

8.166 As previously discussed, CSR advised that the elements of the Agreements which arguably may not be covered by the statutory exemption provisions of the SIA are the differential payment scheme, including the expansion of the crushing season, and the constraints on which new CPA is to be granted.

Differential payment/expansion of the crushing season

8.167 As previously discussed, CSR advises that it is uncertain as to whether the differential payment scheme under the two collective supply agreements are specifically authorised by sections 211(2) and (3) of the SIA.

8.168 Like the Pioneer Supply Agreement, the cane price formulae under the Invicta Supply Agreement also establishes a differential payment scheme for existing growers and new or expanding growers, linked to the extension of the season, and imposes a \$1 levy.

8.169 The issues for the Commission's consideration in this regard are the same as those discussed at paragraphs 8.54 – 8.68 of this determination in relation to the Pioneer Supply Agreement.

8.170 Accordingly, the Commission is of the view that there may be some small lessening of competition arising from the differential payment scheme under the Invicta Supply Agreement.

Granting of new CPA

8.171 The Invicta Expansion Agreement sets out the mechanism by which the Invicta Negotiating Team determines when, and to what extent, applications for new CPA are to be lodged with CPB established under the SIA.

8.172 As mentioned previously, CSR submits it is uncertain as to whether the wording of the SIA is wide enough to provide statutory exemption for the constraints placed on the grant of new CPA created under the Agreements.

8.173 The process followed by the Invicta Negotiating Team in determining the level of new CPA is identical to the process described at paragraphs 8.71 – 8.73 in relation to the Pioneer Supply Agreement.

8.174 In its draft determination, the Commission indicated its view that the Agreements for expansion have a constraining influence on both existing and potential growers wishing to expand production by putting additional land under production, or attempting to enter the industry. The Commission did not receive a subsequent submission on this issue.

8.175 The Commission is of the view that there is some limited lessening of competition arising from the constraints on the manner in which new CPA is granted under the Invicta Expansion Agreement.

8.176 While the Commission considers there is a small level of anti-competitive detriment flowing from the differential payment scheme and the arrangements for expansion under the Invicta Agreements, it considers the overall detriment is somewhat limited by the regional nature of the arrangements.

Localisation of the arrangements

8.177 The Invicta Supply Agreement and the Invicta Expansion Agreement reflect the localisation of sugar supply terms and conditions and is the result of collective negotiations by the Invicta negotiating team comprising CSR and Invicta growers.

8.178 The Commission's view on this issue is the same as that outlined (in paragraphs 8.79 – 8.82 of this determination) in relation to the Pioneer Supply Agreement. Namely, that the effect on competition is less where the collective Agreements are regional and mill specific, rather than industry wide.

Dispute resolution

8.179 As previously discussed in relation to the Pioneer Supply Agreement, Ray Hoey and Co submitted that there is no appeal mechanism in relation to the CPB's determination of whether CPA is defined as existing CPA or new CPA. This is also the case under the Invicta Supply Agreement.

8.180 As concluded in relation to the Pioneer Supply Agreement, the CPB's classification of CPA as new or existing potentially has significant consequences for growers in terms of their cane payments. As a result, the Commission considers a condition of authorisation is necessary to amend the Invicta Supply Agreement.

Condition

8.181 The final sentence in Clause 1.3.2 of the Invicta Supply Agreement is deleted, which currently reads:

The determination by the CPB as to whether CPA is existing CPA or new CPA is final and binding.

8.182 An independent process of appeal which is consistent with section 204 of the SIA is to be inserted into the Invicta Supply Agreement for situations where a CPB's decision is not consistent with the CPA variation guidelines under Clause 1.4 of the Invicta Supply Agreement.

8.183 The Commission considers the extent of the public detriment flowing from the two Invicta Agreements is limited by their regional nature. The Commission considers, subject to the condition discussed in paragraphs 8.181 – 8.182 of this determination, the dispute resolution procedures contained within the Invicta Agreements are adequate.

Assessment of likely benefit to the public arising from the Invicta Agreements

Increased bargaining power

8.184 As discussed in relation to the Pioneer Supply Agreement, CSR claims that by negotiating collectively growers have an enhanced bargaining position with CSR. The Commission considers that as collective negotiation is provided for in, and specifically authorised by the SIA, any public benefits from enhanced bargaining power result from the SIA and not the Invicta Agreements.

8.185 The Commission's consideration of this claim is outlined in relation to the Pioneer Supply Agreement at paragraphs 8.96 – 8.101 of this determination.

8.186 However, the Commission considers certain public benefits may result from the nature and elements within the Invicta Agreements as negotiated. In particular, increased mill throughput and farm output, associated new investment, and efficiency gains from the improved use of infrastructure. There is also likely to be a growth in exports and an associated increase in the international competitiveness of the sector as a result of the efficiencies and seasonal exports of sugar. There are also likely to be some public benefits as a result of economic gains to the Burdekin community.

Increased production and improved use of infrastructure

8.187 As mentioned previously, the essential thrust of the Invicta Agreements is to provide for a gradual extension of the crushing season in conjunction with expansion of mill crushing capacity. CSR claims the additional tonnage harvested under an extended season, and additional mill capacity, will provide an opportunity for more efficient utilisation of resources used in harvesting and milling of cane.

8.188 The Commission accepted in its draft determination that as a consequence of increasing mill throughput at the two mills, utilisation of infrastructure will be improved, including Bulk Sugar Terminals, and harvesting and transport plant.

8.189 Following the pre-determination conference interested party comments concentrated on determining the extent of increased throughput and cane land expansion possible under the Agreements, particularly in relation to the Pioneer Mill.

8.190 The Commission did not receive any submissions opposing the public benefit claims of improved efficiencies at the Invicta Mill.

8.191 As discussed (at paragraphs 8.111 – 8.113 of this determination) in relation to the Pioneer Supply Agreement, the Commission considers that given the conflicting demands on growers and millers, without the Invicta Agreements, industry expansion would be unlikely.

8.192 CSR claims throughput at the Invicta Mill will increase by approximately 700 000 tonnes. Increased throughput will result from a combination of mill expansion and increased crushing season length.

8.193 The Commission considers the Invicta Agreements provide for an increase in mill throughput (by around 700 000 tonnes) in the following ways:

- the differential payment scheme for growers tied to the length of the season provides an incentive for a longer season;
- the levy provides for a means to fund capital investment in land, plant and equipment, including train-line; and
- the Invicta Negotiating Team will meet to consider whether there should be an allocation of new or increased CPA to the Invicta Mill based on the nominal annual capacity and the CPA necessary to fully utilise that capacity.

