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Freyja Phillips
Project Manager
Regulation Branch
Commerce Commission
PO Box 2351
Wellington 6140

By email: regulation.branch@comcom.govt.nz

Miraka Submission to the Commerce Commission Draft Report (14 October 2016): Review of Fonterra's 2016/17 Milk Price Manual

1.0 Introduction

1.1 The Commission performs two reviews concerning the Base Milk Price each year: a review of the Farm Gate Milk Price (FGMP) Manual, and a review of the Base Milk Price calculations (assumptions, processes etc.). Interested parties are invited to submit on process papers and on draft reports. The timing of these processes and of publication of draft and final reports results in a "leap-frogging" of submissions, draft reports and final reports. This makes it difficult to maintain the thread of issues between submissions, draft reports, final reports, and successive annual review cycles. It can also result in a long slow process before issues are addressed and resolved.

1.2 Against this background, in this and future submissions, Miraka will include an appendix of "carried forward" submissions. This will summarise submissions which Miraka considers remain outstanding, or where the Commission does not appear to have addressed the substance of the submission. Appendix B in this latest submission accordingly includes submissions carried forward from the Miraka submission on the Commission's draft report on the 2015/16 Milk Price Calculations. The Commission has since provided its Final Report on the 2015/16 Milk Price Calculations including responses to submitters. This is the first opportunity Miraka has had to follow up on the Commission responses.

1.3 A purpose of presenting these to the Commission at this time is to try to reduce the process iterations in getting issues addressed. The Commission has not called for this submission and Miraka understands the Commission will consider this "carry forward" submission at its discretion. Some of the issues in the "carry forward" submission are however relevant to Miraka's submission on the Commission's latest draft paper on the 2016/17 FGMP Manual.

2.0 Miraka Submission on the 2016/17 FGMP Manual

2.1 Appendix A addresses the Commission responses the Miraka submission on the FGMP Manual. This includes requests that the Commission give further consideration to the Miraka submission.

3.0 WACC/Asset Beta

3.1 The Commission has noted it is looking for quantitative information from independent processors to assist in its further review of the asset beta. Miraka welcomes this review. Miraka will respond to this request for information when the Commission outlines its process for the review of the 2016/17 Milk Price Calculations.

3.2 To date, despite numerous reviews, the Commission has been unable to confirm the practical feasibility of the Notional Producer WACC. In the interim, Miraka considers the WACC has been understated and the milk price has accordingly been inflated. Miraka now seeks that this issue be resolved as a top priority before the milk price for the current season is finalised. To avoid stalemate again at year end, every opportunity should be taken to progress outstanding issues as early as possible. Miraka especially draws attention to the issues outstanding from section 3.0 of its submission on the 2015/16 milk price calculations (see Appendix B). Consideration of that Miraka submission does not depend on the review of milk price calculations. Miraka requests it now be addressed in the Commission's final report on the 2016/17 Milk Price Manual (noting the scope of the report includes "issues arising from our 2015/16 calculation review (including submissions)".

4.0 Off-GDT Sales

As noted, Appendix A summarises the further responses Miraka requests from the Commission on issues it raised in its submission on the 2016/17 FGMP Manual. The remainder of this section concerns new material in the Commission's draft report.

4.1 Fonterra Explanation for Changes to the Manual

4.1.1 In Table 4.1 of the of the Draft Report, the Commission replicates the Fonterra explanation and reasons for those changes to the FGMP Manual concerning off-GDT sales. The Commission does not comment on the Fonterra explanations, and leaves the impression that it accepts the explanations as authoritative. In referring to the change in Part C page 62 of the Manual (expanding use of off-GDT for determining WMP, SMP and AMF revenues of the Notional Producer), Fonterra has justified this change on the grounds that "previous approaches are not consistent with the milk price principles". This explanation is glib and does not satisfy DIRA Section 150A.

