

IN THE FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: VICTORIA
DIVISION: COMMERCIAL AND CORPORATIONS

No of 2017

IN THE MATTER OF MG RESPONSIBLE ENTITY LIMITED

BETWEEN

AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION

Plaintiff

and

MG RESPONSIBLE ENTITY LIMITED (ACN 601 538 970)

Defendant

AGREED STATEMENT

For the purposes of this proceeding, the Agreed Statements of Fact in Parts 1 and 3 of this statement are made jointly by the Applicant (ASIC) and the Respondent (MGRE) pursuant to section 191 of the *Evidence Act 1995* (Cth).

PART 1 – AGREED STATEMENT OF FACTS

A PARTIES

1 ASIC is a body corporate:

- (a) established by section 7 of the *Australian Securities and Investments Commission Act 1989* (Cth);
- (b) continuing in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act); and
- (c) able to sue in its corporate name by reason of section 8 of the ASIC Act.

- 2 Murray Goulburn Co-operative Co. Limited (**MG**) was at all material times between 1 January and 27 April 2016:
 - (a) a public company registered under the provisions of the *Corporations Act 2001* (Cth) (**Act**); and
 - (b) an unlisted disclosing entity within the meaning of section 111AL(2) of the **Act**.
- 3 At all material times between 1 January and 27 April 2016, the Murray Goulburn Unit Trust (Australian Registered Scheme No. 606 103 637) (**MG Unit Trust**), was a managed investment scheme registered under section 601EB of the **Act**.
- 4 **MGRE**, at all material times between 1 January and 27 April 2016:
 - (a) was a public company registered under the provisions of the **Act**;
 - (b) was able to be sued;
 - (c) was the trustee of the **MG Unit Trust**;
 - (d) was the responsible entity for **MG Unit Trust** for the purposes of part 5C.2 of the **Act**;
 - (e) was a listed disclosing entity within the meaning of section 111AL(1) of the **Act**;
 - (f) was, pursuant to section 111AP, subject to the continuous disclosure requirements of section 674 of the **Act**;
 - (g) was bound to comply with the **ASX Listing Rules**;
 - (h) was a wholly owned subsidiary of **MG**;
 - (i) had the same directors as **MG**;
 - (j) had the same managing director as **MG**; and
 - (k) had the same chief financial officer as **MG**.

B RELATIONSHIP BETWEEN MG AND MGRE

- 5 On 1 May 2015, the **MG Unit Trust** was established.

- 6 On 29 May 2015, MGRE issued a product disclosure statement (PDS) by which it offered fully paid units (Units) in the MG Unit Trust.
- 7 On and from 3 July 2015:
 - (a) the MG Unit Trust became admitted to the official list of the Australian Securities Exchange (ASX);
 - (b) the MG Unit Trust issued Units to investors pursuant to the offer in the PDS;
 - (c) MG issued notes and convertible preference shares to a sub-trust of the MG Unit Trust; and
 - (d) MGRE paid any distributions on notes and dividends on convertible preference shares that it received from the sub-trust to Unitholders.
- 8 The Units were at all material times between 1 January and 27 April 2016, intended to give Unitholders an economic exposure to MG and its business.
- 9 Pursuant to a Profit Sharing Mechanism Deed dated 26 May 2015 between MG and MGRE, the parties agreed that:
 - (a) subject to clause 3.3(a), the Board of MG would determine, amongst other things, the net profit after tax (NPAT) in each financial year in accordance with a "Profit Sharing Mechanism" set out in clause 2.1(a) of the Deed and the Deed;
 - (b) the Profit Sharing Mechanism set out in clause 2.1(a) of the Deed required the Board to adjust the NPAT depending on a variable defined in the Deed as the "Actual Weighted Average Southern Milk Region Farmgate Milk Price"; and
 - (c) following determination of NPAT under the Deed, the Board of MG would determine any dividend on MG shares, distribution on notes and dividend on convertible preference shares and each amount would be the same (clause 2.3).
- 10 In its PDS, MGRE referred to its Continuous Disclosure Policy at page 119 and said:

- (a) "[MGRE] ...places a high priority on communication with Unitholders and is aware of the obligations it will have, once listed, under the Act and the ASX Listing Rules, to keep the market fully informed of any information ...[MGRE] becomes aware of concerning the MG Unit Trust which is not generally available and which a reasonable person would expect to have a material effect on the price or value of Units"; and
- (b) "[MGRE] ...has entered into the Relationship Deed with... [MG] in recognition that most of the information that will have a material effect on the price of the Units will relate to the performance and operations of ...[MG]".

11 By the Relationship Deed dated 18 May 2015 between MG and MGRE, the parties agreed that:

- (a) MG and MGRE must coordinate their continuous disclosure functions and ensure that a representative of MG is a member of the MGRE continuous disclosure committee and that a representative of MGRE is a member of the MG continuous disclosure committee (clause 2.3(a));
- (b) the purpose of the arrangement referred to in clause 2.3 is to ensure that each of MG and MGRE are aware of matters that may cause the other to need to make a continuous disclosure announcement in accordance with the Act or the Listing Rules (clause 2.3(b));
- (c) MG must notify MGRE immediately upon becoming aware of any information concerning MG that a reasonable person would expect to have a material effect on the price or value of the Units (clause 2.4(a)); and
- (d) MGRE must notify MG immediately upon becoming aware of any information concerning MGRE that a reasonable person would expect to have a material effect on the price or value of the MG shares (clause 2.5(a)).

12 By a Continuous Disclosure Deed Poll dated 26 May 2015, MG undertook:

- (a) that once it is or becomes aware of any information concerning it or the MG Unit Trust that (i) is not generally available or (ii) is information that a reasonable person would expect, if it were generally available, to

have a material effect on the price or value of the shares in MG or the Units in the MG Unit Trust, MG will immediately notify its shareholders and MGRE (clause 3.1(a)); and

- (b) to ensure that, while MGRE is a subsidiary of MG, MGRE complies with its continuous disclosure obligations under section 674 of the Act (clause 3.1(b)).

C MANAGEMENT

13 Gary Helou (**Helou**) was at all material times between 1 January and 27 April 2016:

- (a) a director of MG and MGRE;
- (b) the managing director of MG and MGRE; and
- (c) a member of the ELT as defined in paragraph 16 below.

14 Bradley Hingle (**Hingle**) was at all material times between 1 January and 27 April 2016:

- (a) the chief financial officer of MG and MGRE; and
- (b) a member of the ELT as defined in paragraph 16 below.

15 Albert Moncau (**Moncau**) was at all material times between 1 January and 27 April 2016:

- (a) Executive General Manager of Dairy Foods for MG; and
- (b) a member of the ELT as defined in paragraph 16 below.

16 At all material times between 1 January and 27 April 2016, MG had an executive leadership team (ELT) which:

- (a) was responsible for implementing the company's strategy and objectives, and for carrying out the day-to-day management and control of MG's affairs;
- (b) typically met on a monthly basis; and
- (c) was comprised of the following members:

- (I) Helou;
- (II) Hingle;
- (III) Moncau;
- (iv) Fiona Smith (Executive General Manager – Corporate Development and Reputation);
- (v) David Mallinson (Executive General Manager – Business Operations);
- (vi) Betsy Harrington (Executive General Manager – Business Transformation and People); and
- (vii) Robert Poole (Executive General Manager – Supplier Relations).

17 At all material times between 1 January and 27 April 2016, all members of the ELT reported directly to Helou.

D MG'S BUSINESS AND PRODUCTS

18 MG is a large dairy foods company.

19 At all material times between 1 January and 27 April 2016, MG's business was broadly divided into three segments or divisions, namely Dairy Foods, Ingredients & Nutritionals and Other.

20 The Ingredients & Nutritionals division sold bulk and customised dairy ingredients to markets in Australia, Asia, Sri Lanka and USA. This division was exposed to fluctuating dairy commodity prices, which during FY16 had faced a volatile trading environment.

21 The Dairy Foods division comprised two further divisions: the Dairy Foods Domestic/Australia division and the Dairy Foods International division.

22 The Dairy Foods division sold ready-to-consume dairy foods products including fresh milk, long-life UHT milk, cheese, cream, butter and instant milk powder.