8.194 As indicated in relation to the Pioneer Supply Agreement, the Commission accepts that as a result of increased throughput at the Invicta Mill, utilisation of milling infrastructure will be improved. Overall improvements in milling efficiencies are likely to lead to improved international competitiveness. The Commission accepts the resulting efficiencies as a public benefit. In addition, the Commission considers that an effect of increasing throughput and therefore output is likely to operate as an incentive for further investment by CSR, with flow on benefits to growers in terms of certainty/continuance of supply.

8.195 The Commission considers there are features of the Queensland sugar industry that should prevent growers and CSR internalising the benefits flowing from gained efficiencies. These features are listed at paragraph 8.116 of this determination.

Better informed market

8.196 The Invicta Supply Agreement provides for the negotiation of cane terms of supply by the Invicta Negotiating Team on behalf of the Invicta growers. The Commission notes that the Invicta negotiating Team will also carry out a process of annual review of the terms and effect of the Agreement.

8.197 As previously discussed in relation to the Pioneer Agreement, the Commission generally accepts that markets work more efficiently when participants are well informed, and as there is a cost in the collection and analysis of market information, there may be efficiency gains from having this function performed on a collective basis.

8.198 In its draft determination, the Commission accepted that to the extent that the Agreements go beyond what is legislated, the collection and analysis of market information on a collective basis is likely to improve the efficient operation of the industry, resulting in public benefit.

8.199 The information requirements under the SIA are outlined at paragraph 8.119 of this determination in relation to the Pioneer Supply Agreement. Unlike the Pioneer Agreement, the Invicta Supply Agreement does not appear to go beyond these legislated requirements. Therefore, in the circumstances, the analysis and collection of market information on a collective basis for Invicta occurs independent of this authorisation. Accordingly, the Commission does not give much weight to any benefits from the Invicta Supply Agreement arising from a better informed market.

Transaction cost savings

8.200 As discussed in greater detail in relation to the Pioneer Supply Agreement (at paragraph 8.123), transaction cost savings are another outcome generally associated with collective negotiations.

8.201 Following its draft determination, the Commission did not receive a submission in relation to the Invicta Agreements addressing this issue. Accordingly, the Commission affirms its decision in the draft determination. That is, to the extent that transaction cost savings result from the Invicta Agreements, there is a benefit to the public. However, collective negotiation is permitted under the SIA. Therefore, the Commission gives little weight to this benefit.

Growth in exports

8.202 In its draft determination, the Commission accepted that as nearly all Queensland sugar is exported, efficiencies resulting from the Agreements may make Australian sugar more internationally competitive.

8.203 Additional information received from CSR following the pre-determination conference in relation to the value of increased sugar exports, and the benefit of extending the crushing season to produce seasonal sugar exports under the Agreements, is outlined under the Commission's discussion of the Pioneer Supply Agreement above (at paragraphs 8.126 – 8.30).

8.204 The Commission's assessment of this issue in relation to the Invicta Agreements is the same as that expressed in relation to the Pioneer Supply Agreement. Namely, there is some public benefit in the efficiencies resulting from the Invicta Agreements and seasonal exports of sugar which may make Australian sugar more internationally competitive.

Regional benefits to the Burdekin community

8.205 As previously discussed, the Commission acknowledges the potential impact that local industries have on the communities and economies of the surrounding towns and areas affected by that industry.

8.206 In its draft determination, the Commission accepted that there may be a public benefit in the form of economic flow-on effects to the Burdekin community associated with the efficiencies gains from the Agreements for which authorisation is sought. The Commission accepts that increased production and incomes generated in regional areas can be regarded as a public benefit in some contexts.

8.207 Subsequent submissions received from CSR in relation to the value of the benefits flowing to the Burdekin region are discussed at paragraphs 8.138 – 8.139 of this determination. The Commission also considers the increased throughput is likely to operate as an incentive for further investment by CSR, with flow on benefits to growers in terms of certainty/continuance of supply. The Commission's view on this issue in relation to the Invicta Agreements is the same as that expressed under the Pioneer Supply Agreement. Namely, there is likely to be some public benefits from the Invicta Agreements, as a result of associated economic gains to the Burdekin community, to the extent that these benefits are not obtained at the expense of other communities (and they do not appear to be).

Summary of public detriment and public benefit arising from the Invicta Agreements

8.208 In the circumstances the Commission considered it necessary to consider the Invicta Supply Agreement and Invicta Expansion Agreement in the context of the regulatory environment in which they exist (which exempts much of the conduct for which authorisation is sought).

8.209 The Commission considers the adverse effect on competition arising from the cane payment formulae; the limited ability of growers to 'opt out' of the collective arrangements; the difficulties faced by new market entrants (both millers and growers);

the restrictions on a grower exiting the industry; and constraints on growers and potential mill owners from minimum supply obligations (apart from the ten year period of the Invicta Supply Agreement), largely exist independent of the of the Invicta Agreements.

8.210 To the extent that the differential payment scheme and the expansion arrangements under the Invicta Agreements are not covered by the terms of statutory authorisation provided by the SIA, the Commission considers there is some small level of public detriment resulting from the Agreement. However, the Commission considers the extent of this detriment is minimal, and is be limited by the localisation of arrangements.

8.211 The Commission considers, subject to a condition of authorisation discussed at paragraph 8.181 –8.182, the Invicta Agreements contain adequate dispute resolution procedures.

8.212 In relation to the public benefit flowing from the Invicta Supply Agreements and the Invicta Expansion Agreement, the Commission considers there is benefit to the public as result of efficiency gains from the better utilisation of infrastructure. In addition, the Commission considers that an effect of increasing throughput and therefore output is likely to operate as an incentive for further investment by CSR, with flow on benefits to growers in terms of certainty/continuance of supply. There is also likely to be a growth in exports and an associated increase in the international competitiveness of the sector as a result of the efficiencies and seasonal exports of sugar achieved as a result of the Agreements. There are also likely to be some public benefits, as a result of associated economic gains to the Burdekin community.

8.213 The Commission's assessment of the public benefits and detriments flowing from the Invicta Agreements is based on the expectation that CSR is obliged to comply with the requirements of the SIA, and particularly those relating to individual negotiations. Therefore the Commission has imposed a condition of authorisation that the Invicta Supply Agreement be amended to include reference to the possibility for growers to enter into individual negotiations with CSR in line with the provisions of the SIA.

