Cane supply (Part III):

3.83 Clause 2 establishes that a grower is required to supply a minimum quota of cane to the Pioneer Mill or risk forfeiture of that percentage of CPA that has not been supplied. In the circumstances where a grower supplies less than 70% of the grower's CPA in each of three consecutive crushing seasons, a party to the Agreement may apply to the Pioneer CPB to consider the forfeiture of the percentage of CPA which has not grown cane.

3.84 Grower cane supply obligations under the Pioneer Agreement are the same as those described at paragraph 3.17 under the Invicta Supply Agreement.

Cane payments (Part III):

3.85 Essentially, Clause 3 (Part III) determines the base average cane price at the Pioneer Mill. Like the Invicta Supply Agreement, the Pioneer Agreement provides a different rate of payment for cane grown on existing CPA and cane grown on new CPA.

3.86 New CPA is defined in the Agreement as CPA granted on or after 1 March 2000, and existing CPA varied by a CPB application or order after 1 March 2000. A variation to existing CPA will be classified as existing CPA as long as the variation :

- does not increase the total area of the mill's CPA;
- does not increase the area of the property description for the CPA;
- does not have the effect of increasing the area of cane under cultivation; and
- does not fall into one of the following categories:
    - a transaction dealing with the land and assignment as one entity;
    - a technical variation such as resurvey;
    - 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.

3.87 The Pioneer cane payment formula for cane grown on existing CPA is identical to that described in paragraphs 3.21 – 3.23 above in relation to the Invicta Agreement. Briefly, the cane price formula for existing CPA, which appears at Clause 3.1 of the Pioneer Agreement, is comprised of the sugar price in dollars per tonne of IPS sugar; seasonal average of CCS of all cane; an ESA; and WEA.

3.88 The Pioneer Agreement also calculates an adjustment to the ESA, which has the effect of reducing the ESA, where cane grown on existing CPA exceeds a certain quantity of cane. Under the Pioneer Agreement, that quantity is 2.05 million tonnes of cane.

3.89 Clause 3.4 provides for a WEA for cane grown on existing CPA on a Saturday, Sunday, or the sixth working day in a calendar week in a continuous roster. The allowance is calculated as a fixed daily component in accordance with the appropriate Sugar Industry Award, or as a piecework rate equal to a certain percentage of the guide price for harvesting burnt cane and green cane.

3.90 The cane price formula for new CPA, which appears at clause 3.5 in the Pioneer Agreement, is comprised of the sugar price in dollars per tonne of IPS sugar; seasonal average CCS of all cane; a constant dollar amount per tonne; and a $1 levy per tonne. It does not comprise either a weekend or extended season allowance.

3.91 As outlined in paragraph 3.27 above in respect of Invicta growers, Pioneer growers that supply cane from new CPA will also be paid a lower cane price per tonne.

3.92 The Pioneer Agreement also imposes a financial penalty on CSR if it fails to meet the net crushing rate necessary to facilitate the requirements of an extended season. The penalty is in the form of additional payment to growers on the amount of cane affected by the season length extension.

Timing of payment for cane (Part III):

3.93 Clause 6 outlines arrangements in respect of the timing of payment of cane. These arrangements are similar to those described under the Invicta Supply Agreement in paragraphs 3.36 – 3.38.

3.94 The end of season payment may also include an adjustment in respect of mill non-performance.

Canned fibre machines (Part III):

3.95 Clause 5 provides that CSR will introduce canned fibre machines for fibre analysis for cane payment purposes from the 2000 crushing season.

Cane and sugar quality scheme (Part III):

3.96 The Pioneer Agreement also provides for a cane and sugar quality scheme to be implemented as outlined in paragraphs 3.33-3.34 in respect of the Invicta Supply Agreement.

3.97 The Pioneer sugar and quality scheme is the subject of a separate agreement to the Pioneer Supply Agreement. It does not form part of the application for authorisation.

3.98 The Commission notes that the Pioneer quality scheme states its objectives as being to:

- to establish a scheme that recognises cane quality standards as they impact on sugar quality;
- to define how sugar quality bonuses will be distributed that incorporates the cane quality criteria developed during the 2000 season;
- to define how sugar quality penalties will be distributed that incorporates the cane quality criteria developed during the 2000 season; and
- To develop a joint growers/miller cane and sugar quality improvement plan which implements agreed measures to improve cane and sugar quality in accordance with the SIA?

3.99 The Cane and Sugar Quality Committee, which consists of 2 miller members and 2 grower members, will manage the Pioneer cane and sugar quality scheme.