4.1.2 The "previous approaches" referred to are that WMP, SMP and AMF prices were set exclusively from GDT sales. The milk price principle referred to seems most likely to be Principle 2, or is possibly Principle 1 – we are left guessing. Turning to Principle 2, the second bullet point requires that revenue for the Notional Producer should be determined as if "Fonterra … processed that milk into commodity products which were sold on freely-contested global markets". GDT is however a "freely contested global market". Accordingly it cannot be said that the "previous approaches" were not consistent with Principle 2. Principle 1 is more broadly defined. It needs to be considered in full. It states:

"The Farmgate Milk price for a Season should reflect the benefits that arise from the *collective selling power* of *Shareholders as suppliers* from scale and other economies Fonterra enjoys in production and sales. The Principle reflects an important reason why Fonterra is a co-operative – *to ensure that benefits arising from the collective selling power of farmers working together flow through into a higher farm-gate milk price*". [Emphasis not in the original].

4.1.3 Principle 1 is a recognisable and understandable basic principle for a co-operative. It is not however compatible with the DIRA Section 150A. It mixes the role of supplier and shareholder; and it attributes the benefits of market power to the "shareholder as supplier" through a "higher farm-gate milk price". Miraka has previously submitted that Principle 1, which replicates the Fonterra constitution, is not compatible with the DIRA. Principle 1 also illustrates a much referenced issue by Miraka that Fonterra would not be reluctant to mingle shareholder returns with the milk price. Miraka also notes the Milk Price Principles contain nothing which matches the Section 150A contestability principle.

4.1.4 Miraka submits that where the Commission replicates Fonterra explanations, it needs to clarify its view on the adequacy of those explanations (do they comply with the DIRA?). Along with the submissions already made on the FGMP Manual (Appendix A), Miraka submits the above discussion is further evidence that there is no proper or DIRA compliant explanation for the change in policy to expand the use of off-GDT sales. Fonterra seems to have taken a superficial and somewhat evasive approach to accounting for this change. Miraka requests the Commission consider this further in its final report.

4.2 Fonterra has provided further information on off-GDT sales

The Commission notes that Fonterra has confirmed certain further information concerning the inclusion of off-GDT sales. This further information raises more questions than answers:

4.2.1 SSP equivalent price/yield adjustments:

At paragraphs 53 to 55, the Commission questions the impact that off-GDT sales might have on yield assumptions where Reference Commodity Products (RCPs) differ from the Standard Specification Product (SSP). Previously at paragraph 46.1, the Commissions advises that Fonterra had confirmed "product specifications of off-GDT qualifying sales do not vary materially from GDT specifications". That seemingly responds to a comment in the Commission's final report on the 15/16 calculations questioning if there are any significant difference in specifications between products sold on and off GDT (paragraph 4.17.3).

4.2.2 The issue of price and yield adjustments for RCPs which differ from the SSP (SSP equivalent price/yield adjustments) should already have been fully transparent to the Commission. The issue already exists and most especially with IWMP sales in the WMP group. Given the WMP group is very large, and IWMP sales must be assumed to be similar to RWMP sales[1], the SSP equivalent adjustments for IWMP sales should be

[1] RWMP is the SSP for the WMP RCP. Unfortunately GDT does not make available the separate sales volume by each GDT seller, much less the sales of each product specification of each supplier. The GDT volume of each

material, and transparent to the Commission. Miraka has always assumed these adjustments were a normal part of the price calculation process, that the Commission had reviewed them, and that the calculations were practically feasible. This now seems doubtful. Miraka requests the Commission review the SSP equivalent price/yield adjustments to assess practical feasibility. Miraka would expect that review to be part of the 2016/17 Milk Price Calculations review. Miraka also supports the Commissions comment (paragraph 55) that Fonterra should make available supporting information showing the method and effect of SSP equivalent adjustments.

4.3 Off-GDT sales do not impact GDT Auction Prices

Fonterra has advised the Commission that "using off-GDT sales … allows larger customers to make substantial orders without impacting on the GDT auction prices"[2]. Without further explanation, this statement is disturbing. It is unclear whether this is providing a justification for including off-GDT sales in the milk price calculations (and if so what is that justification), or if this explains a selection criteria for including certain off-GDT sales. Most importantly, Fonterra needs to explain what "impact on GDT auction prices" is being avoided by these large sales to large customers. Miraka requests the Commission to clarify this in its final report.