Conclusion

8.214 For the reasons discussed, and subject to the conditions discussed, the Commission is of the view there are minimal public detriments that are likely to result from the giving effect to the provisions of the Agreements, and that, the public benefits likely to result from the Agreements outweigh any public detriments.

Time limit

8.215 In its draft determination, the Commission proposed to grant authorisation for a period of four years.

8.216 The Commission has decided to authorise the giving effect to the Invicta Supply Agreement, the Invicta Expansion Agreement and the Pioneer Supply Agreement for a period of five years. This period corresponds with the term of the Pioneer Supply

Agreement. The Commission notes that the terms of the Invicta Agreements are ten years. If CSR considers it necessary for the giving effect to the Invicta Agreements to be protected by authorisation, CSR may wish to re-apply for authorisation at the time of expiry of this authorisation.

8.217 In general, authorising arrangements for a limited period allows the Commission, at the end of the period of authorisation, to evaluate whether the public benefits upon which its decision is made actually eventuate in practice and the appropriateness of the authorisation in the current market environment.

8.218 In addition, the Commission may review the authorisation, prior to the expiry of the authorisation, if there has been a material change of circumstances since the authorisation was granted. For example, an amendment or revocation of the industry legislation may amount to a material change in circumstances that would trigger a review of the authorisation.

9. Determination

9.1 For the reasons set out in Section 7 of this decision the Commission is satisfied, subject to the condition set out below, in all the circumstances the Agreements for which authorisation is sought

- are likely to result in a benefit to the public; and
- that benefit outweighs or would outweigh the detriment to the public constituted by any lessening of competition that is likely to result from giving effect to the Agreements.

9.2 The Commission therefore grants authorisation under section 88(1) of the Act and the Competition Code, to application A90733 in respect of the Invicta Supply Agreement, Invicta Expansion Agreement and the Cane Supply Agreement for the Pioneer Mill (Attachments A – C) on condition that:

- The final sentence in Clause 1.3.2 of the Pioneer Supply Agreement and Invicta Supply Agreement is deleted, which currently reads in both agreements:

The determination by the CPB as to whether CPA is existing CPA or new CPA is final and binding.

- An independent process of appeal which is consistent with section 204 of the SIA be inserted into the Invicta and Pioneer Supply Agreements for situations where a CPB's decision is not consistent with the CPA variation guidelines under Clause 1.4 of the Invicta Supply Agreement and Clause 1.4 of the Pioneer Supply Agreement.
- The Pioneer Supply Agreement and the Invicta Supply Agreement are amended to include reference to the possibility for growers to enter into individual negotiations with CSR in line with the provisions of the SIA.

9.3 This authorisation also applies to growers who become parties to the Agreements at a time after authorisation is granted.

9.4 This authorisation is subject to any application to the Australian Competition Tribunal for its review.

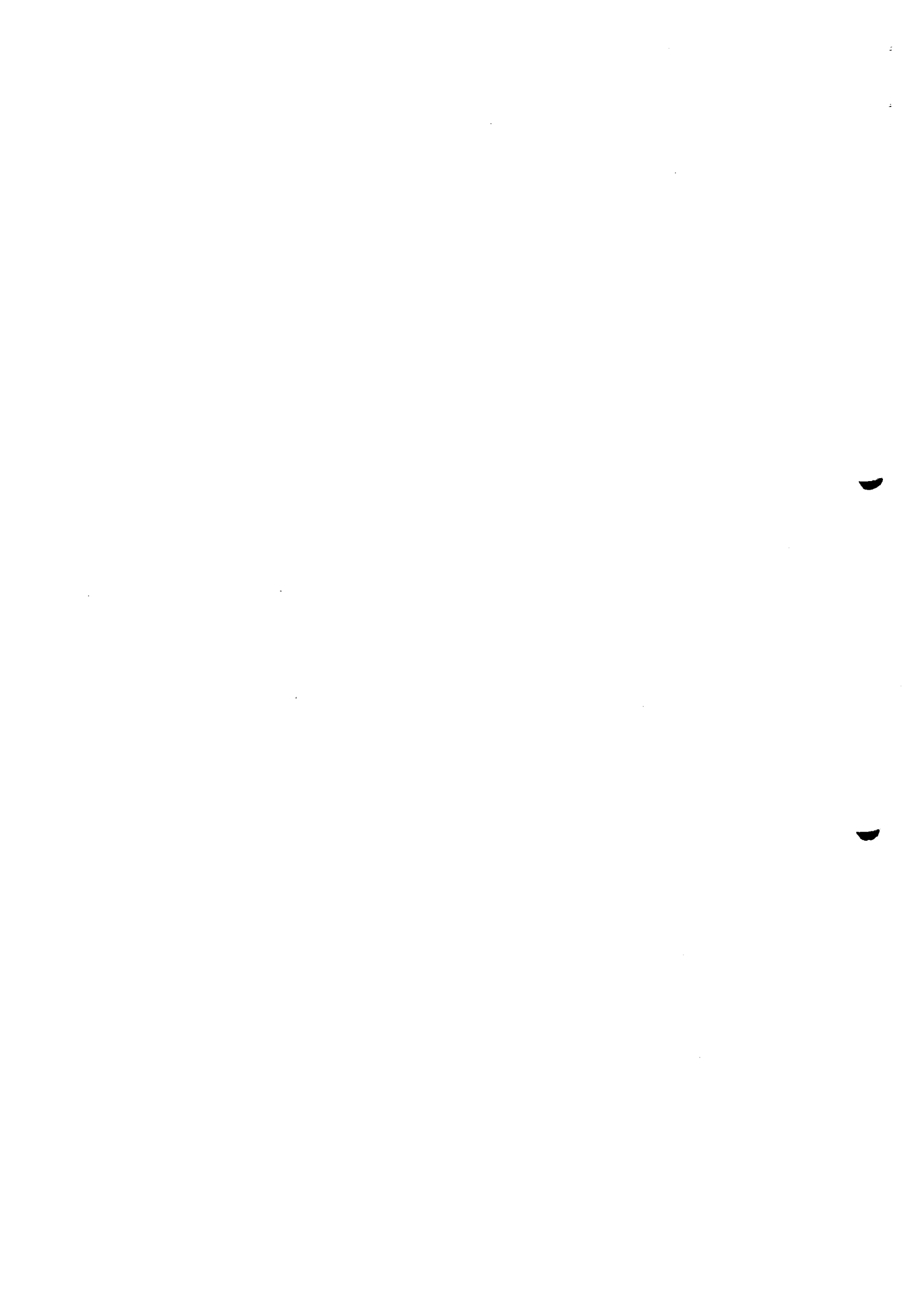
9.5 This determination is made on 11 July 2001. If no application for review is made to the Australian Competition Tribunal (the Tribunal) in accordance with section 101 of the Act, it will come into force on 2 August 2001.

