



Australian
Competition &
Consumer
Commission

23 Marcus Clarke Street
Canberra ACT 2601

GPO Box 3131
Canberra ACT 2601

Our ref: #1002261
Contact officer: William Herron
Contact phone: 02 6243 1244

tel: (02) 6243 1111
fax: (02) 6243 1199

11 May 2017

www.accc.gov.au

JS

Via email to: foi+request-3452-f862bff8@righttoknow.org.au

Dear JS

Decision on freedom of information request

I refer to your email dated 28 April 2017 in which you request access, under the *Freedom of Information Act 1982* (Cth), to the following:

'a copy of initiating documents in the proceedings Australian Competition and Consumer Commission v Murray Goulburn Cooperative Co. Limited (Murray Goulburn), former managing director Gary Helou and former chief financial officer Bradley Hingle.'

Decision

I have decided to release these documents to you in full in accordance with the Schedule (Attachment A). Your review rights are set out in Attachment B.

I am authorised under s.23 of the Act to make this decision.

Understanding the schedule

In relation to the Schedule, please note:

- (a) Column 1 of the Schedule refers to each document by a document number created for the purpose of processing this request;
- (b) Column 2 of the Schedule gives, where applicable, the name and organisation of the author of the document;
- (c) Column 3 of the Schedule gives, where applicable, the name and organisation of the addressee of the document;
- (d) Column 4 of the Schedule shows the date appearing on the document;
- (e) Column 5 of the Schedule briefly describes the document or, where applicable, each part of a composite document;
- (f) Column 6 of the Schedule gives the number of pages of the document or, where applicable, each part of a composite document;

(g) Column 7 of the Schedule shows my decision on whether, and what form, access has been granted to the document, where applicable.

Outstanding charges

Under the Act the first 5 hours (\$100.00) of processing your request are free. As the cost of processing your request is less than \$100.00, there are no charges for processing your request.

Enclosed are copies of the 2 documents which were 'Granted' as per the Schedule.

Publication of documents released under FOI

In accordance with s.11C of the Act, I have decided to publish the documents released on the ACCC's Disclosure Log. This will occur within ten business days of the documents being released to you.

Yours sincerely



Will Herron

FOI Coordinator
ACCC Legal Group

Sent by email 11/05/2017

ATTACHMENT A

Schedule of documents

Doc No	Author	Addressee	Date	Description	No of folios	Access	Findings, Reasons and Brief Description
1	ACCC	Federal Court of Australia	28.4.2017	Notice Application - ACCC v Murray Goulburn Co-operative Co Ltd	7	Granted	
2	ACCC	Federal Court of Australia	24.4.2017	Notice Concise Statement - ACCC v Murray Goulburn Co-operative Co Ltd	9	Granted	

ATTACHMENT B

INFORMATION ON RIGHTS OF REVIEW

1. ACCC Internal Review

Under s.54 of the FOI Act, you can apply for an internal review of my decision by writing to the ACCC within 30 days of receipt of this letter indicating that you seek an internal review of this decision.

If you make an application for review, another officer of the ACCC will review and make another decision in regards to these documents.

There is no charge payable for requesting an internal review. No particular form is required to apply for review. You will need to set why the decision should be changed.

Please send any correspondence to:

FOI Coordinator

Australian Competition & Consumer Commission

GPO Box 3131

Canberra ACT 2601

If you make an application for internal review and we do not make a decision within 30 days or such further period as the IC allows, the original decision is considered affirmed. In such circumstances, you can seek review of our deemed decision by the IC.

2. Review by the Information Commissioner

You may ask for a review of a decision by the Australian Information Commissioner (IC). You do not have to go through our internal review process first for this process. If you do choose to seek an internal review, you can still seek IC review for the internal review decision if we refuse access to the documents.

You must apply in writing and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

If you disagree with the Information Commissioner's review decision, you can appeal to the Administrative Appeals Tribunal (AAT).

