

28th April 2004

Mr Gavan Jones  
Acting Director  
Adjudication Branch  
Australian Competition and Consumer Commission  
470 Northbourne Avenue  
**DICKSON ACT 2602**

Dear Sir,

**RE:TASMANIAN FARMERS AND GRAZIERS ASSOCIATION  
APPLICATION FOR AUTHORISATION A 90914  
Attention: Stefanee Lovett**

I refer to recent correspondence and now enclose Submission in relation to the above mentioned application forwarded for and on behalf of Simplot Australia Pty Ltd as a party impacted by the Application.

If you have any questions or wish to clarify any matter please do not hesitate to contact me on 03 9588 3516.

Yours faithfully

K M Pollard  
Corporate Counsel  
Simplot Australia Pty Ltd

**SUBMISSION IN RESPONSE TO APPLICATION FOR AUTHORISATION  
BY  
THE TASMANIAN FARMERS AND GRAZIERS ASSOCIATION (TFGA)  
VEGETABLE COUNCIL**

**The Application**

The TFGA on the 16 March 2004 applied to the Australian Competition and Consumer Commission (ACCC) under the provisions of sub-section 88(1) of the Trade Practices Act to collectively bargain contracts for the Tasmanian growers (Growers) who supply vegetables to processors such as Simplot Australia and McCains Foods. (collectively known as "the Processors")

An interim authorisation has been granted to give effect to the continuing negotiations and existing contracts.

TFGA now seek authorisation of its conduct which has been in existence for many years in the vegetable industry in Tasmania, to negotiate the contractual terms of supply contracts with the Processors. Simplot Australia is not opposed, in principle to the application, as the negotiations with one representative body rather than individual Growers produces efficiencies and certainty to the supply chain process. The supply of commodity vegetables is negotiated with the TFGA for and on behalf of the following Simplot groups:

- Simplot Processed Potato Groups
- Simplot Seed Potato Growers Group
- Simplot Peas Growers Group
- Simplot Bean Growers Group
- Simplot Carrot Growers Group
- Simplot Brassica Growers Group

It is understood that similar commodity groups exist for McCains.

All contracts with Growers are in a similar form as far as it relates to the commodity supplied but may vary depending on individual negotiations with Growers. Contracts are confidential, as are the final payments made, due to the inclusion of incentive payments, quality matters and other details that are commercially sensitive.

Individual Growers may opt out of the collective negotiations should they choose to do so. A levy is collected and remitted to the TFGA by virtue of the provisions of the Simplot Australia Supply contract.

Simplot Australia disputes a number of contentions raised in the submission accompanying the Application as to the relationship between Growers, the TFGA and Simplot Australia however, it does not oppose the Application provided that certain assurances are provided by the TFGA to the Processors.

## **Industry and relevant markets**

The relevant markets to which this Application relates can be broken down as follows:

1. Australian processed frozen potato which services two relevant markets:
  - a. the frozen packaged retail market where consumers purchase products from major supermarkets; and
  - b. the food service market which comprises quick service restaurants such as McDonald's, KFC etc, catering outlets, take away food shops, restaurants, hospitals and other catering institutions who are usually serviced by independent third party distributors such as Country Wide.
2. Australian processed frozen and canned vegetable market which also serves the two relevant markets outlined above.

The Australian market for potato and vegetable is highly competitive and margins have been eroded over the years so that there is strong focus on price and production costs.

## **Simplot Australia-investment and market share**

Simplot Australia acquired the Edgell operations from Pacific Dunlop in August 1995. Its ultimate holding company is JR Simplot Co of Boise, Idaho, USA. The market for commodity vegetables for Australia tends to be localised in the region due to the prohibitive cost of freight to South East Asia and Australia. The suggestion that individual growers are in a weak bargaining position in their dealings with Simplot Australia is refuted

Prior to 1995 the plants and operations had been conducted for many years in Tasmania through a variety of owners such a Petersville Sleigh. The Tasmanian Ulverstone factory was totally refurbished in 1993. In 2003 Simplot Australia invested a further \$35million in the Ulverstone plant and it is now recognised as the most modern and efficient potato processing facility in the world employing 320 people.

Simplot Australia sources all of its raw potato requirements from Tasmania at a cost of \$40million per annum. In addition it incurs significant cost in the shipment of finished goods to the Australian mainland.

The Devonport factory which produces frozen vegetables was established in 1942 and there continues to be significant investment in plant and equipment and new and innovative product lines to ensure there is growth in the market. It is now the largest frozen mixed vegetable plant in the southern hemisphere and employs 101 permanent staff and up to 220 seasonal employees. In addition, the requirement for cold storage and refrigerated shipping and road transport adds to the cost base of distribution of the products to market.