4.4 Criteria for determining off-GDT Sales to Inform the Milk Price

The Commission has recommended that Fonterra provide explicit criteria for determining the inclusion of off-GDT sales (paragraph 47). At table 4.2 the Commission provides the high level decision criteria that Fonterra has supplied in the interim. The criteria shed very light. This is symptomatic of Fonterra's lack of transparency with this major change in policy. Assuming Fonterra proceeds with this change in policy and in the absence of a substantial change in Fonterra approach to this matter, Miraka considers the credibility of the milk price will be materially damaged.

4.5 Independent Processor Information on RCP Prices

At paragraph 49 the Commission indicates it would "welcome information relating to RCP prices received by independent processors". This is to assist the Commission in the quantitative analysis it intends to perform to determine practical feasibility of including off-GDT prices in the milk price calculation. In its previous submission, Miraka has submitted that the use of off-GDT prices as proposed is not practically feasible (aggregate assessment), is not compliant with the FGMP Manual, and has not been shown to be complaint with the DIRA. Consistent with that position, Miraka does not consider it appropriate or necessary to provide selling price information to the Commission at this time.

Miraka would welcome an opportunity to discuss this submission with the Commission.

Richard Wyeth
Chief Executive Officer
Miraka Ltd

Fonterra product sold on GDT must therefore be deduced from product availability data and is therefore only an estimate.

[2] Draft report paragraph 46.2

Appendix A – Miraka Submission on the 2016/17 Farm Gate Milk Priced Manual – Feedback on Commission's Response in the Draft Report, Review of the 2016/17 FGMP Manual

Miraka Submission Reference	Summary of Submission	Commerce Commission Response	Miraka further comments and submission
Para 2.2: "Exceptional Circumstances"	Section 2.6 of Part A of the FGMP Manual requires the Notional Producer to evolve in a practically feasible manner other than in (undefined) exceptional circumstances. The "exceptional circumstances" proviso is not practically feasible: exceptional circumstances must be dealt with by real world business in a real world manner. They cannot simply be put aside.	The Commission did not respond to the Miraka submission.	With the exception of the safe harbour provisions, S150A (2) does not sanction the Notional Producer to "opt out" of the practical feasibility requirement. The safe harbour provisions do not provide an "exceptional circumstances" proviso. This is an important issue for properly framing the meaning of "practical feasibility". The Commission is requested to consider this matter again in its final report on the 2016/17 Manual.
Section 3.0: Changes to the basket of RCPs	The FGMP Manual does not provide a framework for changing the basket of RCPs in a manner which is practically feasible. As disclosed in the amendments to the 2016/17 Manual and associated Fonterra reasons paper, the lead time Fonterra considers appropriate for a change in the basket could not be achieved by a real world processor and is thus not practically feasible.	The Commission considers a change in the basket of RCPs cannot be made retrospectively, but otherwise considers the change could be announced at any time up to the start of the season in which the change will impact the milk price calculations (paragraph 59). The Commission appears to have misunderstood the Miraka submission. Miraka concern is that the lead time for changing the basket is not practically feasible. Certainly a retrospective change to the basket is not practically feasible, but equally a change announced just prior to the start of the relevant season is also not practically feasible.	Miraka requests the Commission reconsider its conclusion. It appears the Commission has taken an "administrative" view of implications to changes in the basket. Miraka requests the Commission consider the real world implications of a processor changing its mix of base products. The Commission is requested to note especially paragraphs 3.6 and 3.7 of the Miraka submission. Miraka further requests the Commission to consider whether the wider framework for implementing a change in the basket is adequately provided for in the FGMP Manual. Miraka requests the Commission specifically consider paragraph 3.9 of its submission.