- 23 At all material times between 1 January and 27 April 2016, MG produced and sold 1kg bags of adult milk powder through its Dairy Foods division, which was referred to by MG interchangeably as "sachets", "sachet powder", "adult milk powder", "instant milk powder" and "consumer milk powder" (sachets).
- 24 At all material times between 1 January and 27 April 2016, the majority of all sachets sold by the Dairy Foods International division were sold to distributors who on-sold to customers in China.
- 25 At all material times between 1 January and 27 April 2016, a significant portion of sachets sold by the Dairy Foods Domestic/Australia division was sold to customers in Australia who on-sold the sachets to retail customers in China.
- 26 In addition to its Ingredients & Nutritionals and Dairy Foods divisions, within its "Other" segment MG:
- (a) managed and operated a commercial milk brokering business selling milk to and buying milk from other dairy processors in New South Wales, Victoria and South Australia; and
 - (b) operated through its MG Trading business a network of stores and fertiliser depots as well as providing a range of farm input services.

E RELEVANT MARKET DISCLOSURES

- 27 In its PDS dated 29 May 2015 and lodged with ASIC, MGRE presented forecast financial information for MG for the financial year ending 30 June 2016 (FY16) which included the following pro forma forecast results:
- (a) NPAT attributable to shareholders and unitholders of \$86 million; and
 - (b) Available Southern Milk Region Farmgate Milk Price (FMP) of \$6.05 per kilogram of milk solids (kgms).
- 28 The Available Southern Milk Region FMP¹ in a given year is the headline price notified to milk suppliers by MG at the end of each financial year. It is the average price available to the average milk supplier in the Southern Milk

¹ The Available Southern Milk Region FMP is calculated as the Actual Weighted Average Southern Milk Region FMP plus the add-back of quality adjustments accrued from the supply of non-premium milk.

Region if they supply premium quality milk for the duration of the entire financial year.

- 29 On 24 June 2015, MG sent its Opening Price Circular 2015/16 for the Southern Milk Region to milk suppliers and published it on MG's website announcing an average available opening FMP for the Southern Milk Region of \$5.60 per kgms (Opening Price). Page 59 of the PDS states:

"Historically, the [Opening Price] of the season [had] typically been set at lower than the full-year forecast price, allowing for step-ups (or price increases) in the FMP during a season. As sales are made throughout the year and processors gain more confidence in full year forecasts, step-ups (or step-downs) to the Opening Price of the season may be announced, which are paid (or incurred) retrospectively from 1 July. [Note: Step-ups or step-downs are used by dairy processors to recalibrate the forecasted full-year farmgate milk price. After a starting price is named, any recalibration of available monies to pay for milk due to movements in underlying commodity or retail prices, foreign exchange movements, or unanticipated manufacturing issues are passed through to suppliers via step-ups or step-downs.]"

- 30 The Opening Price was determined by the Board of MG earlier on 24 June 2015, taking into account the recommendation of the ELT.
- 31 In the PDS, MGRE stated that it would update the market on potential increases or decreases in the FMP at its annual general meeting and otherwise in accordance with its continuous disclosure obligations.
- 32 On 31 August 2015, MG and MGRE released MG's financial results for the full year ended 30 June 2015 to the ASX (August Announcement) and published those results on MG's website.
- 33 The August Announcement included the following statements:
- (a) the FY16 FMP of "...\$6.05 per kgms and NPAT attributable to shareholders and unitholders of \$86 million can be achieved, provided dairy commodity prices strengthen during the balance of FY16";
 - (b) "Meeting the FY16 forecast remains subject to certain assumptions including a material strengthening of commodity prices during the balance of FY16, foreign exchange and other risk factors as outlined in

the PDS. If these factors do not materialise, MG's FY16 Available Southern Milk Region FMP is more likely to be in the range of \$5.60 - \$5.90 per kgms and NPAT attributable to shareholders and unitholders between \$66 million to \$79 million"; and

- (c) *"MG will continue to monitor the situation closely and will update the market as soon as circumstances materially change. In the meantime, MG remains focused on executing its growth and value creation strategy to shift its product mix away from the volatility of commodity products to ready-to-consumer dairy foods".*

34 On 1 October 2015, MG and MGRE released MG's Annual Report for 2015 (**Annual Report**) and published it on MG's website.

35 The Annual Report included MG's Corporate Governance Statement (**Corporate Governance Statement**), which included the following statements:

- (a) *"Murray Goulburn is 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";*
- (b) *"As an unlisted public company and disclosing entity, Murray Goulburn Co-operative Co Limited has significant continuous disclosure obligations under the Corporations Act 2001";*
- (c) *"Following the listing of the MG Unit Trust on the ASX on 3 July 2015, MG Responsible Entity Limited (a wholly owned subsidiary of Murray Goulburn Co-operative Co Limited and responsible entity of the MG Unit Trust) also has significant continuous disclosure obligations under the Corporations Act 2001 and the ASX Listing Rules";*
- (d) *"It is expected that most of the information that will have a material effect on the price of units in the MG Unit Trust will relate to the performance and operation of Murray Goulburn"; and*
- (e) *"Therefore, Murray Goulburn has entered into a Continuous Disclosure Deed Poll undertaking:*

- (i) *that once it becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of units in the MG Unit Trust, Murray Goulburn will immediately notify its shareholders and MG Responsible Entity Limited;*
 - (ii) *to ensure that, while MG Responsible Entity Limited is a subsidiary of Murray Goulburn, MG Responsible Entity Limited complies with its continuous disclosure obligations".*
- 36 On 26 October 2015, MG and MGRE released the Managing Director's AGM Address to the ASX (**October Announcement**) and published it on MG's website.
- 37 In the October Announcement, Helou stated that:
 - (a) *"...we believe the FY16 PDS forecast of a \$6.05 per kgms Available Southern Milk Region FMP can be achieved, provided dairy commodity prices continue to materially strengthen during the balance of FY16. Meeting the FY16 forecast is subject to foreign exchange and other risk factors as outlined in the PDS; and*
 - (b) *if MG's expectations do not materialise, it is likely that:*
 - (i) *the Available Southern Milk Region FY16 FMP would be in the range of \$5.60 to \$5.90 per kgms*
 - (ii) *the FY16 NPAT attributable to shareholders and unitholders would be in the range of \$66 million to \$79 million....."*
- 38 On 29 February 2016, MG and MGRE released:
 - (a) MG's Interim Financial Report for the half year ended 31 December 2015;
 - (b) MG's Half Year Financial Results Presentation; and
 - (c) MG's Half Year Financial Results News Release,(together the **February Announcement**), and published it on MG's website.
- 39 The February Announcement included the following statements:

- (a) *"MG expects to maintain its opening Available Weighted Average Southern Milk Region FMP of \$5.60 per kgms with Southern Milk Region milk intake of approximately 230 million kgms or higher" (and accordingly expected the FY16 FMP to be \$5.60 per kgms);*
- (b) *"However, this is subject to there being no further material deterioration in dairy commodity prices or unfavourable changes to the current AUD:USD exchange rate. This is at the bottom end of the previous guidance provided and reflects the lack of improvement in global dairy commodity prices and the continued weak outlook for those prices"; and*
- (c) *"Under the Profit Sharing Mechanism, a \$5.60 per kgms milk price would be expected to generate for the full year FY16 NPAT attributable to shareholders and unitholders of approximately \$63 million".*

40 On 22 April 2016, MGRE requested a trading halt.

41 On 27 April 2016, MG and MGRE released an announcement titled "Trading Update and Revised Outlook" which stated, amongst other things, that MG expected its FY16 Distributable Milk Pool (DMP) to be approximately \$170 million to \$220 million lower than previously forecast, resulting in an FY16 FMP of between \$4.75 to \$5.00 per kgms, and that, applying the Profit Sharing Mechanism to the revised FY16 FMP, MG expected to achieve NPAT attributable to shareholders and unitholders of between \$39 million to \$42 million (April Announcement), and published it on MG's website.