9.6 If an application for review is made to the Tribunal, the determination will come into force:

- where an application is not withdrawn — on the day on which the Tribunal makes a determination on the review; or
- where the application is withdrawn — on the day on which the application is withdrawn.

9.7 The interim authorisation granted by the Commission on 7 September 2000 is hereby revoked and substituted with an interim authorisation granted in the same terms and subject to the same conditions as this authorisation until such time as this determination comes into force, or until such further order is made by the Tribunal.

9.8 The authorisation that the Commission grants in respect of Application A90733 is to remain in force until 2 August 2006.



Attachment A

INVICTA MILL

CANE SUPPLY AGREEMENT

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COLLECTIVE SUPPLY AGREEMENT

THIS CANE SUPPLY AGREEMENT is made the 22nd June 2000.

BY: **The Invicta Mill Negotiating Team** pursuant to the provisions of Section 188(1) and Section 40 of the Act ("the Negotiating Team")

RECITALS

- A. The Invicta Mill Negotiating Team has been established in accordance with the Act and comprises four (4) members, two of whom represent CSR and two of whom represent the Committee;
- B. CSR operates the Invicta Sugar Mill at Giru and other mills in the Burdekin region of Queensland;
- C. The Committee is the entity representing canegrowers ("Growers") supplying sugar cane to Invicta Mill;
- D. The Negotiating Team has negotiated this Collective Supply Agreement and an associated agreement (Expansion Agreement) with the objective of achieving outcomes beneficial to CSR and Growers including the following objectives:
 - (i.) to provide confidence in and security of cane supply and processing.
 - (ii.) to create a stable working environment to enable CSR and Growers to plan their future business activities and expansion programs;
 - (iii.) to facilitate the extension of a crushing season to 23.5 Dry Weeks for the 2000 crushing season, and thereafter to 24.5 Dry Weeks, in accordance with the terms and conditions contained in the Expansion Agreement;
 - (iv.) to enable CSR to increase Mill throughput in order to service the requirements of an extended crushing season, and to incur the necessary expenditure on tramline and other infrastructure associated with an extended crushing season; and
 - (v.) to facilitate and regulate the granting of new cane production areas based on actual crop yields, actual rotation and actual Mill crushing rate and availability.
- E. Part I of this Agreement deals with medium term issues, including the payment arrangements for cane supplied under this agreement.
- F. Part II of this Agreement deals with the management of supply in each particular season.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 General Definitions

“Act” means the *Sugar Industry Act 1999* (Qld);

“Expansion Agreement” means the associated Expansion Agreement entered into by the parties hereto on the same date as this Agreement.

“CPB” means the Invicta Cane Production Board as created under the Act.

“CPA” means a Cane Production Area as defined in the Act.

“Dry Weeks” or “Dry Days” in relation to season length or estimated season length means the season length exclusive of any delays caused by wet weather, or other cane supply issues beyond CSR’s reasonable control.

“Invicta Mill” means the Invicta Sugar Mill operated by CSR in the Burdekin region of Queensland.

“Pioneer Mill” means the Pioneer Sugar Mill operated by CSR in the Burdekin region of Queensland

“Grower” or “Growers” is a cane grower or cane growers supplying cane to the Invicta Mill.

“Existing Grower” is a grower who holds existing CPA.

“New Grower” is a grower who does not hold existing CPA.

“Assignment” means assignment granted under the repealed Sugar Industry Act 1991

Other terms used but not defined in this Agreement shall have the same meaning as is ascribed to those terms in:

- (a) the Act; and
- (b) the Expansion Agreement,

and if the definitions in those documents are inconsistent, the definitions used in the Act shall prevail.

1.2 Definition of Existing CPA

“Existing CPA” means assignment or CPA that is not **“New CPA”** as defined in Clause 1.3 below.

1.3 Definition of New CPA

“New CPA” means:

1.3.1. CPA granted on or after 1 March 1999; or

1.3.2 Existing CPA varied by a CPB application or order on or after 1 March 1999, except where the CPA is determined by the CPB, using the guidelines in Clause 1.4. below, to be Existing CPA. The determination by the CPB as to whether CPA is Existing CPA or New CPA is final and binding.

1.4 Guidelines to be used by CPB in determining New and Existing CPA

The overall intention of this agreement is that New CPA should include any unassigned land in production for the 2000 season or later, as a result of roaming, leasing of assignment, or issue of CPA for the land after 1st March, 1999.

The principles to be used by the CPB in determining whether a variation of Existing CPA should be classified as Existing CPA under Clause 1.3. above, is that the variation must -

- (a) not increase the total area of the mills CPA; and
- (b) not increase the area of the property description for the CPA; and
- (c) not have the effect of increasing the area of cane under cultivation, whether through roaming, leasing of CPA, sale of CPA or any other means; and
- (d) fall into one of the following categories –
 - (i) a transaction dealing with the land and assignment as one entity;
 - (ii) a technical variation such as resurvey;
 - (iii) be agreed as an exception by the CPB

or

be CPA rezoned or transferred from another Burdekin Mill, where the CPA would have been classified as Existing CPA at its original mill;

Examples

Farmer A has 100 ha of land with Existing CPA, but grows cane on only 85 ha of this land. He leases 15 ha of CPA to Farmer B who grows cane on it on other land. The supply of cane from Farmer B to the mill would be classified as New CPA because it has the effect of increasing the area of cane under cultivation.

Farmer A has 100 ha of land with Existing CPA, but grows cane on only 85 ha of this land. He sells 15 ha of CPA to Farmer B who grows cane on it on other land. The supply of cane from Farmer B to the mill would be classified as New CPA because it has the effect of increasing the area of cane under cultivation. If however, the CPB was satisfied that Farmer A was to permanently reduce the area of his cane by 15 ha, the supply of cane from Farmer B could be classified as existing CPA, as the transaction has not increased the area under cultivation.

Farmer A has 100 ha of land and Existing CPA, and grows cane on the full 100ha. He also has another 20 ha piece of land nearby. He applies to include the second piece of land in the property description for his CPA, so that he can roam onto the second piece of land and either fallow land in his original block, or grow more cane on the second block. The cane from the second block would be New CPA, as it has the effect of increasing the area of the property description for the CPA.