Section 4.0 Off-GDT Sales	Fonterra has not explained or justified its change in policy to include off-GDT sales for the Notional Producer prices for WMP, SMP and AMF. The change in policy is significant. The expanded use of off-GDT sales as now intended is contradictory to Rule 5 of the FGMP Manual. The Notional Producer is not able to replicate the off-GDT sales and marketing effort of Fonterra not least because of its very large milk volume and very narrow product range. The Notional Producer cannot therefore claim the selling prices Fonterra achieves from off-GDT sales. GDT provides the independence, neutrality and transparency that is necessary to ensure the Notional Producer prices are credible. The proposal to include off-GDT prices undermines independence, neutrality, transparency and therefore confidence in the Notional Producer revenue.	It is not clear from the draft report if the Commission considers the changes in the Manual relating to expanded use of off-GDT sales is consistent with the DIRA. In Table X1, the Commission recommends certain changes that Fonterra should make with regard to the inclusion of off-GDT sales. The table could be interpreted to mean that making these changes would render the changes in the Manual compliant with the DIRA. While Miraka supports those changes, they do not address the substantive issues raised by Miraka; similarly, those substantive issues are not addressed elsewhere in the draft report. The Commission has committed to complete an analysis of the off-GDT sales to test their practical feasibility for inclusion in calculations of Notional Producer revenue (para 49). This will be completed as part of the 2016/17 milk price calculations review.	While it is ambiguous, the Commission appears to have deferred consideration of this change in the Manual until it completes its review of the 2016/17 milk price calculations. Miraka had submitted, as invited, on the changes to the Manual. Miraka has highlighted major issues which raise concerns about the change in the Manual. Miraka considers these concerns need to be addressed as part of the review of the Manual itself. These issues can be addressed independent of any quantitative analysis, and should anyway first be addressed to determine the nature of quantitative analysis required (if any). Miraka requests the Commission's final report include a response to the Miraka submission (of which only part has been summarised here).

Appendix B – Submission Issues Carried forward

Miraka submission – 1 September 2016
Submitting on: Commission Draft Report on the 2015/16 Milk Price Calculations – 15 August 2016
Commission response to Submissions included in: Commission Final Report on 2015/16 Milk Price Calculations – 15 September 2016

Miraka Submission Reference	Summary of Submission	Commerce Commission Response	Miraka further comments and submission
Para 2.3: Principles and standards for determining practical feasibility.	Miraka requested that the Commission explain how it assesses practical feasibility. This was in response to a lack of clarity or apparent consistency in the assessment of practical feasibility, and an apparent bias in the Commission interpretation of S150A towards the efficiency dimension over the contestability dimension. Miraka requested the Commission provide an expanded description of the standards it uses to determine practical feasibility.	The Commission rejected there was "bias" in its interpretation of Section 150A (Note 6 of the addendum to its Final Report on the 2015/16 Milk Price Calculations: "Our approach to reviewing Fonterra's Milk Price Manual and base milk price calculation"). The Commission did not respond to the request for an explanation of how practical feasibility is determined.	Miraka does not agree that the Commission has properly addressed the "bias" issue. Miraka requests the Commission explain why it has found it necessary to in effect reword S150A (1) of the DIRA in a manner which in Miraka's view changes the meaning of the Section. The Act refers to the milk price "providing for contestability in the market"; the Commission has restated this to "not precluding efficient processors from potentially competing". This introduces a difference intent, and creates a bias towards actively incentivising Fonterra efficiency while the contestability dimension is rendered passive. The Act itself provides clarification of the contestability dimension in Section 150A (2) – i.e. the practical feasibility test. Miraka considers the Commission leans heavily on the efficiency dimension in interpreting practical feasibility: assumptions, inputs etc. are considered to meet the efficiency requirement on the grounds that they represent stretch targets for Fonterra; at the same time because those stretch targets are deemed achievable by Fonterra they are also deemed practically feasible. Little to no consideration is given to whether the assumptions, inputs etc. are "providing for contestability in the market". Miraka has submitted many times that the opposite is in