F THE FORECASTING PROCESS

- 42 Throughout the period 1 July 2015 to 30 April 2016, MG prepared monthly "revised income forecasts" (RIFs) which were internal management documents which inter alia provided a monthly update of the company's forecast FMP and NPAT for FY16.
- 43 Each RIF aggregated the actualised results for the preceding months together with an updated forecast for the remaining months of the financial year based on the assumptions set out in each RIF.
- 44 Preparation of the monthly RIFs typically was complex and included the following steps when they were to be provided to the Board:

- (a) early in each month, each business unit provided to the finance team a submission containing their actualised results for the preceding months together with an updated forecast for the remaining months of the financial year;
- (b) the finance team checked to ensure submissions had been received from all business units and then consolidated the submissions to produce a consolidated draft RIF including (inter alia) MG's NPAT and FMP forecast for that financial year;
- (c) if necessary, the finance team sought explanations as to any major variances from the last RIF from the relevant business unit concerned;
- (d) the finance team and Hingle then met to discuss the business unit submissions and the consolidated draft RIF and from time to time, if necessary, Hingle required business units to review and resubmit their submissions;
- (e) the consolidated draft RIF was then revised as required and a further draft sent to Hingle;
- (f) once Hingle was satisfied with the draft RIF it was provided to relevant members of the ELT for review and approval. Any input from ELT members was taken into account and a final draft of the RIF was prepared; and
- (g) once approved by the ELT, the RIF was presented at the next Board Meeting.

If the RIF was not being provided to the Board (as was the position in July and December 2015 and January and March 2016), the RIF was not finalised in the way set out above and remained a draft internal working document.

- 45 Until December 2015, in FY16 each RIF typically contained three possible forecast "scenarios" or "cases" for the FMP and NPAT, referred to as the low case, mid case and high case and set out a range of forecast FMP and NPAT based on the low, mid and high cases. From December 2015 to March 2016, the RIFs were prepared with only one forecasted FMP and NPAT. The December 2015, the January 2016 and the February 2016 RIFs also contained a list of factors described as "risks and opportunities" or "upsides

and downsides" which identified (and quantified) possible negative and positive variations to the forecasted FMP and NPAT.

G SACHET FORECAST AND SALES

46 The minutes of the Board meeting held on 27 and 28 August 2015 stated that:

"The Board received a presentation on management's review of the impact of weakening commodities prices, strengthening of the US dollar and initiatives currently being undertaken to mitigate these impacts that highlighted the following....

- *a number of initiatives are being undertaken to mitigate the impact of the weakened commodity prices including maximising dairy foods production and sales and maximising nutritionals and cheese production while minimising commodity ingredients production".*

The August 2015 RIF provided to the Board stated that a key stream optimisation initiative (amongst others) was to maximise the budgeted sales volumes for sachets from 27,000 tonnes to a forecast of 36,000 tonnes.

47 By mid-October 2015:

- (a) there was, and MG was aware that there was, strong demand for sachets both domestically and internationally;
- (b) internationally, MG had had many enquiries for sachets over the past one and a half years which it had not been able to supply, because MG did not have the production capacity for sachets to meet the then demand;
- (c) major on-line platforms had approached MG directly in an attempt to ensure consistent supply of sachets; and
- (d) supplying sachets directly to China had required constraining and allocating production to the existing customer base in Australia.

48 From about November 2015, sachet sales and revenues forecast were to make a significant contribution to the financial performance of MG in FY16 and to MG meeting its forecasted FMP and NPAT for FY16.

49 The minutes of the Board meeting held on 24 November 2015 state that:

"The Board received a presentation on the current forecast for FY2016....The Board also noted:

- *an update on the optimisation initiatives intended to minimise the impact of lower than budgeted commodity prices and to drive higher value opportunities".*

50 The November RIF provided to the Board stated that *"Additional initiatives to drive higher value opportunities, moving volume away from ingredients"* included:

- *"Devondale Infant Formula launch from February.*
- *Co-Pack opportunities of Devondale bulk instantised powders for selected countries – Indonesia, Philippines & China.*
 - o *Instant powder sales 12,000mt low & mid case increasing to 24,000mt in high case. \$40m to \$80m margin;*
- *Targeting additional 3rd party contract providers to drive additional sales of Sachet powder."*

51 In order to quickly secure additional sachet supply to its customers and deliver maximum market output, in November and December 2015 MG put in place arrangements with third party packers for the production of an additional 18,000 to 20,000 tonnes of sachets in FY16. Up to that point in time (and continuing through to February 2016), sales of sachets by MG had been constrained by supply capacity. The increased packing capacity was expected to be fully in place and operational from late February/early March 2016.

52 On 16 December 2015, Hingle provided Helou with the December RIF which he said was *"for discussion at the Board meeting tomorrow".*

53 The December RIF stated that the volume of forecasted sachet sales for FY16 had been increased to 58,000 tonnes and was forecasted to deliver gross profit of \$150.3 million for FY16. It also stated that MG had *"Targeted a number of 3rd party packers"* and *"established 18kt to 20kt of additional packing capacity and capability"*. Achieving the sachet sales volumes of the targeted magnitude would involve developing MG's physical (as opposed to online) distribution channels for sales into China (commonly referred to as MG

as the "offline" channel) as well as increasing online sales. The "offline" channel consisted of the "bricks and mortar" stores in China, such as large supermarket chains.

- 54 On or about 11 January 2016, Hingle requested that sachet sales be reported to him on a weekly basis.

- 55 On 15 February 2016, Moncau emailed the ELT stating:

"...as per our discussions on Friday and today here below and attached some facts on the disappointing January and February performance of our Instant Milk Powder...

We understand this is a consequence of a price war in the market that is causing key distributors to reduce stocks with the expectation prices will keep going down. This situation negatively impacted us in January and is putting at risk our February results on Instant Milk Powder.

On top of that worth to mention that last week Costco didn't take all the product allocation, giving again a negative sign for the month.

If we can't get the orders on time to be delivered there's a potential risk of being 2,000 tons below latest Dairy Foods forecast in February.

We will initiate today a big pricing push to achieve our numbers and the desire to ramp up as soon as possible since consumption in China doesn't seem to be impacted yet. There's a risk though for February given the process could take longer than expected."

- 56 On 22 February 2016, Hingle received a weekly sachet forecast which stated that the forecasted sales for February (as at the 3rd week of February) were 2,477 tonnes, below the forecast for February of 4,560 tonnes (i.e. sales for the month were expected to be 2,083 tonnes below the forecast for February).

- 57 Later on 22 February 2016, Hingle forwarded the weekly sachet forecast to Moncau by email and said:

"Attached is the estimate of sachets for Feb. It is estimated at 54% of forecast for the month. I am assuming this is timing associated with Chinese New Year and we will recover this in the next months?"

58 On 23 February 2016, Moncau emailed Helou stating:

"we will miss the month [February] by at least 2,000 tonnes [of sachets]....

... We need to sign new regional distributors."

In his email, Moncau outlined the main reasons for not being able to achieve the forecast numbers being:

- (a) high stocks held by the biggest distributors;
- (b) increase in supply and availability from MG leading to more competitive prices; and
- (c) as a consequence distributors have stopped buying and focused on selling the available stock with the hope prices will go down,

and stated that:

"After Chinese New year we have pushed our distributors and new contacts, and customers want to buy again, but not fast enough to attain our February target. We're fine tuning the plan per customer based on the attached document.

After next 2 weeks we will have a clearer vision on where we are heading."

Attached to the email was a spreadsheet which listed existing and potential customers and the quantities of sachets which it was planned to sell to each of them.

59 On 23 February 2016, Helou responded to Moncau's email referred to at paragraph 58 above stating:

"Not good Albert Need to gain physical distribution. 3 months ago."

60 On 23 February 2016, Helou sent a further email in response to Moncau's email referred to at paragraph 58 above stating:

"I knew this will end up being the case.

We have lacked the capacity to sign up regional distribution deals...We need on shelf distribution in supermarkets across major cities in China. We haven't done that.

Time has beaten us, where we now have to chase the numbers!...We have to get more aggressive in our approach [sic].

Peter Scott is up there now and he must focus on this task. He shouldn't come back until he has put in place BIG and IMMEDIATE DEALS!!!

I am prepared to personally go up to China...and stay up there until we get deals in place.

We simply must place an incremental 4000 tons per month between now and June. China is a BIG place. We have had plenty of time to think about this. You and Peter MUST deliver the incremental!!!"

To which Moncau responded on the same day:

"Agree Gary. We will."

- 61 From at least 23 February 2016, MG prepared daily sachet sales reports. The daily sachet sales reports were not provided to all of the directors of MGRE or MG save for Helou who received them from 9 March 2016. Hingle received the daily sachet sales reports from 4 March 2016.