2 OTHER MATTERS

2.1 Condition precedent

CSR has sought authorisation from Australian Competition and Consumer Commission (ACCC) for this agreement. In the event that changes are required by the ACCC, the parties agree that they will negotiate in good faith to modify this agreement to comply with ACCC requirements, while maintaining the commercial effect and intent of this agreement.

2.2 Mill sale or closure

CSR agrees it will not cease to carry on the business of manufacturing sugar at Invicta Mill without first giving the Committee at least one full crushing seasons notice.

In the event Invicta Mill is sold, CSR agrees to obtain undertakings from the new owner to honour this Collective Supply Agreement.

In the event that CSR intends to offer Invicta Mill for sale as a separate entity separate from the rest of CSR Sugar Mills Group, CSR agrees to register the Committee as a potential purchaser.

CSR agrees to keep the Committee informed as to the progress of any separation of CSR Sugar from the rest of CSR.

2.3 Byproducts

The parties agree they will consult on any opportunities that arise to joint venture in relation to commercial exploitation of sugar industry by-products, such as cane tops, mud and ash, but excluding bagasse and molasses, and products derived from these, which have traditionally been the property of the mill.

3 COMMENCEMENT AND TERM

3.1 Commencement of agreement

This Agreement shall commence on the date first written herein.

3.2 Termination of agreement

Parts I of this agreement shall, subject to the conditions hereinafter set out, remain in force for a period of ten (10) years from the commencement date.

Part II of this agreement shall, subject to the conditions hereinafter set out, remain in force for a period of 1 year from the commencement date.

3.3 Annual Review

In December in each year during the term of this Agreement, the Negotiating Team shall undertake a review of the terms and effect of this Agreement.

If the Negotiating Team unanimously agrees that it is desirable that this Agreement be varied, the Negotiating Team shall vary this agreement accordingly.

3.4 Negotiations for fresh Agreement in ninth year

For the purpose of providing confidence and security for CSR and the Growers, and to enable CSR and Growers to properly plan future farming and milling operations, the Negotiating Team shall at the commencement of the 9th calendar year of the term of this Agreement commence negotiations relating to a further supply agreement to commence from the date following the expiry of this Agreement.

3.5 Review on change in circumstances

If at any time during the term of this Agreement CSR or the Committee considers that as a result of any significant change in circumstances, one party has been seriously disadvantaged to the benefit of the other party, that party may by notice in writing request the other party to confer regarding the changed circumstances and that other party shall

within seven (7) days of receiving such notice confer with the first party regarding the changed circumstances.

If CSR and the Committee then mutually agree that because of the changed circumstances it is desirable that this Agreement be varied, the parties shall join in making an application to the Negotiating Team for variation of the Agreement in accordance with the provisions of s 44 of the *Sugar Industry Act*.

If the parties hereto cannot agree on the manner in which this Agreement is to be varied under this clause, then either party may refer the matter for dispute under Clause 12.2 of this agreement, for the purpose of determining the following:

- (a) whether there has been a significant change in circumstance;
- (b) whether such change has caused serious disadvantage to one party, to the benefit of the other party; and
- (c) if (a) and (b) are established, then to determine the changes that should be made to the Agreement to put, as far as is practicable, both parties back into the same respective positions in which they were before the significant change in circumstance occurred.

4 DURATION OF SEASON

4.1 Estimated season length

The estimated length of the season will be calculated each year by the 1 March, using the following formula:

$$L = \frac{AUC \times TPha}{TPHr \times MA \times 168}$$

where

- L = the estimated length of the season in Dry Weeks;
- AUC = area under cane available for harvest (excluding an allowance for seed cane at 0.5%, or a mutually agreed figure) measured in hectares;
- TPha = average yield over last five years excluding best and worst year, measured in tonnes of cane per hectare;
- TPHr = the average gross crushing rate for the last two years measured in tonnes of cane per hour (or a mutually agreed rate considering any significant changes or events);
- MA = average mill availability for the previous two years (or a mutually agreed availability % considering any significant changes or events) as a proportion

of full mill availability:

168 = total number of hours per week;

4.2 Commencement of season - 21.2 Dry Weeks or less

In the event that the estimated season length will be 21.2 Dry Weeks or less, the crushing season will start on the Tuesday after the date gazetted as the "Queen's Birthday" public holiday in Queensland (or, if no such date, the second Monday in June) or otherwise by agreement between the parties.

4.3 Commencement of season – Between 21.2 to 23.5 Dry Weeks

In the event that the estimated season length will be more than 21.2 Dry Weeks, the crushing season will start that number of days prior to the Tuesday after Queen's Birthday (as defined in the previous paragraph) by which the season length is estimated to exceed 21.2 weeks, provided that the earliest start date will be the 1st of June, or otherwise by agreement between the parties.

4.4 Commencement of season - 23.5 Dry Weeks or longer

In the event that the estimated season length is calculated as 23.5 Dry Weeks or more, the crushing season will start on the 1st of June, or otherwise by agreement between the parties.

4.5 Extension of season length by unavoidable delays

If the crushing season is delayed by wet weather or by strikes, or any other matter, beyond the reasonable control of CSR, the parties agree the season length shall be extended by the aggregate of any such delays, and extension shall not be counted in determining the dry season length. If there is any dispute between CSR and the Growers as to whether the delay was beyond the reasonable control of CSR, such dispute shall be referred to the Negotiating Team for resolution. Nothing in this Agreement shall oblige CSR to settle industrial disputes on terms that CSR regards as unfavourable. However, CSR undertakes to abide by all Industrial Commission recommendations.

4.6 Resumption of crushing after wet weather

Should the Mill cease crushing as a result of wet weather, the date of resumption of crushing shall be determined by consultation between CSR and the Committee.

4.7 Cessation of crushing

4.7.1. Crushing shall terminate when all cane has been crushed from CPA relating to the Mill. CSR shall give at least fourteen (14) days notice in the local press and by notice in writing to the Growers of the estimated finishing date.

4.7.2. After giving the notice above, CSR may terminate the season if wet weather causes the quantity of cane supplied to the Mill for crushing for five (5) successive days fall below two thirds (2/3) of the average daily crush to date for that season.

4.7.3. CSR agrees it will not terminate the season under clause 4.7.2 above without first consulting with the Committee and jointly exploring all feasible options to crush any remaining cane.

4.8 Crushing of cane at other mills

The parties agree that CSR may, at its discretion, arrange for any cane supplied under this agreement to be crushed at other mills owned by CSR in the Burdekin region.