			fact more likely to occur. The Milk Price assumptions not only lock in Fonterra advantages of scale, they also exaggerate those advantages of scale (stretch targets). Miraka again requests that the Commission explain the standards and principles it uses to determine practical feasibility. In so doing, Miraka also requests the Commission reconsider the way it has chosen to interpret S150A.
Para 2.4: "Real World" test of practical feasibility	At paragraph X14 of the Commission's draft report on the 2015/16 BMP calculations, the Commission concluded without explanation that the milk price "provides for more contestability than [would be the case if] a more "real world" approach" is adopted. Miraka requested the Commission substantiate the basis for this conclusion.	The Commission did not respond to the Miraka submission.	The practical feasibility of assumptions, inputs etc. is crucial to the credibility of the milk price model. Miraka considers a "real world" test of assumptions, inputs etc. is in fact necessary for concluding practical feasibility. Assumptions, inputs etc. which are demonstrably consistent with the real world also give credibility to the milk price, and would provide for greater contestability because participants and potential participants in the market would have greater confidence that the milk price is fair, transparent, replicable, and predictable. By implying that alternative assumptions exist which are more "real world", the Commission adds to the existing doubt that the assumptions which are used are "less" real world. This adds weight to the Miraka view that many assumptions are only theoretically or technically feasible. Miraka submits again that the Commission needs to elaborate on what it meant by a "more real world approach", and how a more real world approach could be used to better assess practical feasibly.

Section 3.0: WACC/Asset Beta	Miraka requested that the Commission lay out the legal basis for its interpretation that the Notional Producer is "akin to a toll processor". Miraka also considered the conclusion that the Notional Producer faces no price risk on its key input cost is not consistent with the Commission's explanation that "in a workably competitive market … the farm gate milk price would be determined through … processors competing in both the purchase of raw milk and its onward sale after processing". Miraka asked how it is feasible for processors operating in a competitive market to have no milk price risk when the milk price is a key instrument used to compete for supply.	In the draft report, the Commission concluded the asset beta was practically feasible. In the final report, on the basis of submissions, the Commission reverted to its previously long held position that it was unable to conclude if the asset beta (and therefore the WACC) was practically feasible. The Commission committed to again consider the asset beta issue in the review of the 2016/17 Milk Price Calculations. The Commission did not respond to specific issues raised by Miraka.	Miraka is concerned that progress on this issue continues to stall. Rather than respond to the submissions made by Miraka and others, the Commission again deferred action on the issue. While the Commission has committed to do further work on the issue, the Commission has not withdrawn its previous conclusions and it appears the Commission remains open to the asset beta and WACC assuming no competitive risk for the Notional Producer for its key input cost. Accordingly it remains quite possible that the Commission will revert to the position expressed in the draft report, and the process will be no further advanced because the Commission has not directly responded to the issues raised by Miraka and others in submissions. Miraka again requests the Commission to explain its position and to respond specifically to the Miraka submission. Given the urgent need to make progress on this issue, Miraka requests the Commission respond in its final report on the 2016/17 FGMP Manual. Miraka submission raises issues of principle and legal interpretation. They can be addressed independently of the technical analysis of the milk price calculations.
Para 4.1 Fonterra disclosures: Notional Producer selling prices	Miraka responded to the Commission's request for feedback on the Fonterra offer to expand disclosures related to the Notional producer selling prices. Miraka welcomed expanded disclosures and proposed an alternative to that offered by Fonterra.	The Commission noted Miraka's feedback.	Fonterra had offered to include the new disclosures in the public version of the milk price model. In the event, neither the disclosures offered by Fonterra, nor the disclosures sought by Miraka were included in the 2015/16 public version of the model. Fonterra did not explain why it did not deliver the expanded disclosures. Miraka requests the Commission seek an explanation from Fonterra and an explanation of its intentions regarding its original offer and the disclosures sought by Miraka.