H THE FEBRUARY RIF

- 62 The February RIF was provided to the Board on 26 February 2016. It forecast a mid case FY16 FMP of \$5.62 and a mid case FY16 NPAT of \$63.7 million.
- 63 The February RIF was based on a number of assumptions, including that MG would sell 56,507 tonnes of sachets in FY16 (37,192 tonnes of which were forecast to be sold by Dairy Foods International from February to June 2016 at an average unit price of \$8.37 per unit). The sale of 56,507 tonnes of sachets was forecast to deliver a gross profit of \$162.2 million for FY16.
- 64 The February RIF contained the following tables with respect to the sachet forecast (inter alia):

Sachet Volume

Distribution Channel	Jul 15	Aug 15	Sep 15	Oct 15	Nov 15	Dec 15	Jan 16	Feb 16	Mar 16	Apr 16	May 16	Jun 16	Total	1H	1H
Corporate Brands	528	531	605	579	625	658	476	516	530	527	519	490	6,605	3,526	3,078
Devondale	887	1,019	868	1,354	1,219	1,664	1,245	1,579	1,708	1,598	1,653	1,663	16,444	7,009	9,435
Food Service	172	212	390	565	684	1,251	592	807	875	817	946	846	8,058	3,275	4,783
International Retail	135	143	260	692	395	1,072	495	1,658	5,276	5,235	5,270	4,769	23,400	2,696	22,704
Marketing	1,722	1,905	2,122	3,190	2,533	4,635	2,808	4,560	8,388	8,126	8,308	7,758	54,507	16,507	38,999

Sachet Powders H2 - Volume Sensitivity	-10,000MT	-8,000MT	-6,000MT	-4,000MT	-2,000MT
DMP Impact	(\$31,872)	(\$25,497)	(\$19,123)	(\$12,749)	(\$6,374)
FMP Impact	(\$0.14)	(\$0.11)	(\$0.08)	(\$0.06)	(\$0.03)

- 65 The "Sachet Volume" table above contains actual sales figures for the months of July 2015 to January 2016 (inclusive) and forecast figures for the months of February 2016 to June 2016 (inclusive).
- 66 The "Sachet Powders H2 – Volume Sensitivity" table above shows the potential impact on the DMP and the FMP of a decrease in sachet sales volume (as against the February RIF forecast) in 2,000 metric tonne increments (to the exclusion of all other risks and opportunities).
- 67 The February RIF stated that:
- (a) in the 7 months from July 2015 to January 2016, Dairy Foods International had sold 3,192 tonnes of sachets. (However, while not expressly stated in the February RIF, prior to January 2016, sachet sales had been constrained by sachet packing capacity);
 - (b) in the remaining 5 months, being February 2016 to June 2016, MG forecast that the Dairy Foods International division would sell 22,209 tonnes of sachets, which was reflective of increased sachet packing capacity being available;
 - (c) forecast gross profit from the sale of sachets in the period February to June 2016 was \$118.5 million;
 - (d) demand for sachet sales had softened in February due to the Chinese New Year;
 - (e) to achieve the forecast sachet sales for the full fiscal year (FY16) required the market to bounce back from late February through the remainder of the fiscal year; and
 - (f) given the sensitivities, full year guidance was expected to be around \$5.60/kgms to \$5.70/kgms; that there were a number of key initiatives

driving the full year estimate and that the greatest focus to mitigate downside risk was delivery of sachet volumes.

- 68 At the time the February RIF was prepared, MG management expected demand for sachet sales to rebound in March 2016 and the following months, after the softening in demand in February due to the Chinese New Year.
- 69 The February RIF also identified a number of potential risks and opportunities to the FMP, including in relation to sachet sales. It showed, by way of illustration in relation to sachets, that to the exclusion of all other risks and opportunities:
- (a) if sales of sachets in the period February to June 2016 were 7kt less than the forecast 37kt, this would have an impact to gross profit of - \$23.6 million and a FMP impact of -10 cents; and
 - (b) if opportunities were realised in relation to sachet sales so that 60kt of sachet sales were achieved in FY16, this would increase gross profits by \$9.6 million with a FMP impact of +4 cents.
- 70 At the Board meeting on 26 February 2016:
- (a) the February RIF was presented to the Board by Hingle in the presence of Helou and Moncau;
 - (b) a draft of the February Announcement was tabled to the Board in the presence of Helou and Hingle;
 - (c) the Board agreed to delegate authority to a sub-committee comprising the Chairman, Helou, the Finance, Risk and Audit Committee Chairman and the Compliance Committee Chairman to approve the February Announcement.
- 71 On 29 February 2016, the sub-committee approved the February Announcement for immediate release to the market.

I THE FEBRUARY ANNOUNCEMENT

- 72 On 29 February 2016, MG made the February Announcement which included the following statements:

- (a) *"For Dairy Foods International, revenue was also up strongly by 21.4 percent to \$83 million compared to 1H15. All markets delivered revenue growth, particularly Vietnam, Singapore and China. In China, MG's largest dairy foods export market, sales of consumer milk powders and cheese were up strongly compared to 1H15, supported by expanded grocery and online listings, cross border sales and a broadened distribution network that extends MG's reach to tier two and tier three cities across China".*
- (b) *"International Dairy Foods revenue continues to experience significant growth";*
- (c) *"Internationally, Dairy Foods sales growth of 21.4 percent was supported by a broadened distribution network and very strong demand for Devondale branded consumer milk powders. In particular, we are pleased to have advanced our Asian distribution strategy in this period by securing valuable supply agreements with major retailers and entering into joint business plans with global eCommerce platforms including JD.com and Tmall.com".*
- (d) *"Since issuing the PDS in May 2015... and again since MG's Annual General Meeting in October 2015, dairy commodity prices have continued to decline. Whilst MG and market commentators expect a recovery in dairy commodity prices, this is taking longer than expected due to the ongoing oversupply in global commodity dairy markets";*
- (e) *"The weakness in dairy commodity prices is now expected to result in the Ingredients and Nutritionals segment materially underperforming against the PDS forecasts in FY16. This underperformance is expected to be partially offset by the growth in the Dairy Foods segment resulting from the acceleration of production mix shifts and the expected strong performance of domestic and international ready to consume dairy foods product sales";*
- (f) *"MG expects to maintain its opening Available Weighted Average Southern Milk Region FMP of \$5.60 per kgms in FY16....However this is subject to there being no further material deterioration in dairy commodity prices or unfavourable changes to the current AUD:USD exchange rate. This is at the bottom end of the previous guidance and*

reflects the lack of improvement in global dairy commodity prices and the continued weak outlook for those prices"; and

- (g) *"Under the Profit Sharing Mechanism, a \$5.60 per kgms milk price would be expected to generate for the full year FY16 NPAT attributable to shareholders and unitholders of approximately \$63 million".*

J FEBRUARY SACHET SALES

73 As at 29 February 2016:

- (a) the daily sachet sales report for 29 February 2016 showed that for the month of February:
- (i) total sachet sales in Dairy Foods were 1,724 tonnes, below the forecast of 4,483 tonnes for the month in the February RIF;
 - (ii) total sachet sales in Dairy Foods International were 464 tonnes, below the forecast of 1,658 tonnes for the month; and
 - (iii) total sachet sales in Dairy Foods Domestic/Australia were 799 tonnes, below the forecast of 2,018 tonnes for the month.
- (b) MG had missed its forecast sales for sachets for January and February but planned and expected to make up these missed volumes between March and June 2016;
- (c) a large portion of MG's increased forecast for sachets that had been included in the December RIF (as referred to at paragraphs 52 and 53 above) had not been allocated to existing customers. The unallocated amounts were expected to be taken up by new and existing on-line distributors and new offline distributors in the period from March to June 2016;
- (d) sales of the forecast sachet volumes of 56,507 tonnes were considered to be an important contributor to MG achieving the forecast FMP of \$5.60 for FY16; and
- (e) MG did not have supply arrangements with major retailers in Asia for all the forecast sachet sales being produced in the remainder of FY16.

K MARCH SACHET SALES

74 In early March 2016, MG received interest for sachet sales from existing and potential new on-line distributors and progressed discussions with five regional offline distributors in China who were keen to establish "bricks and mortar" distribution in Beijing, Shanghai and Zhejiang respectively. At that time Peter Scott (MG's General Manager Sales – Consumer Brands) was in China meeting with potential offline distributors.