In addition to potato processing, Simplot Australia invests heavily in research and development to aid the extensive potato breeding program for new and improved varieties, disease resistance varieties and improved farming practices. The Simplot Australia field services team works closely with Growers to supply potato seed, advise on optimum planting and growing conditions in order to achieve the maximum efficiencies in raw material supply and growth in the industry.

Simplot Australia also provides extensive harvesting services so that Growers are not required to invest heavily in under-utilised machinery and equipment. Further, it provides potato storage facilities as a service to its Growers.

There is a significant investment in the Tasmanian agricultural industry by Simplot Australia in times where it is constantly challenged to stay competitive with Processors operating on the mainland and cheap imported products. Heavy emphasis on quality demands control of all stages of the supply chain process from the field through to the consumer's plate. Simplot Australia values its relationships with Growers who are consistently able to provide quality produce at the best possible price. This places the Growers in a strong bargaining position when it comes to contract negotiations.

Simplot Australia's retail market share in frozen potato is 42.6% MAT (Aztec Data 04/04/04). There are low barriers to entry and it is expected that the commencement of Southern Food Processors in South Australia, a smaller potato producer due to come on line in April 2004, will lead to price decreases particularly in the Food Service Market but also as Simplot's branded products of Edgell and Birds Eye vie to compete against the "Homebrands" of the major Australian retailers. Simplot Australia's retail market share in frozen vegetable category is 33.7% MAT (Aztec Data 04/04/04). There are a number of major multi-national companies competing in this sector including Heinz Watties who source vegetables from New Zealand at a lower cost than those available from Tasmania.

### **Collective Negotiations by Growers and Processors**

Through collective bargaining in the past Simplot Australia has suffered increased prices in the cost of potatoes and vegetables without necessarily being able to pass on this increase to the retail trade and the foodservice customers who have a "fixed price" contract for the currency of the term. Potato price increases in particular have led to losses in operating profit.

During the course of the 2001 negotiations a number of Tasmanian McDonald's stores were the target of a campaign by Growers for an increase in the price paid for potatoes. This generated unhelpful media interest in pricing issues which are complex. The actions were unhelpful in that the Processors were forced into paying an unsustainable price without being in a position to recover that increase from customers where the market could not sustain a price increase. Having already identified and taken processing efficiency gains there were no further ways in which the raw material price increase could be absorbed. It is recognised that there needs to be greater exchange of information with the TFGA and Growers so that there is a real understanding of the supply chain costs, capital investment risk, sustainable rates of

return and the competitive market forces. Comparisons of the sale price at retail or quick service restaurants with what the Grower receives at the farm gate is unhelpful to any negotiation and Simplot Australia seeks to avoid the scenario which arose in 2001 through better communication and understanding.

Simplot Australia is reasonably satisfied with the collective negotiations conducted by Growers and facilitated by the TFGA in the past. There are however, a number of concerns which Simplot Australia has in relation to the on-going process under Authorisation. These are:

- the role and authority of the TFGA is not well known and is not published;
- it is unclear how the TFGA will determine if there is a consensus from Growers on contract negotiations
- the composition, appointment and removal of the representatives of the negotiating group is unclear;
- there currently exists no dispute resolution process;
- there is no Code of Conduct relating to the negotiations.

Simplot Australia is of the view that any Authorisation should be subject to the requirement that the TFGA publish its Charter and that the parties agree to a Code of Conduct which includes dispute resolution provisions. This matter has been raised with the TFGA in discussion and is yet to be progressed.

#### **Public Benefits of Authorisation**

Authorisation of the collective bargaining between Growers and Processors would formalise the system of contract negotiation and lead to greater certainty for both Growers and Processors. It would also lead to an improved bargaining position for Growers to counter the perception of power imbalance with Processors.

Authorisation would allow greater efficiencies in the finalisation of contracts with Growers through a known and certain process. Growers will be armed with much greater information . If dispute resolution processes are adopted, this would lead to greater industrial harmony allowing for continuity of supply of consumer products.

Contract certainty, particularly in price, will also lead to growth in the industry as the parties co-operate to achieve efficiencies in better varieties, sharing of research and knowledge and methods of reducing supply chain costs.

Benefits will flow to consumers through the competitive nature of the industry and ability to deliver product of better quality and greater variety.

#### **Detrimental Effects of Authorisation**

Simplot Australia considers the benefits of Authorisation, with the conditions outlined above far outweigh the detriments. The major concern for collective bargaining of contracts is that it may result in less flexible contracts for individual Growers, particularly Growers who out-perform other growers.

## **Summary**

The potato and vegetable processing industry in Australia is highly competitive and consumers have long benefited from the aggressive competition in the market. The Application formalises a system of management of relations between Growers and Processors which has been informally in place for many years. Simplot Australia supports the Application with the condition that a Code of Conduct be adopted by the TFGA and the Processors which serves as an ongoing guide to all relevant parties as to the methodology to be adopted in collective bargaining. It is agreed that the term of the Authorisation should be for a period of five years.