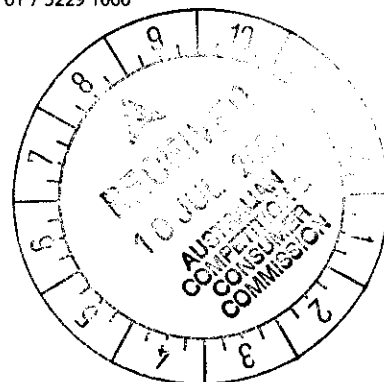




2 July 2001

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Mr Paul Arscott
Australian Competition and Consumer Commission
10th Floor AAMI Building
500 Queen Street
BRISBANE QLD 4000



Dear Mr Arscott

**Australian Sugar Milling Council Pty Ltd
Exclusive Dealing Notification**

We act for the Australian Sugar Milling Council Pty Limited ('ASMC') and the sugar mill operators listed in the **attached** Schedule (collectively 'Mill Corp').

As you may be aware, ASMC is an organisation representing the interests of operators of sugar mills. The number of mills owned by each operator varies between one and eight mills.

Our clients are concerned that the proposed implementation of a new training program developed by the ASMC may involve a technical breach of section 47(1) of the *Trade Practices Act* (the 'Act'), in the form of third line forcing under section 47(6).

Enclosed is a notification under s93(1) of the Act in respect of the proposed conduct.

Also **enclosed** is a copy of a draft ASMC document outlining the Program and an extract from the 'Trainer's Guide Queensland Sugar Milling Operations'.

This letter sets out submissions on behalf of our clients as to why the conduct should be permitted. It consists of four parts:

1. Description of the current situation which the conduct is designed to overcome.
2. Description of the proposed conduct.
3. Consideration of the benefits arising from the conduct.
4. Consideration of any likely detriment to the public.

1. The current situation

In the ordinary course of business, Mill Corp engage workers or firms on a contract basis to provide general or specialist labour ('Contractors'). For this purpose, Contractors present for work either:

- without safety training suitable for working in sugar mills; or
- professing to have completed generic workplace safety programs.

In the latter case, it is often difficult (or impossible) for the mill operator to ascertain whether the program is suitable for or comprehensive enough for work at the mill, or even whether or not an individual person has in fact successfully completed the program.

Aspects of mill work that require specific induction training include:

- maintenance of cane haulage plant and equipment, cane railway operations and cane rail bridges;
- sugar manufacturing processes, including cane preparation, milling, clarification, evaporation, sugar boiling and fuggalling;
- steam and power generation;
- communication systems; and
- emergency response management.

As a result, mill operators are obliged to expend a large amount of time conducting comprehensive on-site safety inductions for incoming Contractors in order to fulfil their duties at common law and their statutory obligations to the Contractors and to the mill employees.

This results in:

- (a) delays and increased costs expended in actually conducting the training and in paying Contractors for the time spent in training. It is estimated by Mill Corp that an individual mill operator may spend up to 600 hours per year conducting on-site safety training (depending on the number of mills it owns). The average duration of each safety induction session is three hours; and
- (b) increased barriers to entry to the market for the provision of contract services to mills as each mill operator tends to favour Contractors who are familiar with the mill and its safety requirements.

2. The proposed conduct

ASMC and its member mills have identified a need for a standard training program, recognised throughout Queensland, which is specifically designed to provide a comprehensive level of training in safety relevant to the sugar milling industry, to Contractors engaged to perform work for ASMC members. A generic program should be prepared by persons with expert knowledge of the sugar milling industry to ensure it is specific and thorough in meeting the safety training requirements of the industry.

If such a program was put in place mill operators could, with confidence, engage Contractors who have completed the course and thus avoid the need to conduct comprehensive on-site induction training (on-site inductions could be reduced to 15 minute briefing sessions).

Contractors who complete the course would be recognised by all Queensland sugar mills as appropriately trained in safety.

To this end, ASMC, or specifically its Workplace Health and Safety Committee, has developed a safety training program called the Queensland Sugar Milling Generic Induction Program (the '**Program**'). The Program includes a registration system for Contractors who successfully complete the course. These Contractors will be issued with a 'passport' which is valid for two years. The Program also outlines minimum criteria for the appointment of training providers, the training assessment strategy, passport issuing procedures, recommended costs and the administration process.

ASMC will license participating member mills to use the Program. Under the terms of the licence mill owners have the right to sub-licence the provision of training services to third party training providers (such as local TAFE colleges). The mill owners will select training providers by:

- (a) inviting expressions of interest. The invitation will be extended through a standard letter sent by the mill owner to potential training providers in the mill area; and
- (b) assessing applicants against the criteria identified in the Program ('Minimum requirements for delivery') and the 'Trainer's Guide Queensland Sugar Milling Operations'.