75 On 2 March 2016, Moncau sent an email to Helou stating:

"Just a short note to confirm that we have locked JD.com for 500t per month from now to June (at AUD\$7.85 CIF), and also 10 containers of UHT milk per month as part of the deal".

76 On 7 March 2016, Moncau spoke with Helou on the telephone. The following day, Helou emailed Moncau stating:

"I haven't received your Sachet volume note. I thought long and hard about your call last night, I'm more convinced now that our task is to get new physical retail distribution in new geographies. Cities. Accounts. Etc. This is what we MUST do. Do we have the right people to activate this button? Not just rotating Coles Ww and JD."

77 On 8 March 2016, Moncau emailed Helou stating:

"I'm working on the note Gary, I will send you a Low, Mid and High scenario for discussion. Concerning your below question we're set for the online business but not for the retail offline capillar distribution. The transition from Foodgears to other players is being difficult and we don't have a wide sales organisation in China. One of my goals next week is to get deep into this subject and see if we can find a player there to immediately help us...."

78 On 8 March 2016, Moncau sent an email to Helou, Hingle and the rest of the ELT members attaching a document entitled "Sachet Risk Profile" dated 8 March 2016 (March Sachet Risk Profile) and informing them that:

- (a) he had prepared a "detailed analysis of the risk profile of our latest Instant Milk Powder forecast" as discussed with Helou the day before;

- (b) he had prepared a "Low, Mid and High scenario view based on today's performance";
- (c) he had "looked at every single known opportunity and added some aspirational additional volumes to get to those Low and Mid scenarios, and will continue looking at opportunities of additional volume at different price points";
- (d) "Next Friday we're meeting TMall here in Melbourne, and next week I'll be in China to continue chasing opportunities, particularly the Master Kong one mentioned in a previous email";
- (e) "I would suggest the Mid Scenario is the more realistic, but if we want to maintain [sic] the volume our estimated price for higher volumes would be in line with domestic pricing, that is \$6.70 per kg," and
- (f) "I think it is important to highlight the risks now we better know the market appetite and we still have some time to react".

79 The "Mid Scenario" referred to in subparagraph 78(e) above set out a forecast of:

- (a) sales of 47,800 tonnes of sachets in FY16, stated to be a gap of 8,700 tonnes from the "Previous Forecast" (being a reference to the February RIF) of 56,500 tonnes; and
- (b) a corresponding gross profit of \$81.1 million in FY16, stated to be a gap of \$29.3 million from the "Previous Forecast" of \$110.4 million.

80 The March Sachet Risk Profile stated in part:

- "Initial estimates after 2 weeks of sales activity show a significant potential risk vs our previous forecast..."
- "We will continue chasing volume, particularly in the Offline Chinese market in order to achieve our latest forecast number, that is 56,500 tons."
- "The fact that our product is a hot item and also there's no stock shortage has brought retail price from 100 RMB 6 months ago to prices around 50 or 60 RMP [sic] today

- *Consumption level has not decreased but has not increased either*
- *Big players have used Chinese New Year to reduce stocks and now are more reluctant to be aggressive due to the price war. They don't see the opportunity to make as much money as they made before*
- *We have gained direct customers, but this has brought a reduction of the sales from Costco and others given those customers were buying to Costco before. We're gaining \$1.5 per bag on average for 2,000 tons (500 tons per month), but the volume is not additional*
- *We're well distributed Online but we're not well distributed offline. A big push is taking place during March to activate new Offline customers and promote our product in local stores, supermarkets and hypermarkets before June 18 big day".*

81 Under the heading "Next Steps", the March Sachet Risk Profile stated: "Get Offline Distribution in China" and "Get International opportunities materialized" and "Look for further opportunities to offset the potential loss".

82 On 8 March 2016, Helou responded to Moncau's email attaching the March Sachet Risk Profile from Moncau referred to at paragraph 78 stating:

"I understand the situation, but our task remains to activate direct distribution to off line retail outlets.

We were always going to struggle to place all that additional volume via existing online and cross border trade.

The challenge was and still is "new" direct customers in "new" geographies, "new" cities and "new" outlets.

We need to sign "new" distribution agreements.

To date we haven't done that.

I expect us to do so.

I will be doing so.

We can't walk away from 60kt."

- 83 Also on 8 March 2016, Helou sent an email to Mallinson stating inter alia that he was *"not convinced we pushed [sachet] sales hard enough"*.
- 84 On 9 March 2016, Hingle was informed that the draft March RIF had been "built around" the mid case in the March Sachet Risk Profile.
- 85 On 10 March 2016 Moncau sent an email to Helou referencing a meeting between Jeff Zhang, MG's Sales Director China and a potential distributor of MG sachets in China, on 10 March 2016, stating inter alia: *"Sense of urgency is there Gary, rest assured"*.
- 86 A Pre-Sales and Operations Planning meeting was held by MG on 11 March 2016 attended by senior managers and staff from MG's divisions including sales and production managers. The papers for that meeting were sent to the participants on 10 March 2016, including a "Pre-S&OP Review". In relation to sachet sales the "Pre-S&OP Review" stated that:
- (a) *"Sales of Sachet Powder where [sic] 2837 tonnes below forecast in February 2016 and expected to be approximately 3500 tonnes below forecast in March 2016"; and*
 - (b) *"Sales demand for Sachet Powder appears to be slowing down and a high (60k tonnes), medium (48k tonnes) and low (42k tonnes) cases business scenarios are being developed"*.
- 87 The minutes of the Pre-Sales and Operations Planning meeting held on 11 March 2016 were circulated on 17 March 2016 and record, inter alia, that:
- (a) Hingle and Moncau attended the meeting; and
 - (b) a new action item arising from the meeting for which Moncau had responsibility was to *"Confirm the FY16 Sales Forecast so that plans can be implemented at contract packers to reduce production in line with the sales forecast"*. The date by which the action was to be completed was 21 March 2016.
- 88 In the week commencing 14 March 2016, Moncau travelled to China, returning to Australia on or about 22 March 2016. The principal purpose of his trip was to sign additional "bricks and mortar" distributors in China to purchase sachets including in the period prior to the end of FY16 so as to achieve the targeted sachet sales of 60kt in FY16. In the period 15 March to 21 March 2016,

Moncau visited a number of Chinese distributors including thirteen distributors located variously in Hong Kong, Chengdu, Wuhan, Beijing, Guangzhou, Fuzhou and Shanghai.

89 On 18 March 2016, Hingle sent an email to Moncau stating:

"I know you are in numerous meetings, but when you have an opportunity, please can you send through an update of what volume and orders you expect to generate out of your trip.

Would like to get a more up to date understanding of the balance of year outlook".

90 On 19 March 2016, Moncau sent an email to Helou in which he stated that:

- (a) *"March looks much better than February and January but unfortunately the traction we're getting is not good enough to achieve our expected results. As you can see below we're aiming to get 3,000 tons this month, which means 1,500 tons short. We have still some opportunities we're discussing but it's a bit late to be able to get them shipped in March".* The reference to 3,000 tonnes was a reference to the forecast for the month of March for the Dairy Foods International division of 2,840 tonnes (being the forecast contained in the Low Case and Mid-Case in the March Sachet Risk Profile);
- (b) *"Bad news, and I'm very frustrated for that, but the market is a bit of a chaos these days due to pricing. Different reasons are causing this result:*
- *JD has moved to 49.90 RMB (10 AUD) pricing on daily offers and this is making our product less attractive for the grey market*
 - *There was enough stock in our customers' warehouse to continue supplying the demand without placing new orders*
 - *By finding new direct customers Costco and others have lost customers and we have just shifted volume*
 - *Our distribution is limited to cross-border, we have very limited offline distribution*

On this last point the discussions we started 4 to 5 months ago with potential new distributors seem to get to a conclusion. From this trip we have got confirmation of 2 distributors for the West provinces (Sichuan and Chongqing), another 2 for the centre provinces (Hubei, Henan and), and one for Beijing. Tomorrow we're in Guangzhou and Sunday in Fuzhou, so hopefully new customers will be added to our distribution network. We should see results of that expansion in April, and the team is working to size the opportunity. On top of that we keep using our existing Infant Formula distributors to sell sachets. We have mobilized 200 tons this month and we're planning to mobilize another 400 next month. And we also met some traders that need to give us an answer next week on how much they would be ready to buy.