3.100 With regard to methods for determining cane quality, the Pioneer quality scheme states that, where possible, methods will be developed in conjunction with industry research bodies. The development will culminate in written procedures and standards for analysis and will be recommended by the Cane and Sugar Quality Committee for inclusion in the 2001 season program. For example, the methods proposed to assess cane will be based on first expressed juice (FEJ) analysis using existing recognised methods.

3.101 In addition, the scheme will classify cane into three cane quality standards — premium, standard, and penalty cane. Growers will receive data on each cane quality criterion for each rake of cane analysed.

3.102 With regard to the division of sugar quality bonuses and penalties, the Pioneer scheme states that for the 2000 season the following is adopted:

- the costs of the program will be deducted from raw sugar quality premiums received;
- the remaining balance of the premiums will be shared evenly between the mill and the growers supplying cane to the mill. The miller will distribute to each grower their share of the raw sugar bonuses in proportion to the amount of cane delivered to the mill by each of them; and
- raw sugar penalties will be divided between the mill and the growers supplying cane to the mill using the penalty sharing table attached to the scheme. The miller will distribute raw sugar penalties in the proportion to the amount of cane delivered to the mill.

3.103 With regard to the future division of sugar quality bonuses and penalties, the Pioneer scheme states that premium cane will be the only cane that will share in the growers' portion of the raw sugar quality bonuses. Penalty cane will be the only cane that will share the discounts associated with raw sugar associated with poor cane

quality. The penalties are shared in accordance with a penalty sharing table attached to the Pioneer scheme.

3.104 CSR advises that the Pioneer scheme operated very successfully during the 2000 season. As a result, growers will share in a quality pool of over $300 000 in relation to the 2000 season.

Refusal of supply (Part III):

3.105 Clause 8 establishes cane acceptance provisions identical to those described at paragraph 3.40.

Part IV — Seasonal Supply Issues

Estimates (Part IV):

3.106 The process prescribed under the Pioneer Agreement in relation to crop estimates is the same as that described at paragraphs 3.44 – 3.45.

Allotments (Part IV):

3.107 The process prescribed under the Pioneer Agreement in relation to cane delivery allotments is the same as that described at paragraphs 3.46 – 3.49.

Group harvesting (Part IV):

3.108 Clause 4 governs group harvesting arrangements. Specifically, growers wishing to form a harvesting group must notify CSR by 1 March each year. Within the group, each member shall have the whole of the truck allotment of the group for a fair and proportional period to be determined by the group concerned, or by CSR in a default situation. A group may be dissolved by consent of the majority of its members.

4. Statutory provisions

4.1 The application has been made under section 88(1) of the Act to:

- make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would have the purpose, or might have the effect, of substantially lessening competition within the meaning of section 45 of the Act;

- to give effect to a provision of a contract, arrangement or understanding where the provision has the purpose, or may have the effect, of substantially lessening competition within the meaning of section 45 of the Act.

4.2 In the case of an application for authorisation under section 88(1) of the Act the relevant tests that must be satisfied in order for the Commission to grant authorisation is contained in sub-section 90(6) and 90(7) of the Act.

4.3 Sub-section 90(6) of the Act provides that the Commission shall not make a determination granting authorisation unless it is satisfied in all the circumstances that:

- the proposed provision of a contract, arrangement or understanding would result, or be likely to result, in a benefit to the public; and

- that benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made, or the proposed understanding arrived at, and the provision concerned was given effect to.

4.4 Sub-section 90(7) of the Act provides that the Commission shall not make a determination granting authorisation unless it is satisfied in all the circumstances that:

- the provision of a contract, arrangement or understanding has resulted, or is 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 has resulted, or is likely to result, from giving effect to the provision.

4.5 The Commission therefore must examine the likely anti-competitive effect of the arrangements as well as the likely benefit to the public arising from the arrangements and weigh the two to determine which is greater. Should the likely benefit outweigh the likely anti-competitive detriment, the Commission may grant authorisation, which may in turn be subject to conditions.

5. Submissions

5.1 The following submissions were made on the basis that the application for authorisation was lodged in respect of the two Agreements at the Invicta Sugar Mill, but was also expressed to be made in respect of a similar Agreement at the Pioneer Sugar Mill (for which particulars were not available at the time submissions were made).

5.2 The applicant provided a copy of the Pioneer Mill Collective Supply Agreement to the Commission on 31 October 2000.

Public benefits argued by the applicant

5.3 The applicant asserts that public benefit is derived from the Agreements and that this public benefit outweighs any detriment to competition. In particular, it submits that there is public benefit in:

- facilitating the achievement of the objectives of the SIA;
- extending the crushing season in the Burdekin so as to better utilise existing and future infrastructure used in harvesting and milling of sugar cane in that region;
- enabling an additional 7000 hectares of land to be brought into production, which equates to an additional 700 000 tonnes of cane for processing;
- encouraging and providing a means for infrastructure expenditure; and
- providing direct financial benefits to the workforce and economy of the Burdekin area through increased operating and capital expenditure as a result of the programs necessarily arising from the proposed Agreements.