			In its reasons paper for the 2016/17 Milk Price Manual, Fonterra is now offering to disclose on a quarterly basis the impact of off-GDT sales in the milk price calculations. Fonterra has not followed through on the previous offered disclosure. Miraka is concerned the offer of these new disclosures is merely intended to "soften" a controversial change in the measurement of Notional Producer selling prices. The first quarter has already ended, but it is possibly too soon to expect Fonterra to have made the first of these disclosures. And it has not. The Commission will however be able to assess Fonterra intentions by the time the final report on the Manual issued.
Section 4.2 USD conversion rate	Miraka explained why the Notional Producer conversion rate is not practically feasible, and suggested an alternative calculation process.	The Commission did not respond to the Miraka submission.	Miraka requests this issue be included in the 2016/17 review of Milk Price Calculations. Miraka notes that in the draft report on the 2016/17 Milk Price Manual (Table X1), the Commission recommends that Fonterra disclose an average Fx rate throughout the Season. Miraka would welcome this further disclosure.
Appendix A, para 1.1 Aggregate feasibility	The Commission has used a comparison between an apparent desktop analysis of Fonterra's ingredients and operations activities (GOGI) to conclude the Notional Producer is practically feasible "in aggregate". Miraka laid out in detail why the GOGI cannot provide a proper basis for assessing aggregate practical feasibility. Miraka recommended that assessment of aggregate	The Commission did not address the substance of the Miraka submission. In the final report, it continued to conclude "the GOGI is a good proxy for the notional producer". This included because "we consider GDT prices are achievable for a processor of the notional producer's scale" (paragraph 4.27,	Miraka submission remains unchanged and the Commission has not addressed the substance of the Miraka submission. This especially includes that the Notional Producer business model is not in and of itself practically feasible as it relies on safe harbour provisions to bypass the practical feasibility requirement (i.e. large volume of milk processed into a very narrow and commercially unviable (by volume) product range). It is unproductive and even futile to draw aggregate comparisons between the Notional Producer and the substantially different GOGI operations.

	feasibility should rather focus on consistency across assumptions in the Model.	Final Report on the 2015/16 BMP Calculations).	Miraka has previously noted the Notional Producer could not in fact achieve its sales volume at the prices derived from the current volume of product sold on GDT. The absolute increase in volume that would be brought to market would necessarily reduce prices achieved. This outcome can be clearly deduced from the changes in GDT prices which actually occur when significant shifts in supply occur: e.g. price response to increased European milk production following the removal of quotas, and the very recent response of prices to the signalled reduction in NZ milk production. This is not controversial – it is consistent with expected outcomes. By contrast, the Commission provides no explanation for its assertion that GDT prices could actually be achieved for a processor of the notional producer scale. This is counterintuitive and is not economic orthodoxy. Miraka requests the Commission to explain how it has come to this conclusion. Miraka also requests the Commission reconsider its approach to assessing aggregate practical feasibility.
Appendix A, Section 2.0: Production Yields	Miraka laid out a number of reasons why yield assumptions appeared to have been assessed against technically feasible rather than practically feasible standards. Miraka requested that the Commission's independent expert (Greg Winter) consider and respond to the Miraka submission.	The Commission disagreed that yields were assessed against a technical standard. The Commission further stated "we have assessed each assumption, input and process and concluded that it can be replicated by Fonterra if operating in the same way as the notional producer". [Final Report: 2015/16 BMP Calculations – Note 63]	By the appointment of an independent expert the Commission has acknowledged it is not qualified to make an assessment on the practical feasibility of the Notional Producer yields assumptions. It is therefore not qualified to draw the conclusion in Note 63. Miraka again requests that the independent expert consider the Miraka submission and confirm, based on a standard approved by the Commission, that the yields meet a proper standard of practical and not just technical feasibility.

Appendix A, para 2.4: Typical Compositions	Fonterra needs to explain why it describes composition specifications as “typical” when marketing GDT products, but those compositions are not even theoretically feasible for the volumes assumed produced by the Notional Producer.	The Commission stated the inclusion of typical and minimum specifications “could cause confusion amongst customers and this could be made clearer by Fonterra” [Final Report: 2015/16 BMP Calculations – Note 85].	The Commission response does not address the Miraka submission, which concerned the practical feasibility of yields. It is also not clear why the Commission considers the inclusion of “typical” and “minimum” compositions in Fonterra’s product specifications could be “confusing”. “Typical” composition has a clear and unambiguous meaning: i.e. representative or expected composition of the product. The typical compositions reflect manufacturing outcomes from targeting specification offsets. It is unreasonable to assume the typical specifications are anything other than Fonterra’s typical or expected product composition. Notably Fonterra changes the typical compositions from time to time, and this presumably reflects a change in Fonterra manufacturing performance thus requiring a change in the representations Fonterra makes regarding typical compositions. By concluding that “typical compositions” are merely “confusing”, the Commission appears to deny that Fonterra (or any real world) actual product compositions provide a meaningful benchmark for assessing the practical feasibility of the overall Notional Producer yields. This again tends to support the conclusion that Notional Producer yields are only assessed against technically or theoretically feasible operating conditions. Miraka submits there is no good reason for typical compositions alongside minimum compositions to be considered “confusing”. Fonterra needs to explain what “typical compositions” actually mean if not “typical”. The Commission needs to consider why it would remain practically feasible for the Notional Producer to produce