The Tribunal is a completely independent review body with the power to make a fresh decision. A filing fee of \$861.00 (as at 1 July 2014) should accompany your application, unless you are granted legal aid or you come within an exempt category of persons (check with the Tribunal registry in your State). The Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded if you are successful.

3. Complaint to the Information Commissioner

You may request the Information Commissioner to investigate action taken by the ACCC in relation to this Freedom of Information request. There is no fee for making a complaint. The Information Commissioner will consider your complaint and, if appropriate, conduct an investigation into it. Any investigation will be completely independent.

You must lodge your complaint in writing and do so in one of the following ways:

Online: www.oaic.gov.au

Post: GPO Box 5218, Sydney NSW 2001

Fax: +61 2 9284 9666

Email: enquiries@oaic.gov.au

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/04/2017 5:35:11 PM AEST and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Originating Application - Form 15 - Rule 8.01(1)
File Number:	VID430/2017
File Title:	AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v MURRAY GOULBURN CO-OPERATIVE LIMITED & ORS
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	First Case Management Hearing
Time and date for hearing:	02/06/2017, 10:15 AM
Place:	Please check Daily Court List for details



Dated: 28/04/2017 10:03:08 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Form 15
Rules 8.01(1), 8.04(1)

ORIGINATING APPLICATION

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL
NPA: COMMERCIAL AND CORPORATIONS,
REGULATOR AND CONSUMER PROTECTION**

NO VID OF 2017

**AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION**

Applicant

MURRAY GOULBURN CO-OPERATIVE CO LIMITED

ABN 23 004 277 089

and others named in the Schedule
Respondents

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

TIME AND DATE FOR HEARING:

PLACE:

Owen Dixon Commonwealth Law Courts Building
305 William Street
Melbourne VIC 3000

Date:

.....
Signed by an officer acting with
the authority of the District Registrar

Filed on behalf of the Applicant, ACCC

File ref: 16006417

Prepared by: Katrina Close

AGS lawyer within the meaning of s 551 of the *Judiciary Act*
1903

Address for Service:

The Australian Government Solicitor,
Level 34, 600 Bourke St, Melbourne, VIC 3000
Katrina.Close@ags.gov.au

Telephone: 03 9242 1230
Lawyer's Email: Katrina.Close@ags.gov.au

DX 50 Melbourne



DETAILS OF CLAIM

On the grounds stated in the accompanying concise statement the Applicant claims:

Murray Goulburn

1. A declaration that the first respondent, Murray Goulburn (**MG**), has engaged in unconscionable conduct in breach of s21 of the Australian Consumer Law (**ACL**), by providing false and misleading information to dairy farmers in its Southern Milk region (**Farmers**) on numerous occasions between June 2015 and 27 April 2016 concerning the price it would pay them for milk for the 2015/2016 financial year (**FY16**), and failing to correct that information, in circumstances where:
 - 1.1. MG knew that Farmers relied on information it provided in making their significant business decisions throughout the year;
 - 1.2. there was an imbalance of information between MG and the Farmers;
 - 1.3. MG knowingly provided and maintained overstated forecasts which were repeating and continuing in FY16 until 27 April 2016;
 - 1.4. MG knew that Farmers expected and relied on accurate disclosure of milk pricing information as their primary source of income;
 - 1.5. Farmers lacked practical alternatives to supplying MG; and
 - 1.6. Farmers suffered detriment as a result of MG withholding accurate financial information until near the very end of FY16 when it was too late for Farmers to practically readjust significant business decisions, and where Farmers ultimately incurred debts to MG as a result of its conduct.
2. A declaration that MG, by:
 - 2.1. representing to Farmers on and from 24 June 2015 that:
 - 2.1.1. MG had fixed the Opening Price for FY16 at a level that minimised the risk of the final farmgate milk price (**Final FMP**) for FY16 falling below the Opening Price and facilitated step-ups from the Opening Price;
 - 2.1.2. MG forecast the Final FMP for FY16 to be \$6.05 kg/ms;
 - 2.1.3. the forecast Final FMP of \$6.05 kg/ms was subject to changes in external factors such as global dairy commodity prices which reflected MG's up to date opinion about those matters;
 - 2.1.4. MG considered the forecast final FMP of \$6.05 kg/ms to be the most likely outcome for FY16;
 - 2.1.5. there were no material risk factors to achieving a Final FMP of \$6.05 kg/ms known to MG other than the disclosed risk factors; and