We also met JD today. A lot of good news and good support for our Infant Formula. We're the biggest Food brand in sales in JD, which makes me think our sales of powder are pretty impressive yet. We can still grow, and we talked about June 18 big sales day. Tony calculated what would it mean to be one of the 20 promoted brands in JD that day, and the extra sales if we agree on the terms would be 240 tons. We will go for it, but at the same time it made me think and somehow confirms that the volumes we're targeting must be achieved outside the online channel.

Next week we have a meeting set with Walmart where we expect to get listed, so results are coming but don't know if fast enough to recover the volumes lost in the first quarter of 2016."

- 91 Later on 19 March 2016, and in response to Hingle's email of 18 March 2016 referred to in paragraph 89 above, Moncau forwarded his email that he sent to Helou at paragraph 90 above to Hingle (also copied to Helou) and stated (in part) in his covering email that:

"We're getting some order here and there from existing Distributors, and we're also getting alignment with big distributors in the different regions we're visiting (crossed fingers today we got a major one in Guangzhou!), so expectations are good for the months to come.

The balance of the year looks far from reaching the 57k tons. We're anyway still looking for trading opportunities, but there the price will be lower than what

we want so the contribution impact would be worse if at the end this volume replaces the volume we're targeting at 7.5 AUD average price.

I will still fight for the 57k, but I think it would be wise to use the mid case scenario [i.e the mid case scenario set out in March Sachet Risk Profile referred to in paragraphs 78 and 79 above] for our next forecast. We will lose 1,500 tons or more for March, and getting to a 8,000 level per month will be tough but I don't want to lower more our forecast, we need to keep believing in what we put and for that it has to be achievable. Maintaining 57k will mean including a lot of risk in our numbers if we take into account (1) last 2 month results, (2) the feedback from the market, (3) the lack of regional distributors today, and (4) the fact that our competitors (Nestle) are also reacting and defending its field."

- 92 On 21 March 2016, Hingle received an email from a senior member of the finance team which stated "NPAT scenarios based on variation in the sachet volumes attached" which attached a document titled "NPAT Scenarios" (NPAT Scenarios). The NPAT Scenarios document forecasted the FMP and NPAT for FY16 on the basis of 7 different assumed sachet sales volumes as follows:

Available Weighted Average Southern Milk Pool	Scenarios						
	Sachet Vol 85,000	Sachet Vol 90,000	Sachet Vol 95,000	Sachet Vol 47,635	Sachet Vol 52,760	Sachet Vol 55,220	Sachet Vol 60,000
NPAT attributable to Unitholders and Shareholders - \$000s	48,523	50,489	52,748	54,175	55,313	57,663	60,055
Available Weighted Average Southern Milk Pool FMP - \$/kgms	\$ 6.21	\$ 6.27	\$ 6.33	\$ 6.37	\$ 6.40	\$ 6.46	\$ 6.52

- 93 On 21 March 2016, Hingle received an initial draft RIF analysis from a member of the finance team which estimated a "ball park" FMP of \$5.32 on the basis of the forecast information contained in the analysis (some of which was still under investigation) including sachet sales in accordance with the "Mid Scenario" of the March Sachet Risk Profile.
- 94 Later that day, Hingle received a further draft of the document referred to in paragraph 93 above which was still estimating a "ball park" FMP of \$5.32.
- 95 On 21 March 2016, Hingle received an initial draft of the March RIF from a member of the finance team, which on the basis of the assumptions set out in the draft RIF, including sachet sales in accordance with the "Mid Scenario" of the March Sachet Risk Profile, forecast an FY16 FMP of \$5.38 and FY16 NPAT of \$54.6 million. The draft March RIF indicated that other parts of MG's

business apart from sachets were underperforming and were contributing to the lower forecast FY16 FMP and FY16 NPAT.

- 96 On or about 22 March 2016, Moncau returned from China. Notwithstanding his meetings with various Chinese distributors over the period between 15 March and 21 March 2016 as referred to in paragraph 88 above, Moncau had been unable to conclude new distribution arrangements under which sufficient sachets would be sold and shipped to China before the end of FY16 to meet forecast sales for FY16.
- 97 Also on 22 March 2016, Hingle, Helou, Moncau and others received the daily sachet sales report for 21 March 2016 which showed that:
- (a) the month to date sales volume for sachets was 1,138.8 tonnes, against the forecast for the month of 8,366.4 tonnes;
 - (b) the month to date gross sales revenue for sachets was \$8.27 million, against the forecast for the month of \$67.97 million; and
 - (c) the projected month end results were:
 - (i) 1,752 tonnes, against the forecast for the month of 8,366.4 tonnes; and
 - (ii) \$12.72 million, against the forecast for the month of \$67.97 million.
- 98 On 22 March 2016, Hingle received a further draft of the March RIF from a member of the finance team, which on the basis of the assumptions set out in the draft RIF, including sachet sales in accordance with the "Mid Scenario" of the March Sachet Risk Profile, forecast an FY16 FMP of \$5.32 and an FY16 NPAT of \$52.4 million.
- 99 As at 22 March 2016, the following facts (the **March 22 Facts**) were known to Hingle and Helou:
- (a) sachet sales for the month of March to date were tracking significantly below forecast sales for the month of March;

- (b) the planned and expected rebound in sachet sales in the month of March 2016, following below forecast sales in each of January and February 2016, had not occurred;
- (c) sales of the forecast sachet volumes of 56,507 tonnes for FY16 was considered to be an important contributor to MG achieving the forecast FY16 FMP of \$5.60;
- (d) sachet sales for FY16 were tracking significantly below forecast sales volumes of 56,507 tonnes;
- (e) sachet sales gross sales revenue for FY16 was tracking significantly below forecast sachet sales gross revenue for FY16;
- (f) achieving 56,507 tonnes of sachet sales in FY16 was substantially dependent upon MG concluding new distribution arrangements under which sachets would be sold and shipped to China before the end of FY16; and
- (g) notwithstanding MG's attempts to do so, new distribution arrangements under which sufficient sachets would be sold and shipped to China before the end of FY16 to meet forecast sachet sales for FY16 had not yet been concluded by MG.

L INFORMATION REQUIRED TO BE NOTIFIED TO THE ASX

- 100 As at 22 March 2016, it was a consequence of the March 22 Facts (when taken collectively and in combination) that MG was unlikely to achieve the forecast FY16 FMP of \$5.60 per kgms and full year FY16 NPAT attributable to shareholders and unitholders of approximately \$63 million, as stated by MG and MGRE in the February Announcement (the Material Information).
- 101 As at 22 March 2016:
- (a) MGRE was "aware" (within the meaning of Listing Rules 3.1 and 19.2) of the Material Information, by reason of Helou and Hingle having knowledge of each of the March 22 Facts at that time;
 - (b) the Material Information was not generally available;

- (c) the Material Information comprised information that a reasonable person would have expected, if it had been generally available, to have had a material effect on the price of the Units, within the meaning of section 674(2) and section 677 of the Act; and
- (d) the Material Information comprised information that was required to be notified to the ASX by MGRE under ASX Listing Rule 3.1 and s674(2)(b) of the Act.

102 Between 22 March and 27 April 2016, MGRE did not notify the ASX of the Material Information. At 8:48am on 27 April 2016 (prior to the commencement of trading), MGRE released the April Announcement, which disclosed the substance of the Material Information (along with other information).