			product to a tighter specification (and therefore better yield) than indicated by Fonterra's typical specifications.
Appendix A, section 3.0: Selling Costs	In its assessment of the selling costs included in the 2015/16 Milk Price calculations, the Commission departed from the "practically feasible" test to conclude selling costs were feasible. The Commission relied on a "netting" of two infeasible assumptions. Further, its assessment was contingent on an analysis yet to be performed.	The Commission did not respond to the noted issue. The Commission acknowledge but otherwise did not respond to the Miraka view that selling costs are not practically feasible because the underlying sales volume to achieve the GDT commission rates are not commercially feasible.	Miraka has submitted the Commission's interpretation of the "practically feasible" test of Section 150A is problematic. It is therefore disturbing that in its assessment of selling costs for the 2015/16 milk price calculations, the Commission went further, explicitly departing from the practical feasibility test while still concluding selling costs assumptions comply with the DIRA. Miraka is concerned that the Commission adopts an ad hoc approach to the practical feasibility test, and in this case has simply put it aside. The Commission is asked to provide an explanation on this matter. That would be best provided within the detailed statement already sought of principles and standards the Commission uses for determining practical feasibility. Miraka also again submits that the overall average GDT commission rate should be consistent with a practically feasible volume of product sales through GDT. The average rate should at most be no less than the average rate Fonterra actually pays. That is an acceptable compromise which results in a practically feasible cost rate even though the underlying sales volume, "protected" by safe harbour provisions, is not practically feasible.
Appendix A, Section 4.0: Plant "full capacity" operating time.	Miraka requested the Commission to review the practical feasibility of the Notional Producer plants operating at full capacity for 85% to 90% of operating days. While Fonterra has completed a	The Commission did not respond to the Miraka submission.	The extraordinarily high proportion of time that factories are assumed to operate at full capacity is another example of the Notional Producer assumed efficiency being rendered "feasible" as a result of the upstream assumption that the Notional Producer converts all milk into the narrow range of RCPs. This is not commercially feasible, but is protected by safe harbour provisions.

	desktop study to show this is technically feasible, it is unclear how practical feasibility has been determined. Miraka also sought assurance that the Notional Producer milk collection cost is practically feasible. This seems unlikely because no adjustment had been made to account for the costs of milk aggregation that would be required to achieve the assumed level of capacity utilisation.		Miraka considers this protection should not extend to downstream assumptions, including selling costs and, in this case, plant operating efficiency. Miraka considers the plant operating efficiency should be demonstrably achievable and should therefore be no greater than achieved by Fonterra across the plants it uses for production of RCPs, and on which the Notional Producer plants are based. Miraka requests that the practical feasibility of the plant operating efficiency, and of the milk collection costs be assessed in the review of the 2016/17 milk price calculations.
Appendix A, Section 5.0	Miraka requested the Commission reassess evidence that the notional rebate from Kotahi is practically feasible.	The Commission acknowledged the Miraka submission, but accepted Fonterra reasoning for the notional rebate for the time being. The Commission will continue to monitor the situation (Final Report, note 128).	Miraka appreciates the Commission's commitment to monitor this further. Miraka however submits there is no commercial reason why pricing would not be on an arm's length basis, and the Notional Producer would have no greater ability to negotiate competitive rates than Fonterra itself. In the absence of any clear and commercially rational evidence that pricing is not on an arm's length basis (e.g. including an actual rebate payment), there can be no basis for determining a notional rebate is practically feasible. It could only be hypothetically and is therefore not compliant with the DIRA.