The mill owners will provide the registration or licence details of the successful applicants to ASMC in order for ASMC to maintain a register of licensed training providers. ASMC will not be involved in the selection of training providers. The ASMC's primary role is to administer the Program. It will also maintain a register of passport holders.

In order to obtain the maximum benefit from the Program, the mills propose to implement a policy of only engaging Contractors who have a passport, ie. those who have completed the Program with a licensed third party training provider. The mills will make available to Contractors a list of all training providers licensed to administer the Program.

A 'half-measure' of engaging *either* Contractors with passports *or* Contractors with general workplace health and safety qualifications or experience is unlikely to be successful as:

- (a) appointing the latter will still necessitate comprehensive on-site mill induction training, in order to overcome the need to check the quality or existence of claimed qualifications or experience; and
- (b) third line forcing conduct could still occur in practice due to the attractiveness of the qualification to mill operators seeking to engage Contractors.

The recommended cost of the course to participants is not more than \$170. The comprehensive standardised course will require attendance by Contractors at a one day training session, of no longer than eight hours (excluding breaks).

3. Benefits to the public arising from the conduct

Foreseeable benefits include the following:

- (a) increased efficiency in the process of engaging Contractors, including reduced delays and costs;
- (b) increased safety standards in the sugar milling industry. The training program will be more comprehensive than the induction training currently provided by mills prior to allowing commencement of work, and will always be provided by qualified trainers. The program will be delivered without the pressures for completion that may be experienced in the mill environment where it is important to commence the work the Contractor has been engaged to perform. From 1997 to 2000 the number of injuries to workers in the sugar industry which have resulted in lost work time have been between 197 and 361;
- (c) increased mobility for Contractors (as the passport qualification will be accepted at all participating mills);
- (d) increased opportunity for workers to enter into the market for engagement by mill operators and to compete against workers with prior experience in the industry;
- (e) opportunity for training providers to offer and deliver a specialised course designed for the sugar milling industry;
- (f) increased certainty for Contractors as to the qualifications necessary to obtain mill work, promoting efficiency in seeking work from mills; and
- (g) increased efficiency as a result of centralised record-keeping of worker qualifications and training provider details by ASMC.

4. Detriment to the public arising from the conduct

A consideration of possible detrimental effects follows:

- (a) The Program requires minor expenditure of time and money in order to complete the course and obtain the passport.
- (b) The adoption of the Program will mean that:
 - (i) the range of training providers and programs from which Contractors in the milling industry may choose will be limited to those appointed by mill operators; and
 - (ii) in order to provide acceptable training services to Contractors in the milling industry, training providers will need to secure appointment by a mill operator by meeting the Minimum requirements for delivery set out in the Program and the 'Trainer's Guide Queensland Sugar Milling Operations'.

However, there is no restriction on mill operators appointing multiple training providers provided that they meet the criteria specified in the Program. Further,

a passport obtained from any training provider will be accepted at all participating mills.

- (c) There will be some initial inconvenience for experienced mill workers who will need to complete the training and obtain a passport.

However, the Program will also be 'phased in' over three to six months after the Program is introduced. Contractors currently providing services to mill operators will be formally notified of the commencement of the Program and therefore will have express notice before the passport becomes compulsory.

We submit that the likely benefits to the public from the proposed conduct will outweigh the likely detriment to the public from the conduct.

Please telephone Andrew Greenwood on (07) 3226 6381 or Margaret Brown on (07) 3226 6388 if you would like to discuss any aspect of this submission or the notification.

Yours faithfully
MINTER ELLISON



Contact: Margaret Brown (07) 3226 6388 margaret.brown@minters.com.au
Partner responsible: Andrew Greenwood (07) 3226 6388
Our reference: MAB APG 1125917

SCHEDULE

Bundaberg Sugar Ltd

CSR Limited

Mackay Sugar Co-operative Association Limited

Mossman Central Mill Company Limited

The Mulgrave Central Mill Company Limited

Tully Sugar Limited

Proserpine Co-operative Sugar Milling Association Limited

Isis Central Sugar Mill Company Limited

The Maryborough Sugar Factory Limited

WH Heck & Sons Pty Limited

COMMONWEALTH OF AUSTRALIA

*Trade Practices Act 1974 - Sub-section 93(1)***EXCLUSIVE DEALING:
NOTIFICATION**

To the Australian Competition and Consumer Commission:

Notice is hereby given, in accordance with sub-section 93(1) of the *Trade Practices Act 1974*, of particulars of conduct or of proposed conduct of a kind referred to in sub-section 47(2), (3), (4), (5), (6) or (7), or paragraph 47(8)(a), (b) or (c) or 9(a), (b), (c) or (d) of that Act in which the person giving notice proposes to engage.