M EVENTS AFTER 22 MARCH 2016

- 103 On 23 March 2016, the Board of MG had a Strategy Day. The March RIF was not presented to the Board of MG at the Strategy Day. At the Strategy Day the Board of MG, requested a fortnightly update on the progress of sales of sachet powders.
- 104 On 24 March 2016, Moncau provided Helou with a regional distributor map of China which identified the provinces he had visited during his recent visit to China, the potential customers he had met with and the potential volume of sachets which he estimated could be sold to each potential customer in the remainder of FY16. The estimated sales to these potential customers totalled 6,000 tonnes.
- 105 As at the end of March 2016, new distribution arrangements, under which sufficient sachets would be sold and shipped to China before the end of FY16 to meet forecast sales for FY16, had not yet been concluded by MG.
- 106 On 29 March 2016, MG met with Asipac Corporation Pty Ltd (Asipac) and commenced discussions for the acquisition of potentially large quantities of sachets and UHT with possible exclusive rights to distribution in China. These discussions continued into April 2016.
- 107 On 31 March 2016, Helou and Hingle received a daily sachet report which showed that:

- (a) the month to date sales volume for sachets was 2,005.6 tonnes, below the forecast for the month of 8,366.4 tonnes; and
 - (b) the month to date gross sales revenue for sachets was \$15.078 million, below the forecast for the month of \$67.97 million.
- 108 As at 31 March 2016, MG had sold 4,256 tonnes of sachets since 1 February 2016, below the 12,948 tonnes that had been forecast for February and March 2016 according to the February RIF.
- 109 On 31 March 2016, a member of the finance team sent an email to Hingle stating *"we need above AUD \$9 on the appx 8.9k mt of sachets that we've fallen behind the 7+5 RIF"*.
- 110 In late March 2016, MG's Group Finance division was requested by Hingle to prepare a memorandum for the Board *"to identify what options MG have under the Profit Sharing Mechanism Deed for determining the year end Farmgate Milk Price (FMP) to Suppliers and NPAT distribution to Shareholders and Unitholders"* in the event that the FMP for FY16 was less than the Opening Price.

N APRIL SACHET SALES

- 111 From the beginning of April 2016, MG was in negotiations with Asipac in relation to the potential purchase by Asipac of a large quantity of sachets and UHT milk.
- 112 On 7 April 2016, Hingle received a draft of the paper referred to at paragraph 110 which stated that *"the 8+4 RIF has forecast a year-end FMP of \$5.33, below the opening milk price of \$5.60 and therefore if this became the final FMP payable to Suppliers it would require MG to reduce payments to Suppliers in May and June to ensure the actual cash paid equalled the forecast FMP of \$5.33"*.
- 113 On 9 April 2016, MG and Asipac were in advanced negotiations for Asipac to buy 23,000 tonnes of sachets at a price of \$7.60 per kg and \$60 million of UHT in the remainder of FY16.
- 114 On 12 April 2016, Hingle received a draft April RIF (draft April RIF) which:

- (a) incorporated the potential sale of 23,000 tonnes of sachets to Asipac at the agreed price of \$7.60 per kg; and
- (b) forecasted a resulting FMP of \$5.33 and a resulting NPAT of \$52.4 million.

115 On 12 April 2016, Smith sent an email to the directors of MG and MGRE attaching an update on the progress of sales of sachet powders, and advising the directors that a further update would be provided at the April Board meeting. The update stated inter alia:

"March month sales volume lower than forecast by 5.7kt, mainly as a result of slower than anticipated distribution arrangements in place. As a result of lower volume and sales prices Gross Profit adverse to forecast by \$20m. Positive development in week 1 April with new distribution arrangement into China being finalised for 23kt Sachet volume for Q4 FY16. ... In process of finalising arrangements and will update the Board at the April Board meeting."

116 On 13 April 2016, Hingle forwarded the draft April RIF to Helou informing him that the draft April RIF included the sachets under the proposed Asipac agreement.

117 On 19 April 2016, an April RIF (19 April RIF) was provided to the Board. The 19 April RIF stated inter alia in relation to sachet sales that:

- *"Previously forecast 57kt sachets. Slower offtake in Feb and March has impacted full year projection."*
- *In process of finalising China distribution for Apr to June with 23kt of the 27kt forecast for balance of year supply to China;*
- *Management require further analysis over the next 2 weeks to better understand:*
 - *Performance of April month, in particular final sachet shipments;*
 - *Agreement of terms and contracts for Sachet sales for May/June with agreed pricing.*
- *Propose to revert to Board on 6 May, following performance of April, with a definitive range for FY16 outlook."*

118 At the Board meeting on 19 April 2016, amongst other things:

- (a) the Managing Director provided an update on forecast sachet sales including progress being made on a 24,000 tonne distribution contract to China (being a reference to the proposed arrangements with Asipac); and
- (b) the Board requested management to undertake urgent further analysis to better understand final sachet shipments in April, expected contract sales for May and June, infant formula sales into both domestic and Chinese markets and the impact of an increase in promotional activities for domestic consumer markets for May and June in order to assess the impact, if any, on the current forecast.

119 On 22 April 2016, MGRE requested a trading halt and the Units were placed into trading halt until the commencement of trading on 27 April 2016.

120 Between 19 April and 24 April 2016, MGRE undertook a detailed further analysis, including in relation to sachet sales, as requested by the Board on 19 April 2016.

121 At the next Board meeting on 24 April 2016:

- (a) a revised April RIF (24 April RIF) was provided to the Board. The 24 April RIF stated amongst other things that:
 - (i) "Sachet full year sales forecast of 28kt to 44kt"; and
 - (ii) the estimated FMP for FY16 was in the range \$4.75 to \$5.05.
- (b) The Board noted, amongst other things:
 - (i) *"the expected full year forecast for sachet powder, together with management's explanation for the variance compared to the forecast advised in February (with a total negative impact of \$72.7 million based on the 'likely case'), including:*
 - o *a slower than expected build up of the distribution network in China;*
 - o *lower demand over the Chinese new year period;*

- o *confusion arising from the recent announcement of regulatory changes in China;*
- (ii) *"detailed breakdown of sachet forecast by customers in China for the remainder of the year with a likely and low scenario case"; and*
- (iii) *"flow on impact of lower sachet sales impacting the NRV with a negative variance of \$54 million".*

122 On 27 April 2016, MG released to the ASX and published on its website:

- (a) the April Announcement which, as set out in paragraph 123 below, included an announcement of an expected FY16 FMP and NPAT; and
- (b) an announcement that:
 - (i) *"...Managing Director, Mr Gary Helou, will step down from his role, but remain with the company for a short period to assist with the transition to an interim Chief Executive Officer..."; and*
 - (ii) *"...Chief Financial Officer, Mr Brad Hingle has resigned from his position following Mr Helou's decision to step down as managing director but will remain in the business to assist with the finalisation of the FY16 annual results".*

O TRADING ON 27 APRIL 2016

123 At 8:48am on 27 April 2016, MG released the April Announcement to the ASX and at about the same time published the April Announcement on its website. The April Announcement disclosed MG's expected FY16 FMP and NPAT of \$4.75 to \$5.00 and \$39 million to \$42 million respectively. The primary driver of MG's revised FY16 FMP was stated to be lower than expected adult milk powder sales in China.

124 The closing price of Units of the MG Unit Trust on 21 April 2016 prior to the trading halt on 22 April was \$2.14. Following the April Announcement on 27 April 2016, the price opened at \$1.50 (29.9% lower than the closing price prior to the trading halt) and closed that day at \$1.24 (42.06% lower than the closing price prior to the trading halt). The volume of Units reported as traded

on ASX and Chi-X on 27 April 2016 was approximately 21,203,529 significantly above the 30 day moving average of 818,500 Units.

- 125 During the period from 22 March to 26 April 2016 (inclusive), approximately 17 million Units in the MG Unit Trust were reported as traded on ASX and Chi-X with a value of \$36.7 million (calculated on the basis of volume x VWAP).

PART 2 - ADMISSIONS

P ADMITTED CONTRAVENTION

- 126 MGRE admits that it contravened section 674(2) of the Act on and from 22 March 2016 continuing until 8:48am on 27 April 2016, by failing to notify the ASX of the Material Information.
- 127 MGRE admits that the contravention was "serious" within the meaning of section 1317G(1A)(c)(iii) of the Act.

PART 3 - OTHER AGREED FACTS RELEVANT TO RELIEF

Q MG's SIZE AND FINANCIAL POSITION

- 128 MG:
- (a) is one of the largest co-operatives in Australia;
 - (b) is one of the largest milk processors in Australia, receiving approximately 20% of milk produced in Australia.
- 129 As at 30 June 2016, MG's:
- (a) consolidated sales revenue in FY16 was \$2.8 billion;
 - (b) profit for FY16 was \$39.8 million;
 - (c) net assets were approximately \$1.2 billion;
 - (d) number of issued shares was 205,300,338;
 - (e) market capitalisation was approximately \$223,777,368 (based on a closing price of \$1.09).
- 130 As at 30 June 2017, MG's:

- (a) consolidated sales revenue for FY17 was \$2.4 billion;
- (b) loss for FY17 was \$370.8 million;
- (c) net assets were approximately \$0.74 billion;
- (d) number of issued shares was 205,979,213;
- (e) market capitalisation was approximately \$132,856,592 (based on a closing price of \$0.645).