- 2.1.6. it had a genuine and reasonable basis for making the representations referred to in paragraphs 2.1.1 – 2.1.5;
- 2.2. further or alternatively, representing to Farmers on and from 31 August 2015 that:
- 2.2.1. MG maintained a forecast Final FMP for FY16 of \$6.05 kg/ms;
 - 2.2.2. although that forecast was subject to certain assumptions including a material strengthening of commodity prices during the balance of FY16, MG expected dairy commodity prices to strengthen during the balance of FY16;
 - 2.2.3. MG considered the forecast final FMP of \$6.05 kg/ms to be the most likely outcome for FY16;
 - 2.2.4. if the assumptions underpinning the forecast Final FMP of \$6.05 kg/ms did not materialise, it expected a Final FMP in the range of \$5.60 to \$5.90 kg/ms;
 - 2.2.5. there were no material risk factors to achieving a Final FMP of \$6.05 kg/ms known to MG other than the disclosed risk factors; and
 - 2.2.6. MG had a genuine and reasonable basis for each of the representations referred to in paragraphs 2.2.1 – 2.2.5;
- 2.3. further or alternatively, representing to Farmers on and from 29 February 2016 that:
- 2.3.1. the Final FMP would be \$5.60 kg/ms;
 - 2.3.2. although that forecast was subject to there being no further material deterioration in commodity prices or unfavourable changes to the current AUD:USD exchange rate, MG considered a final FMP of \$5.60 kg/ms to be the most likely outcome for FY16;
 - 2.3.3. there were no material risk factors to achieving a Final FMP of \$5.60 kg/ms known to MG other than the disclosed risk factors;
 - 2.3.4. the underperformance of the Ingredients and Nutritionals segment of its business derived from the weakness in commodity prices was expected to be partially offset by the expected strong performance of domestic and international dairy foods products sale; and
 - 2.3.5. it had a genuine and reasonable basis for making each of the representations in paragraphs 2.3.1 – 2.3.4,

has on each occasion throughout the period 24 June 2015 to 27 April 2016, in trade or commerce, in connection with the supply of milk by Farmers, made false or misleading representations with respect to the price of that milk in contravention of s29(1)(i) of the ACL.



3. A declaration that MG, by engaging in the conduct set out in paragraph 2 above, has on each occasion and throughout the period 24 June 2015 to 27 April 2016 engaged in misleading or deceptive conduct in contravention of s18 of the ACL.
4. An order pursuant to s247 of the ACL that MG cause to be sent to Farmers, and to be published, at its expense, a notice in terms and form to be agreed with the Applicant, setting out the substance of the Court's findings in relation to its conduct.
5. An order pursuant to s246(2) of the ACL that MG establish and maintain for a period of 3 years an education and training program for employees or other persons involved in MG's business, being a program designed to ensure their awareness of their responsibilities and obligations in relation particularly to Parts 2.1 and 2.2 of the ACL.

Mr Helou

6. A declaration that the second respondent, Mr Helou, was knowingly concerned in, party to, the contraventions by MG of the ACL referred to above, within the meaning of s224(1)(e) of the ACL.
7. An order pursuant to s248 of the ACL that Mr Helou be disqualified from managing corporations for a period of seven years from the date of the Court's order.
8. An order pursuant to s224 of the ACL that Mr Helou pay to the Commonwealth of Australia, in respect of his involvement in MG's contraventions of s21 and s29 of the ACL, pecuniary penalties in such amount as the Court considers appropriate.