1. (a) Name of person giving notice:

Bundaberg Sugar Ltd (ACN 077 102 526)

CSR Limited (ACN 000 001 276)

Mackay Sugar Co-operative Association Limited (ARBN 057 463 671)

Mossman Central Mill Company Limited (ACN 009 657 103)

The Mulgrave Central Mill Company Limited (ACN 009 657 032)

Tully Sugar Limited (ACN 011 030 256)

**Proserpine Co-operative Sugar Milling Association Ltd
(ARBN 080 866 539)**

Isis Central Sugar Mill Company Limited (ACN 009 657 078)

The Maryborough Sugar Factory Limited (ACN 009 658 708)

WH Heck & Sons Proprietary Limited (ACN 009 661 401)

(referred to as 'the Notifier');

(b) Short description of business carried on by that person:

Milling of sugar cane and manufacture of raw sugar;

- (c) Address in Australia for service of documents on that person:
- c/- Margaret Brown
Minter Ellison
Lawyers
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000;
2. (a) Description of the goods or services in relation to the supply or acquisition of which this notice relates:
- (i) Supply of work opportunities to contractors; and
- (ii) Acquisition of generic induction training for contractors;
- (b) Description of the conduct or proposed conduct:
- Requirement that contractors obtain specified generic induction training from licensed training providers in order to be contracted to perform work for the Notifier, pursuant to the Queensland Sugar Milling Generic Induction Program (copy annexed hereto);
3. (a) Class or classes of persons to which the conduct relates:
- Contractors wishing to obtain contracts for work from the Notifier;
- (b) Number of those persons-
- (i) At present time:
- 100 - 400 per mill
- The exact figure varies from mill to mill and year to year. For example, the figures of one of the mills owned by Mackay Sugar Co-operative Association Limited are:
- 1997: ~ 130
1998: ~130
1999: ~ 457
2000: ~ 270
2001: ~106 so far;
- (ii) Estimated within the next year:
- 100 - 400 per mill
- (c) Where number of persons stated in item 3(b)(i) is less than 50, their names and addresses:
- N/A;

4. Name and address of person authorised by the person giving this notice to provide additional information in relation to this notice:

c/- Margaret Brown
Minter Ellison
Lawyers
Waterfront Place
1 Eagle Street
BRISBANE QLD 4000.

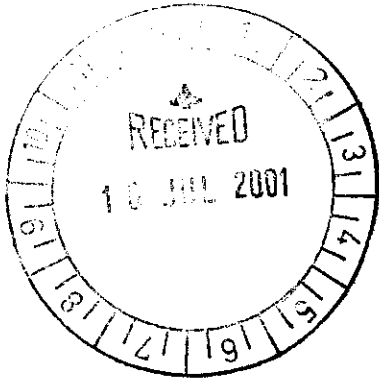
DATED *4th July*, 2001

SIGNED by/on behalf of the applicant

Margaret Brown
.....
(Signature)

MARGARET BROWN
.....
(Full Name)

SOLICITOR
.....
(Description)



DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the person giving the notice.
2. If the notice is given by or on behalf of a corporation, the name of the corporation is to be inserted in item 1(a), not the name of the person signing the notice, and the notice is to be signed by a person authorised by the corporation to do so.
3. In item 1(b), describe that part of the business of the person giving the notice in the course of which the conduct is engaged in.
4. If particulars of a condition or of a reason of the type referred to in sub-section 47(2), (3), (4), (5), (6), (7), (8) or (9) of the *Trade Practices Act 1974* have been reduced in whole or in part to writing, a copy of the writing is to be provided with the notice.
5. In item 3(a), describe the nature of the business carried on by the persons referred to in that item.
6. In item 3(b)(ii), state an estimate of the highest number of persons with whom the person giving the notice is likely to deal in the course of engaging in the conduct at any time during the next year.

NOTICE

If this notification is in respect of conduct of a kind referred to in sub-section 47(6) or (7) or paragraph 47(8)(c) or (9)(d) of the *Trade Practice Act 1974* ('the Act'), it comes into force at the end of the period prescribed for the purposes of sub-section 93(7A) of the Act ('the prescribed period') unless the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, or this notification is withdrawn.

The prescribed period is 21 days (if this notification is given on or before 30 June 1996) or 14 days (if this notification is given after 30 June 1996), starting on the day when this notification is given.

If the Commission gives a notice under sub-section 93A(2) of the Act within the prescribed period, this notification will not come into force unless the Commission, after completing the procedures in section 93A of the Act, decides not to give a notice under sub-section 93(3A) of the Act. The notification comes into force when that decision is made.

If this notification is in respect of conduct of a kind referred to in sub-section 47(2), (3), (4) or (5), or paragraph 47(8)(a) or (b) or (9)(a), (b) or (c), of the Act, it comes into force when it is given.