R MGRE'S CONTINUOUS DISCLOSURE POLICY

131 At all material times, MGRE had two policy documents in force at the relevant time in relation to continuous disclosure:

- (a) titled "Market Disclosure and Communications Policy"; and
 - (b) titled "Continuous Disclosure - Referral Information"
- ("collectively the **Continuous Disclosure Policy**")

132 MGRE's policy titled "Market Disclosure and Communications Policy" provided that:

- (a) MG and MGRE will, subject to the exceptions set out in the ASX Listing Rules, immediately notify the market of any information it becomes aware of which is not generally available and which a reasonable person would expect to have a material effect on the price or value of its securities, by announcing the information to the ASX.
- (b) MG and MGRE appreciate the importance of timely and adequate disclosure and is committed to effective communication with its shareholders, unitholders, market participants and other stakeholders so as to give them ready access to balanced and clear information in relation to MG and MGRE and MG Unit Trust (as applicable).
- (c) the Managing Director had established a Disclosure Committee which was responsible for, amongst other matters, ensuring that MG and MGRE complied with their continuous disclosure obligations. The Disclosure Committee comprised the Managing Director, Company Secretary/General Counsel, Chief Financial Officer, Executive General

Manager – Shareholder Relations and Executive General Manager – Business Operations;

- (d) the role of the Disclosure Committee included amongst other things that it would:
- (i) ensure that adequate processes and controls are in place for the identification of material information and the release of disclosable information;
 - (ii) review material information and determine whether it must be disclosed to the market; and
 - (iii) oversee compliance with relevant continuous and periodic disclosure obligations.
- (e) the Disclosure Committee appointed a Disclosure Officer for each of MG's key business units and functions, who were responsible for ensuring all material information relevant to their respective areas was reported internally and where necessary referred to the Disclosure Committee for consideration from a continuous disclosure perspective.

- 133 The Continuous Disclosure Policy also set out in relation to "Finance and accounts" the types of matters that were to be referred to the Disclosure Committee and included:

"A variation/change greater than 5% between

- *the internal financial forecast and external market expectations;*
- *the financial forecast or expectation previously disclosed to the market, which is greater than 5%; and*
- *other projections and indication previously given to the market"*

- 134 The Continuous Disclosure Policy required among other things that each Disclosure Officer certified on a monthly basis that no matters of the type requiring disclosure to the market had occurred during the relevant month.

- 135 Helou and Hingle were members of the Disclosure Committee in the period 1 January 2016 to 27 April 2016. The Disclosure Committee did not meet during 1 January 2016 to 27 April 2016.
- 136 During FY16, several Disclosure Officers had on a number of occasions:
- (a) failed to certify on a monthly basis as required by the Continuous Disclosure Policy whether matters of the type that required disclosure to the market had occurred during the relevant month; or
 - (b) provided certificates in relation to the relevant month, two or three months after the certification was due under the Continuous Disclosure Policy.
- 137 Continuous Disclosure was not listed as an agenda item at Board Meetings of MG or MGRE in the period 1 January 2016 to 27 April 2016.
- 138 Since 27 April 2016, MG has reviewed and made a number of changes to its policies and procedures in relation to the company's disclosure practices; including:
- (a) establishing Internal Guidelines which contain further guidance for employees on the application of the continuous disclosure obligations under the ASX Listing Rules, the exceptions to the rule, the internal continuous disclosure procedures, and examples of material information;
 - (b) streamlining internal processes including making ELT members the guidance officers responsible for ensuring that the internal reporting procedures for their business unit or function are adequate for timely reporting of all material information;
 - (c) the topic of continuous disclosure being a standing agenda item for each meeting of the Board and the ELT (both weekly and monthly meetings); and
 - (d) further guidance on communications with investors and other stakeholders.
- 139 The Board and the ELT have changed since the contravention. As set out above, both Helou (the former MD) and Hingle (the former CFO) have

resigned. Only 1 of the 13 directors at the time of the contravention, remain on the Board as at today's date. Only one of the ELT, of the 7 members at the time of the contravention, remains on the ELT as at today's date.

S EXTENT OF PREJUDICE TO PERSONS TRADING UNITS

140 Persons who traded in Units in the period from 22 March 2016 to 8:48am on 27 April 2016 may have been materially prejudiced as a result of MGRE's contravention.

141 There was a material decline in the Unit price on 27 April 2016 (see paragraphs 123, 124 above and 142 below). However, there are a range of factors, in addition to the disclosure of the Material Information, which are likely to have affected the Unit price on that day.

142 ASX and Chi-X data is set out in the table below:

Murray Goulburn trading data								
Date	Open	High	Low	Close	Volume (m)	VWAP	Value (Volume x VWAP) (\$m)	Market cap (\$m)
22 March 2016	2.29	2.34	2.27	2.34	1.904	2.31	4.39	482.43
23 March 2016	2.33	2.34	2.30	2.3	0.456	2.32	1.06	474.18
24 March 2016	2.3	2.33	2.25	2.28	1.498	2.30	3.44	470.06
25 March 2016	0	0	0	2.28	0.000	0.00	0.00	470.06
28 March 2016	0	0	0	2.28	0.000	0.00	0.00	470.06
29 March 2016	2.27	2.28	2.20	2.26	0.237	2.24	0.53	465.93
30 March 2016	2.26	2.26	2.21	2.23	0.491	2.24	1.10	459.75
31 March 2016	2.26	2.285	2.22	2.28	0.225	2.26	0.51	470.06
1 April 2016	2.28	2.28	2.22	2.25	0.225	2.25	0.51	464.62
4 April 2016	2.25	2.26	2.21	2.21	0.316	2.23	0.70	456.36
5 April 2016	2.24	2.25	2.21	2.25	0.381	2.24	0.85	464.62
6 April 2016	2.23	2.27	2.20	2.27	0.258	2.23	0.58	468.75
7 April 2016	2.27	2.29	2.22	2.26	0.372	2.27	0.84	466.69
8 April 2016	2.26	2.26	2.22	2.22	0.242	2.24	0.54	458.43
11 April 2016	2.22	2.22	2.10	2.19	0.879	2.16	1.89	452.23
12 April 2016	2.12	2.12	1.99	2.01	3.116	2.03	6.32	415.06
13 April 2016	2.04	2.08	2.00	2.03	2.163	2.04	4.41	419.19
14 April 2016	2.05	2.18	2.02	2.14	0.785	2.10	1.65	441.91
15 April 2016	2.15	2.16	2.10	2.12	0.459	2.14	0.98	437.78
18 April 2016	2.16	2.2	2.13	2.17	0.736	2.17	1.60	448.10
19 April 2016	2.18	2.195	2.15	2.18	0.995	2.17	2.16	450.17
20 April 2016	2.19	2.19	2.11	2.15	0.412	2.15	0.89	443.97
21 April 2016	2.1	2.14	2.08	2.14	0.807	2.12	1.71	441.91
22 April 2016	0	0	0	2.14	0.000	0.00	0.00	441.91
25 April 2016	0	0	0	2.14	0.000	0.00	0.00	441.91
26 April 2016	0	0	0	2.14	0.000	0.00	0.00	441.91
27 April 2016	1.5	1.5	1.24	1.24	21.204	1.36	28.73	256.06

* These figures are calculated from reported information regarding trading on ASX and Chi-X. VWAP means volume-weighted average price.

T LACK OF AWARENESS OF THE BOARD APART FROM HELOU

- 143 The documents referred to in paragraphs 92 to 95 and 98 above were not provided to the boards of MG or MGRE.
- 144 The March Sachet Risk Profile and the documents referred to in paragraphs 90 to 91 and 97 above were not provided to any of the directors of the boards of MG or MGRE apart from Helou.
- 145 As at 22 March 2016, the directors on the boards of MG and MGRE (apart from Helou) were not aware of all of the March 22 Facts and as a

consequence MG or MGRE did not believe or hold the opinion that the forecast FY16 FMP of \$5.60 per kgms and full year FY16 NPAT attributable to shareholders and unitholders of approximately \$63 million were unlikely to be achieved.

U COOPERATION WITH ASIC

- 146 MGRE and MG have cooperated fully with ASIC in its investigations in relation to MGRE's possible contraventions of the Act. Further, MGRE has admitted it contravened the Act, as set out in paragraphs 126 to 127 above.