Mr Hingle

9. A declaration that the third respondent, Mr Hingle, was knowingly concerned in, or party to, the contraventions by MG of the ACL referred to above, within the meaning of s224(1)(e) of the ACL.
10. An order pursuant to s248 of the ACL that Mr Hingle be disqualified from managing corporations for a period of seven years from the date of the Court's order.
11. An order pursuant to s224 of the ACL that Mr Hingle pay to the Commonwealth of Australia, in respect of his involvement in MG's contraventions of s21 and s29 of the ACL, pecuniary penalties in such amount as the Court considers appropriate.

Other orders

12. Costs.
13. Such further or other orders as the Court considers appropriate.



APPLICANT'S ADDRESS

The Applicant's address for service is:

Australian Government Solicitor,
Level 34, 600 Bourke St, Melbourne, VIC 3000

Email: Katrina.Close@ags.gov.au

The Australian Government Solicitor's telephone and document exchange numbers are:

Tel: 03 9242 1230

DX 50 Melbourne

The Applicant's address is:

Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne Vic 3000

SERVICE ON THE RESPONDENTS

It is intended to serve this application on all Respondents.

Date: 27 April 2017

A handwritten signature in blue ink, appearing to read "Katrina Close", is written over a horizontal dotted line.

Katrina Close
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Applicant

Date: 27 April 2017



Schedule

**FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL
NPA: COMMERCIAL AND CORPORATIONS,
REGULATOR AND CONSUMER PROTECTION**

No VID

of 2017

Respondents

Second Respondent

Gary Helou

Third Respondent

Bradley Hingle

Date: 27 April 2017

Released under FOI

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 27/04/2017 5:35:11 PM AEST and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Concise Statement
File Number: VID430/2017
File Title: AUSTRALIAN COMPETITION AND CONSUMER COMMISSION v
MURRAY GOULBURN CO-OPERATIVE LIMITED & ORS
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 28/04/2017 10:03:12 AM AEST

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



NCF1

Concise Statement

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: GENERAL

No VID

of 2017

NPA: Commercial and Corporations, Regulator and Consumer Protection

Australian Competition and Consumer Commission

Applicant

Murray Goulburn Co-Operative Co Limited (ABN 23 004 277 089) and others listed in Schedule 1

Respondents

A. Important facts giving rise to the claim

1. This is a claim against the first respondent (**MG**), Australia's largest dairy producer, for engaging in unconscionable and misleading or deceptive conduct and making false representations towards farmers concerning the price it would pay them for milk for the 2015/16 financial year (**FY16**) in breach of the *Australian Consumer Law (ACL)*, and against its former Managing Director (the second respondent (**Helou**)) and former Chief Financial Officer (the third respondent (**Hingle**)) for involvement in that conduct.
2. The farmgate milk price (**FMP**) is a weighted average price for milk over a financial year, set solely by MG, that MG pays to dairy farmers in its Southern Milk region (relevantly the dairy regions of Victoria, South Australia and southern New South Wales) from whom it acquires milk (**Farmers**). In parts of the Southern Milk region, MG is the only acquirer of milk from Farmers.
3. Before the start of a financial year MG announced the FMP that would apply at the beginning of that year (**Opening Price**) and its forecast of the average FMP for the full year taking into account variations to the Opening Price (**Final FMP**). Typically, the Opening Price was set conservatively, and at 90 to 96% of the forecast Final FMP, so that there would be 'step-ups' from the Opening Price as the financial year progressed. Farmers expected the Opening Price to be a floor price for milk for the year, and that the Final FMP would be higher than the Opening Price as a result of step-ups.
4. Many Farmers operate small to medium dairy farming businesses. The payments of the FMP were their sole or primary source of income. Many Farmers relied on the Opening Price, and used information given by MG about the Opening Price and forecast Final FMP, when setting their budgets for the financial year and when making their significant business decisions throughout the year, such as whether to increase or decrease herd size, the quality and volume of feed to acquire