5 CANE SUPPLY

5.1 Minimum Supply Amount.

If a Grower supplies less than 70% of that Grower's CPA in each of three consecutive crushing seasons, and the total area of cane available for crushing is below 85% of the total CPA for Invicta Mill, then a party to this agreement may ask the CPB to consider whether it is appropriate for that Grower to forfeit that percentage of CPA which has not been supplied.

5.2 Obligation to Supply

Each Grower who grows cane on land included in the Grower's CPA relating to the Mill shall supply such cane to the Mill.

5.3 Cane Supplied from non-CPA land

If CSR processes cane from land without a CPA entitlement, and as a result CSR receives no payment for the sugar made from that cane, then the Grower who delivers that cane shall receive no payment for the cane.

6 CANE PAYMENTS AND FINANCIAL INCENTIVES

6.1 Cane price formula – Existing CPA

The value for cane supplied under this agreement from Existing CPA shall be calculated according to the following formula:

$$P_C = P_S \times 0.009(CCS - 4) + 0.578 + ESA + WEA$$

where

P_C = base average cane value at the Mill (pre GST);

P_S = sugar price in dollars per tonne of IPS sugar (pre GST);

CCS = seasonal average CCS of all cane;

ESA = Extended Season Allowance calculated in accordance with Clauses 6.2 and 6.3;

WEA = Weekend Harvesting Allowance calculated in accordance with Clause 6.4.

The value for an individual Grower's cane shall be calculated by the "Relative A" daily system of relative payment that incorporates the individual Grower's relative CCS. The relative "A" scheme is detailed in the Cane Supply and Processing Procedures Manual.

6.2 Extended Season Allowance for Existing CPA

Subject to Clause 6.3, the Extended Season Allowance for a season for all cane supplied from existing CPA shall be the amount in the following table corresponding to the actual season length. This allowance incorporates all previously paid adjustments excluding Weekend Harvesting Allowances, but including (without limitation) continuous crush allowances, production incentive payments, Bulk Mills/IPS adjustments, an allowance for CCS, the introduction of canned fibre machines, and any other losses whatsoever incurred as a result of the season length extension.

Actual Season Length (in Dry Days)	Extended Season Allowance
151.9 or less	\$0.302
152.0 - 152.9	\$0.332
153.0 - 153.9	\$0.362
154.0 - 154.9	\$0.392
155.0 - 155.9	\$0.422
156.0 - 156.9	\$0.452
157.0 - 157.9	\$0.482
158.0 - 158.9	\$0.512
159.0 - 159.9	\$0.542
160.0 - 160.9	\$0.572
161.0 - 161.9	\$0.602
162.0 - 162.9	\$0.632
163.0 - 163.9	\$0.662
164.0 - 164.9	\$0.692
165.0 - 165.9	\$0.722
166.0 - 166.9	\$0.752
167.0 - 167.9	\$0.782
168.0 - 168.9	\$0.812
169.0 - 169.9	\$0.842
170.0 - 170.9	\$0.872
171.0 or more	\$0.902

6.3 Adjustment to Extended Season Allowance - Existing CPA

The Extended Season Allowance payable for cane grown on Existing CPA is limited to payment on 3.00 million tonnes of cane. Factors such as CPA leasing, increased rotation, or increased yield could increase the amount of cane grown on Existing CPA.

Accordingly, in the event that the amount of cane supplied from Existing CPA is more than 3.00Mt., the allowance calculated in the previous clause shall be reduced according to the following formula:

$$\text{Adjusted Allowance for Existing CPA} = \frac{\text{Allowance under Clause 6.2} \times 3.00\text{Mt}}{\text{Quantity of cane from Existing CPA (Mt)}}$$

The amount of 3.00Mt which appears in the above formula will be proportionately adjusted if there are transfers of Existing CPA between Pioneer Mill and other sugar mills.

6.4 Weekend Harvesting Allowance

6.4.1 Definitions

In this clause –

“**Guide Price**” shall mean the estimated cost of harvesting and hauling for a 60,000 tonne group using New Equipment., as published by the Burdekin District Canegrowers Executive, or another mutually agreed value which reflects the average cost of harvesting and hauling in the Invicta Mill Area. The guide price shall be adjusted for green cane harvesting as appropriate.

“**Calendar Week**” means a working week commencing on a Sunday and ending on a Saturday

6.4.2 Cane harvested on Saturday or Sunday

An allowance shall be payable for all cane harvested from existing CPA of 17 cents per tonne.

6.4.3 Cane harvested on days off

An allowance for cane harvested from existing CPA on a harvesting groups rostered day off, where the work has been requested by the mill, shall be payable, calculated as follows –

- (i) A piecework rate equal to 10.38% of the guide price for harvesting burnt cane, and 12.3% of the guide price for harvesting green cane for work on the 6th day; or
- (ii) A piecework rate equal to 13.00% of the guide price for harvesting burnt cane, and 14.76% of the guide price for harvesting green cane for work on the 7th day.

6.5 Cane price formula – New CPA

The parties acknowledge that cane supplied from New CPA is subject to different payment provisions than cane grown on Existing CPA. New CPA will not attract any Weekend Harvesting Allowances or Extended Season Allowances. New CPA will be assigned new Farm Numbers, and will not be able to be aggregated with existing farms.

The value for cane supplied under this agreement from new CPA shall be calculated according to the following formula:

$$PC = PS \times 0.009(CCS - 4) + 0.578 - Levy$$

where:

- PC = base average cane value at the Mill (pre GST);
- PS = sugar price in dollars per tonne of IPS sugar (pre GST);
- CCS = seasonal average CCS of all cane;
- Levy = \$1.00 per tonne for the first ten years of supply. After ten years of supply, the levy will be zero.

The price for an individual Grower's cane shall be calculated by the "Relative A" daily system of relative payment that incorporates the individual Grower's relative CCS.

7 ADJUSTMENT FOR MILL NON-PERFORMANCE

7.1 Definitions

In this clause 7:

"Actual Crush" means the quantity of cane actually crushed during the season, measured in metric tonnes.

