the contracts according to a standard format, but the contracts will be entered into by FC and the Qualified Buyers concerned. A contract may enter into force at the beginning of each calendar month with a fixed contract term of 12 months. The minimum volume per DPC plant per month is 2 million kg based on full truckloads. The minimum order term depends on the volume involved: between 2 and 4 million kg/month, the minimum order term is three months. For volumes of 4 up to 6 million kg/month it is 4 months. For volumes of 6 million kg/month or more, the order term is 6 months.
- (138) Contracts for different periods and different volumes may be accumulated. However, contracts concluded by a single Qualified Buyer starting within a time period of two months will be accumulated for the application of the above-mentioned order terms as well.
- (139) The price for the Raw Milk for all Qualified Buyers under the Raw Milk Remedy 2 will be the monthly "guaranteed milk price" of FC being applicable in the month of delivery minus 1% for the first five years from the date this Remedy becomes effective (i.e. DMF will be operational) and the aforesaid guaranteed milk price without reduction in the years thereafter. The guaranteed milk price is based on standard fat (4,41%) & protein (3,47%) contents and will be objectively adjusted for the actual fat and protein contents of the Raw Milk supplied (on the same basis as is being done for the members of FC). The guaranteed milk price is the cash paid out price exclusive of dividend, interest for

debt, loans and other returns on member capital of FC, which is paid by FC to its members for the supply of Raw Milk.


- (140) The guaranteed milk price is a representative price for raw milk in North West Europe and reflects the weighted average milk price over the year paid out by dairy companies in Denmark, Germany, Belgium and the Netherlands ("**the Dairy Companies**"), altogether constituting the average price paid for about 45 billion kg of raw milk. The milk prices of the Dairy Companies are based on verifiable sources like ZMP in Germany and LTO Nederland (*Land- en Tuinbouw Organisatie Nederland*) in the Netherlands. The development is determined by the monthly price developments in Germany, Belgium, Denmark and the Netherlands.
- (141) The table below demonstrates how the guaranteed milk price using the weighted average milk price over the year paid out by the Dairy Companies is determined. In the last column of the table the weight attributed to each of the Dairy Companies involved is mentioned (i.e. CONO, Bel Leerdammer, DOC each account for 7.9%, Arla accounts for 10%, Milcobel accounts for 6.7% and the dairy companies reflected in the ZMP data account for 59.6%).

**Details of guaranteed price**  
Development of milk prices weighted by country (at 4.41 fat and 3.47 protein)

	2003	2004	2005	2006	2007	Ave. 5 year	Supplied kg milk	%
Cono	32.62	31.74	31.97	31.96	37.73	33.20	3.6	7.9
Bel Leerdammer	31.77	30.62	30.38	29.44	37.41	31.92	3.6	7.9
DOC	31.01	31.13	30.46	29.94	37.52	32.01	3.6	7.9
Ave. Netherlands	31.80	31.16	30.93	30.45	37.55	32.38		
ZMP = Germany	30.51	30.00	29.49	29.26	35.23	30.90	26.8	59.6
Arla = Denmark	34.00	31.79	30.54	29.61	32.70	31.73	4.5	10.0
Milcobel = Belgium	29.37	29.94	28.42	27.72	35.57	30.21	3.0	6.7
<b>Guaranteed price</b>	<b>31.09</b>	<b>30.45</b>	<b>29.87</b>	<b>29.47</b>	<b>35.55</b>	<b>31.29</b>	<b>45.0</b>	<b>100</b>

In NL total 10.6 billion kg milk

In DK 4.49 billion  
In B 3.01 billion



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- (142) According to the statutes of FC, the guaranteed price will be reviewed once every three years. However, such review is meant to ensure that the guaranteed price is still a representative market price.

- (143) Qualified Buyers buying Raw Milk via the DMF will pay the purchase price to FC plus a fee for logistical costs (see below).
- (144) Logistics and transport (collection at farms and delivery at FC plants) as well as quality control, quality assurance and administration are and will be costs borne by FC. These costs are not charged separately to the farmers. Consequently, the farmers receive the guaranteed price for the Raw Milk delivered without a discount for these costs. FC carries these costs as overhead. Therefore these costs are included in the profit and loss account of FC and hence affect the profits of FC. This, however, is completely different from a hypothetical scenario where the logistical costs would be charged to the farmers concerned. Where the aim is to create a level playing field, it goes without saying that the logistical costs relating to the collection of Raw Milk made available to the Qualified Buyers procuring Raw Milk via DMF are borne by these Buyers. Otherwise, FC would have to carry these costs twice: on behalf of itself (in relation to its members) and in relation to the Qualified Buyers of the Raw Milk concerned.
- (145) Logistics and transport (collection at farms and delivery at DPC plants) of Raw Milk sold via the DMF will be organised by FC as well as quality control, quality assurance and administration. Additional costs that arise from these activities will be calculated in advance by FC and will be charged on an objective and transparent basis. The costs charged by FC to DPC plants per 100 kg Raw Milk are the same as for FC internally. The costs are based on optimal logistic solutions, maximum economies of scale and the average actual costs of FC per 100 kg Raw Milk (which is currently EUR 1.35/100 kg). In other words, the buyers of Raw Milk will benefit from the economies of scale that are achieved by FC. The (breakdown of the) costs concerned will be made transparent for DMF and the Qualified Buyers. The allocation of costs by FC will be supervised by DMF and in case of a dispute, DMF may give binding instructions to FC.
- (146) Upon the request of a Qualified Buyer buying Raw Milk, logistics, quality testing and administration may (partly) be organized by that Buyer, to be agreed upon between FC and the Buyer concerned. Collection on farms of members of FC may be effectuated by Qualified Buyers, only (i) upon consultation of FC and (ii) with the prior approval of the individual farmers concerned. If a Qualified Buyer decides to arrange collection and transportation of raw milk itself, it should engage to do so for at least three years without interruption. Such Qualified Buyer shall not be charged by FC any mark up for collection or transportation.
- (147) DMF will monitor compliance by FC with the conditions of this remedy on an ongoing basis and may give binding instructions to FC in case of non-compliance. FC and DMF will agree upon an effective arbitration clause, subject to approval of the Monitoring Trustee, in connection with disputes and complaints (on interpretation etc.) ensuring quick dispute resolution (and providing for continuity of supply of Raw Milk pending the arbitration procedure). This includes disputes between FC and DMF in connection with binding instructions issued by DMF.

- (148) The Forms RM relating to fresh dairy products and cheese provide for supply agreements. As contemplated in Forms RM relating to fresh dairy products and cheese, the supply agreements are meant to be replaced by sourcing arrangements under this Raw Milk Remedy 2.