Filed on behalf of: The Applicant, Australian Competition and Consumer Commission
Prepared by: Katrina Close, AGS lawyer within the meaning of s 551 of the Judiciary Act 1903
Law firm: Australian Government Solicitor
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Address for service: Level 34, 600 Bourke Street, Melbourne, VIC, 3000
21606535

and when to maximise milk production. Farmers were not in a position to forecast the Final FMP themselves, as the forecast depended on matters that included MG's costs, MG's current and planned product mix, and demand and likely prices in a range of foreign countries.

5. As MG, Helou and Hingle knew, the Farmers relied on the forecasts and were exposed to risk of financial harm if MG provided forecasts or information relating to the FMP that did not have a genuine and reasonable basis, or set the Opening Price at a level that failed to minimise the risk of the Final FMP falling below the Opening Price. Indeed, MG stated that it was committed to making timely and balanced disclosure of all material matters and effective communication with its key stakeholders so as to give them ready access to clear and relevant information to assist them in making informed decisions.
6. As at May 2015, MG was proceeding with an initial public offering (IPO) of units in the MG Unit Trust. MG completed its budget and the forecast Final FMP for FY16 before issuing its prospectus for the IPO. On 1 May 2015 MG issued the prospectus and told Farmers that its forecast Final FMP for FY16 was \$6.05 per kilogram of milk solids (kg/ms). This was earlier than its usual timing for announcing its forecast Final FMP.
7. For FY16 approximately 30% of MG's forecast sales (by volume) comprised dairy commodities, such as bulk milk powder, butter and cheddar cheese. Between 1 May and 24 June 2015 auction prices for dairy commodities declined and sources of expert opinion relied upon by MG lowered their forecast commodity prices for FY16.
8. Notwithstanding those adverse developments, MG chose not to revise its forecast Final FMP before the start of FY16, which in turn caused it to set the Opening Price too high. On 24 June 2015 MG told Farmers that it had fixed the Opening Price for FY16 at \$5.60 kg/ms. It also represented to Farmers that it had fixed the Opening Price at a level that minimised the risk of the Final FMP falling below the Opening Price and would facilitate step-ups from the Opening Price, and that it had a genuine and reasonable basis for this representation. That was not in fact the case, as MG, Helou and Hingle knew.
9. On the same day, MG also represented to Farmers that it forecast a Final FMP for FY16 of \$6.05 kg/ms. In doing so, MG further represented that although the forecast Final FMP was subject to changes in external factors such as global dairy commodity prices, it reflected MG's up to date opinion about those matters, and that there were no material risk factors to achieving a Final FMP of \$6.05 kg/ms known to MG other than the disclosed risk factors. In addition, MG represented that it had a genuine and reasonable basis for making these representations. That was not in fact the case, as MG, Helou and Hingle knew.
10. MG did not withdraw, qualify or correct its representations to Farmers about the Opening Price between 24 June 2015 and 27 April 2016. To the contrary, it reinforced them by further statements confirming the previous forecasts, and by making monthly payments to Farmers in accordance with the Opening Price, despite the adverse information known to MG. Nor did MG withdraw, qualify or correct its representations to Farmers about the forecast Final FMP between 24 June 2015 and 29

February 2016, but made further reinforcing statements. The representations accordingly continued during those respective periods.

11. MG typically prepared internal Revised Income Forecasts (**RIFs**) each month, which forecast its

[REDACTED]

sales for the balance of the financial year. Helou and Hingle were involved in approving RIFs, then presenting them to the board of directors of MG (**Board**) at monthly meetings (other than in July 2015, January and March 2016, when RIFs were not presented to the Board). The presentation of RIFs to the Board provided MG with an opportunity, each month, to determine whether to amend its forecast Final FMP and ensure that Farmers had an opportunity to adjust their budgets and business decisions in light of any changes to MG's trading conditions and outlook. At all times until late April 2016, the RIFs did not support MG's ongoing representations about its forecast Final FMP.