"Agreed Net Crushing Rate" means

- i. In respect of the 2000 to 2003 seasons, the amounts shown in the following table for Pioneer and Invicta combined -

Season	Agreed Net Crushing Rate
2000	1,380 tonnes/hour
2001	1,395 tonnes/hour
2002	1,410 tonnes/hour
2003	1,425 tonnes/hour

ii. In respect of the 2004 and subsequent season, the Target Net Crushing Rate ("TNCR") as defined in the Expansion Agreement, less a buffer of 1.5% to allow for normal seasonal variations including CCS, Fibre and Cane Purity, measured in metric tonnes per hour. The 1.5% buffer will be limited to the amount by which the three year rolling average net crushing rate (that is, the average net crushing rate for the current season and the previous two seasons) exceeds the TNCR.

iii. If other circumstances arise that, in CSR's reasonable opinion, reduce crushing rate such as

(a) the production of a brand of sugar that is not the Industry Standard Brand as defined in Section 99(9) of the Act.

(b) a season of excessive fibre levels; or

(c) other cane quality parameters significantly different from normal seasons,

then the Committee and CSR will agree adjustments to the Agreed Net Crushing Rate to compensate for these variations, and in the absence of agreement, the matter is to be referred to the Negotiating Team for resolution. The Negotiating Team may request supporting documentation for verification and if necessary seek verification of this documentation by an independent assessor.

"Agreed Crush" means the amount of cane the Mill has agreed to crush, measured in metric tonnes, and calculated as:

$$\text{Agreed Crush} = \text{Agreed Net Crushing Rate} \times 24.5 \text{ Dry Weeks} \times 168 \text{ hours per week}$$

"Estimated Standover" means the amount of cane not crushed, and stood over until the following year, measured in metric tonnes. It is calculated as:

$$\text{Estimated Standover} = \text{Area stood over} \times \text{estimated yield for that area}$$

"**Total Crop**" means the amount of cane available for crushing, including cane actually crushed plus an estimate of standover, measured in metric tonnes. It is calculated as:

$$\text{Total Crop} = \text{Actual Crush} + \text{Estimated Standover}$$

"**Expected Crush**" means the amount of cane that would have been crushed if the Mill had met its Agreed Net Crushing Rate, measured in metric tonnes. It is calculated as:

$$\text{Actual Season Length (in hours)} = \text{Season Length (in Dry Weeks)} \times 168 \text{ hours per week:}$$

$$\text{Expected Crush} = \text{Agreed Net Crushing Rate} \times \text{Actual Season Length (in hours):}$$

provided that if the result of the above calculation is greater than the Total Crop, then the Expected Crush is equal to the Total Crop.

"**Actual Net Crushing Rate**" means the Crushing rate actually achieved after the adjustments outlined in clause 7.4 for extraordinary circumstances. It is calculated as:

$$\text{Actual Net Crushing Rate} = \frac{\text{Actual Crush} - \text{Clause 7.4 Adjustment}}{\text{Crushing Hours} - \text{Clause 7.4 Adjustment} + \text{Factory Stops}}$$

where "Factory Stops" means stops within the Mill's control, for example mechanical breakdown or maintenance stops.

"**Expected Season Length**" means the season length that would be expected given the Actual Net Crushing Rate achieved, measured in weeks. It is calculated as:

$$\text{Expected Season Length} = \frac{\text{Expected Crush}}{\text{Actual Net Crushing Rate (in tonnes per hour)} \times 168 \text{ hours per week}}$$

"**Standard Season Crush**" means the amount of cane that would have been crushed in 24.5 Dry Weeks, measured in metric tonnes. It is calculated as:

$$\text{Standard Season Crush} = \text{Actual Net Crushing Rate} \times 168 \text{ hours per week} \times 24.5 \text{ dry weeks}$$

7.2 Adjustment for Season Length Extension

In the event that

- (a) the Actual Net Crushing Rate is less than the Agreed Net Crushing Rate, (that is, there has been a shortfall in Mill performance); and
- (b) the Expected Season Length is greater than 24.5 Dry Weeks (that is, there was sufficient cane available to result in this shortfall causing the season length to exceed 24.5 dry weeks),

then CSR will make additional payments on the amount of cane that was affected by the season length extension. Growers acknowledge that such payment is in full compensation for any and all types of loss to Growers resulting from the season length extension. The distribution of any such payments between individual Growers shall be determined by the Committee.

7.3 Adjustment for Wet Weather and Abnormal Circumstances

The parties acknowledge that special circumstances apply when crushing operations are taking place during periods of wet weather, and that crushing performance can be reduced due to:

- high mud loadings;
- stop / start operation; and
- variations to crushing rate to maximise sugar recovery and sugar quality, during periods of reduced cane availability.

If the Mill ceases crushing as a result of lack of cane supply caused by such circumstances, then for the purpose of calculating Actual Net Crushing Rate in clause 7.1, both the amount of cane crushed and the crushing hours shall be excluded from the calculation until one full day of continuous supply is available and mud loadings have, in the reasonable opinion of CSR and the Committee, returned to normal levels. CSR shall, on request, supply reasonable evidence to support its decision on when mud levels have returned to normal levels.

7.4 Amount of Cane Eligible for Additional Payment

If the Expected Crush is less than the Agreed Crush (that is, if the crop could have been crushed in 24.5 Dry Weeks if there was no deficiency in Mill performance) then the amount of cane (measured in metric tonnes) eligible for additional payment is calculated as:

$$\text{Amount Eligible} = \text{Expected Crush} - \text{Standard Season Crush}$$

If the Expected Crush is greater than the Agreed crush (that is, if the crop could not have been crushed in 24.5 Dry Weeks, even if the Mill had performed properly) then the amount of cane (measured in metric tonnes) eligible for additional payment is calculated as

$$\text{Amount Eligible} = \text{Agreed Crush} - \text{Standard Season Crush}$$

7.5 Payment Amount

The amount of the additional payment is calculated as:

$$\text{Payment Amount} = \$3.50 \text{ per tonne} \times \text{Amount Eligible}$$

7.6 CCS underpinning after 24.5 Dry Weeks

In the event the actual season length exceeds 24.5 Dry Weeks, CSR will underpin the CCS level of any cane crushed after 24.5 Dry Weeks as a result of the Mill not achieving the Agreed Net Crushing Rate. The procedure to calculate such underpinning is as follows:

- (a) The amount of cane subject to underpinning is calculated as:

$$\text{Underpinned CCS} = \text{Actual Crush} - \text{Standard Season Crush}$$

The amount of cane subject to underpinning is assumed to be the last cane crushed for the season. The average CCS of this cane is then calculated.

- (b) The average CCS for the 24.5 Week Crush is calculated (“**Standard Season CCS**”)

- (c) In the event the Underpinned CCS is more than the Standard Season CCS, no CCS underpinning is payable.