12. MG's RIFs typically identified a range of potential Final FMPs, either in the form of a "low case", a "mid case" and a "high case" (where the mid case represented the most likely Final FMP), or a forecast Final FMP with potential "upside" and "downside".
13. On 27 or 28 August 2015 a RIF was presented to the Board that had a low case of \$5.52 kg/ms, a mid case of \$5.74 kg/ms and a high case of \$6.05 kg/ms. This RIF was based on inappropriate and/or unreasonable assumptions concerning forecast commodity prices and the successful achievement of initiatives and sales targets developed after the budget for FY16 had been finalised, as well as having a mid-case well below the forecast Final FMP that MG had announced to Farmers. Both Helou and Hingle knew this. In approving and presenting this RIF to the Board, they knowingly overstated the range of potential Final FMP that Farmers would receive, leading to the provision of incorrect forecasts by MG to Farmers.
14. Further, despite the mid-case in the August RIF being only \$5.74, MG did not lower its forecast FMP for FY16. On the contrary, on 31 August 2015, MG represented to Farmers that it maintained its forecast Final FMP for FY16 of \$6.05 kg/ms. In doing so, MG further represented that it considered a Final FMP of \$6.05 kg/ms to be the most likely outcome for FY16, that although the

16. Between September 2015 and February 2016 (inclusive), as detailed in Schedule 2, Helou and Hingle approved and presented to the Board RIFs that did not support a Final FMP of \$6.05 as the most likely outcome for FY16.
17. Each of these RIFs was based on inappropriate and/or unreasonable assumptions concerning forecast commodity prices and/or the successful achievement of initiatives and sales targets. Helou and Hingle knew this and, in approving and presenting these RIFs, knowingly overstated the range of potential FMP that Farmers would receive.
18. Further, despite each of these RIFs being presented to the Board approximately monthly between September 2015 and February 2016, and having a mid case or forecast well below \$6.05 kg/ms, MG did not tell Farmers it had lowered its forecast of the Final FMP they would receive for FY16 until 29 February 2016.
19. On 29 February 2016 MG presented its half yearly results. In doing so, MG represented to Farmers that it expected that the Final FMP would be \$5.60 kg/ms, that although that forecast was subject to there being no further material deterioration in commodity prices or unfavourable changes to the current AUD:USD exchange rate, MG considered a Final FMP of \$5.60 kg/ms to be the most likely outcome for FY16, and that the underperformance of the Ingredients and Nutritionals segment of MG's business derived from the weakness in commodity prices was expected to be partially offset by the expected strong performance of domestic and international dairy foods product sales. MG also represented to Farmers that there were no material risk factors to achieving a Final FMP of \$5.60 kg/ms known to MG other than those disclosed factors. It further represented that it had a genuine and reasonable basis for these representations. This was not in fact the case, as MG, Helou and Hingle knew.
20. MG repeated and reinforced these representations to groups of Farmers at presentations in March and early April 2016. It did not withdraw, qualify or correct its representations until 27 April 2016, and the representations accordingly continued during this period.
21. On 27 April 2016 MG told Farmers it had revised its forecast Final FMP down to \$4.75 - \$5.00 kg/ms. It announced that, as a result, it was introducing a "Milk Supply Support Package" (**MSSP**) by which it would lend money to Farmers during FY16 that would make the FMP equivalent to \$5.47 kg/ms. It also announced that the MSSP and its cash funding cost were to be recovered by MG from Farmers' milk payments over the following three financial years. Many Farmers had no practical choice but to accept the MSSP (which effectively included a 'claw back' of payments they had already received) and incur substantial indebtedness to MG for milk they had supplied in FY16. This was a material consequence Farmers suffered as a result of MG's conduct towards them in relation to the Opening Price and forecast Final FMP. In October 2016 MG suspended recovery of payments under the MSSP until 30 June 2017, and extended the period for recoupment from 3 years to 6 years, while retaining its discretion to accelerate that recoupment.
22. MG's actual Final FMP for milk it acquired from Farmers in FY16 was \$4.80 kg/ms.

B. Summary of the relief sought from the Court

23. The ACCC seeks the relief set out in the accompanying application. As against MG this includes declarations, adverse publicity orders and non-punitive orders, and as against Helou and Hingle it includes declarations, disqualification orders and pecuniary penalties.

C. Primary legal grounds for the relief sought

24. MG, in trade or commerce, engaged in conduct that was, in all the circumstances, unconscionable in contravention of s 21 of the ACL. The relevant circumstances included the imbalance of information between MG and the Farmers, MG's knowing provision and maintenance of overstated forecasts which were repeated and continuing during FY16 until 27 April 2016, its knowledge about the Farmers' expectations, vulnerability and reliance on accurate disclosure of the FMP as their primary source of income, the practical lack of alternatives to supplying MG which Farmers faced, and the detriment suffered by many Farmers as a result of MG's withholding of accurate information about the forecast Final FMP until near the very end of FY16 when it was too late for Farmers to practically readjust significant business decisions. The Final FMP was well below MG's estimate of the Farmers' average production costs.
25. MG, in trade or commerce, in connection with the supply of milk by Farmers, engaged in misleading or deceptive conduct in contravention of s 18(1) of the ACL, and made false or misleading representations with respect to the price of that milk in contravention of s 29(1)(i) of the ACL. To the extent MG's representations were as to future matters, it did not have reasonable grounds for making them.
26. Each of Helou and Hingle was knowingly concerned in, or party to, each of MG's contraventions within the meaning of s 224(1)(e) of the ACL.

D. Harm suffered

27. As a result of the unconscionable and misleading or deceptive conduct of MG, and the false representations it made, Farmers had inaccurate information when making their significant business decisions in FY16 as to the most likely price they would receive from MG for milk supplied that year, and the financial risks to which they were exposed by MG. The 'claw-backs' are a significant financial burden for Farmers.

Date: 27 April 2017



.....
Katrina Close
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Applicant

This Concise Statement was prepared by Peter Collinson QC, Oren Bigos and Andrew Barraclough.

Certificate of lawyer

I Katrina Close certify to the Court that, in relation to the concise statement filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 27 April 2017



.....
Signed by Katrina Close
AGS lawyer
for and on behalf of the Australian Government Solicitor
Lawyer for the Applicant

Released under FOI

Schedule 1

FEDERAL COURT OF AUSTRALIA

DISTRICT REGISTRY: VICTORIA

DIVISION: GENERAL

NPA: Commercial and Corporations, Regulator and Consumer Protection

NO VID

OF 2017

Respondents

Second Respondent

Gary Helou

Third Respondent

Bradley Hingle

Date: 27 April 2017

Released under FOI

Schedule 2

Details referred to in paragraph 16.

Between September 2015 and February 2016 (inclusive) Helou and Hingle approved and presented to the Board RIFs that had:

- a. in September 2015, a low case of \$5.51 kg/ms, a mid case of \$5.67 kg/ms and a high case of \$6.05 kg/ms;
- b. in October 2015, a low case of \$5.61 kg/ms, a mid case of \$5.73 kg/ms and a high case of \$6.05 kg/ms;
- c. in November 2015, a low case of \$5.49 kg/ms, a mid case of \$5.69 kg/ms and a high case of \$6.03 kg/ms;
- d. in December 2015, a Final FMP of \$5.68 kg/ms with an "upside" of \$6.04 kg/ms and a "downside" of \$5.60 kg/ms; and
- e. in February 2016, a RIF that forecast a Final FMP of \$5.62 kg/ms.

RIFs were not presented to the Board in January or March 2016.

Released under FOI