- (d) In the event the Underpinned CCS is less than the Standard Season CCS, then the amount calculated in (a) above will be underpinned according to the following formula:

$$U_P = P_S \times 0.009 \times (\text{Standard Season CCS} - \text{Underpinned CCS})$$

Where

U_P = Average underpinning payment per metric tonne of cane. The actual payment to an individual Grower will be calculated taking into account that Grower’s relative CCS; and

P_S = Sugar Price of IPS sugar (in dollars per metric tonne).

7.7 Standover Cane

In the event that -

- (a) the Actual Net Crushing Rate is less than the Agreed Net Crushing Rate, (that is, there has been a shortfall in Mill performance); and
- (b) there has been cane stood over to the following season as a result of the shortfall in mill performance;

then the following arrangements shall apply to that cane.

- (a) The cane shall, as far as is practicable, be the first cane crushed in the Following Season; (For the purposes of this clause, the season in which the cane was originally scheduled to be crushed is defined as the Scheduled Season, and the following season in which the cane is actually crushed is defined as the Following Season)

- (b) The maximum amount of standover cane related to mill non performance will be calculated as follows;

Crush Hours = Actual Crushing Hours + Factory Stops in Scheduled Season or 4116, whichever is lower.

*(Agreed Net Crushing Rate – Actual Net Crushing Rate) * Crush Hours*

- (c) The amount of standover cane related to mill performance shall be either
- (i) the amount calculated above, or
 - (ii) the actual amount of standover cane,
- whichever is the lower.
- (d) The amount of cane calculated in sub-clause (c) above shall be treated for all payment purposes as belonging to the Scheduled Season, including underpinning the growers relative CCS for that cane to the growers average relative CCS for the Scheduled Season;
- (e) The grower shall receive no further payment for this cane in respect of the Following Season. Full payment for this cane shall be made with the final payment for the Scheduled Season.

8 CANE AND SUGAR QUALITY SCHEME

8.1 Canned Fibre Machine

The Committee agrees to the introduction by CSR of canned fibre machines for fibre analysis for cane payment purposes from the 2000 crushing season.

8.2 Components of Scheme

The parties agree that the production of high quality sugar is an important common goal. Better sugar quality will maintain our competitiveness in the market place, better meet customer expectations and give greater returns to grower and miller for their sugar. Both parties accept that the quality of sugar produced is heavily dependant on the quality of cane supplied and the technology and milling practices in place at the mill. Accordingly, the parties agree that they will put in place, before the 30th June 2000, in respect of the 2000 season, and before the commencement of each season in subsequent years, a cane and sugar quality scheme that incorporates a sharing of the costs and benefits of producing high quality sugar. This scheme will be documented in a separate agreement.

The Cane and Sugar Quality Scheme is to consist of seven components –

- (1) An identifiable premium received by the mill for the production of high quality sugar

- (2) An equitable sharing of the premium between grower and miller into grower and miller pools
- (3) A commitment to the production of high quality cane and sugar by growers and millers
- (4) The application of appropriate processes and technology for quality sugar production at the mill
- (5) The application of appropriate agricultural and harvesting practices by growers
- (6) The objective measurement of appropriate cane quality parameters for cane delivered to the mill
- (7) The sharing of the growers pool between growers based on the parameters determined in (6) above.

Where the Committee incurs costs from the operation of the Cane and Sugar Quality Scheme, it may recover all or part of these costs from growers in any equitable manner it sees fit. Such amount as is determined by the Committee as an equitable contribution by each grower to the costs of the Cane and Sugar Quality Scheme shall be due and payable by the grower to the Committee, and the Mill shall, on written request from the Committee, deduct such amount from the Cane pay of the growers concerned and remit to the Committee.

9 TIMING OF PAYMENT FOR CANE

9.1 Interim price

The interim price during the season shall be 100% of the base price calculated in accordance with Clause 6.1 or 6.5, using the initial declared delivery price for Sugar. In the case of cane supplied from Existing CPA, the ESA in the formula in clause 6.1 shall be \$0.302. Weekend Harvesting payments shall be paid either weekly with cane pays, if payment is made direct to growers, or weekly to the Committee as mutually agreed.

9.2 Weekly payments

Payments shall be made weekly during the season and CSR shall supply to each Grower who has supplied cane during the week in question, a payment advice showing the relevant payment information. Such payment to be made within one (1) working day of receipt by the CSR the payment relating to such cane supply.

9.3 Payment for adjustments

If at any time during the season, CSR owner receives a higher price for sugar, the interim and base price shall be adjusted to the new level within one (1) working day after receipt of payment by CSR.

9.4 End of Season Payment

Within fourteen days excluding public holidays after the end of the season CSR shall adjust payments to each Grower to account for the difference between the value of that Grower's cane at the base price adjusted for the Grower's seasonal average relative CCS (including any adjustment under clause 7) and the sum already paid for that cane, provided that Queensland Sugar Ltd may extend the period allowed for payment in special circumstances.

An adjustment in respect of Mill non-performance pursuant to clause 7 will also be made with the end of season payment if applicable.

The balance of the constant calculated in accordance with clauses 6.2 and 6.3 will also be made with the end of season payment, if applicable.

During the term of this agreement, CSR agrees that it will pay with the end of season payment, a maximum amount of \$357,000 per annum towards the cost of water charged to growers in the Burdekin River Irrigation Area. The amount payable will reflect the actual increase in charges from the DNR as a result of the phase out of the Sugar Mill Levy, up to the above limit. The Committee shall supply to CSR by 31st October each year a list showing the percentage of this payment attributable to each grower.

9.5 Subsequent increases in price and final payment

Within 1 working day of payment by Queensland Sugar Ltd of an increase in the price for sugar after the end of the season, CSR shall pay each Grower the difference between the value of that Grower's cane calculated at the new sugar price and the sum already paid for that cane.

9.6 General payment conditions.

9.6.1 Interest on overdue payments.

CSR shall pay interest at the current bank rate for primary producers on account of any payments not made by the due date.

9.6.2 Recovery of overpayments.

Where any grower has been inadvertently overpaid, CSR may make appropriate adjustments to subsequent payments, or take other action for the recovery of sums overpaid as considered necessary.

9.6.3 Recovery of Cost of Operation of CPB

Where the Committee incurs costs from the operation of the Cane production Board, it may recover these costs from growers. On request from the Committee, the mill shall deduct the growers' half share of the net cost of operation of the CPB from the final cane payment for the year, allocated on a cents/tonne cane basis, and remit to the Committee.