5.4 The applicant advises that the Agreements have two main outcomes. First, an extension of the season length, and secondly an expansion of the net crushing rate at the Invicta and Pioneer Mills. This has the effect of increasing the total combined crushing rate of the two mills from 1380 tonnes per hour net to 1485 tonnes per hour net.

5.5 Regarding the Invicta Mill, CSR submits its annual capacity will increase from 3.2 million tonnes of cane to approximately 4.0 million tonnes of cane, generating economic benefits to growers, contractors and the general community. In particular:

- capital expenditure by growers of approximately $80 million and approximately $55 million by millers;
- annual revenue is expected to increase by approximately $36 million, of which $24 million will flow to growers and approximately $12 million will flow to millers;
- the annual cost of growing, harvesting, transporting and processing of additional cane is estimated at $24 million. Much of this is in the form of wages and local purchases of materials, which could be expected to remain in the local community;

- annual EBITD for millers and growers is expected to increase by approximately $12 million;
- employment in the field sector in the areas of growing, harvesting, and transporting cane may increase by over 200 persons;
- earnings of seasonal employees in the milling sector will be increased by approximately 10% because of the longer season;
- there will be increased employment in mills during construction phase and increased employment on maintenance during the slack season;
- earnings of existing harvesting contractors and haul out personnel may increase by approximately 10% due to the longer season. The capital utilisation of harvesting and transport plant will be enhanced;
- better utilisation of industry infrastructure, such as Queensland Government railways and Bulk Sugar Terminals; and
- there will be significant positive economic flow on effects to the community from both the construction phase and ongoing operations.

5.6 The Commission sought further information regarding claimed efficiency improvements. CSR advised that while it is difficult to place a dollar amount on efficiency improvements derived from the Agreements, efficiencies will result from a longer crushing season and increased capacity.

5.7 In addition, CSR outlined that sugar milling is a highly capital intensive industry, and the economics of sugar milling are such that expansion of milling capacity by itself does not give CSR satisfactory returns. Furthermore, CSR refers to a study commissioned by the Burdekin District Canegrowers Executive into the economics of building their own mill in the district, while at the same time expanding production and preserving a short season length and the current payment arrangements. While CSR was not privy to the results of that study, it claims that the new study showed a new factory was not viable without a longer season length.

5.8 Regarding collective negotiation, CSR submits that growers realise significant public benefits from being part of a collective arrangement. These benefits are:

- their cane is harvested throughout the year in an orderly and equitable manner along with all growers supplying under the proposed Collective Agreement;
- growers have an enhanced bargaining position with CSR by negotiating collectively; and
- individual growers generally do not have the time or inclination to enter into individual negotiations, and are happy for this task to be carried out for them by the grower's negotiating committee.

Submissions from interested parties

5.9 The Commission invited a range of interested parties to comment on the application including mill associations, grower associations, randomly selected growers and relevant government agencies.

5.10 The majority of submissions received by the Commission support the Agreements the subject of the application. Submissions were received from both individual cane growers and grower and milling organisations.

5.11 Copies of all non-confidential submissions are available from the Commission's Public Register. An overview of these submissions is provided below.

Support application for authorisation — growers

Bohle Grazing Pty Ltd:

5.12 Bohle Grazing is an existing grower in the Invicta Mill area who supports the arrangements. It is of the view that:

- the arrangements allow for cane expansion in the Invicta area;
- increased cane production in the Invicta area provides for increased economic activity throughout the whole district;
- large capital cost infrastructure, which is currently under utilised, will be more fully utilised. For example, the Burdekin River Dam and Tramway infrastructure; and
- increased employment and commercial activity.

5.13 It also submits that the arrangements for an infrastructure levy and differential in cane payments are authorised for competition legislation in the SIA. Further information explaining this view was not provided by Bohle Grazing. (However, see paragraphs 7.4 – 7.8).

Bugeja Cane Farms:

5.14 Bugeja Cane Farms is both an existing grower and an applicant for new CPA and supplies cane to the Invicta Mill and Pioneer Mill.

5.15 Bugeja Cane Farms supports the arrangements and is of the view that:

> The agreement gives certainty and direction to the Millers and the growers so that they can plan with a degree of certainty.

5.16 It submits that growers and CSR need to make full use of their capital, namely, crushing plant/machinery to compete in the world market. This means more product throughput. It submits there are two methods to achieve this: either by spending bulk capital in their mills to keep a season length of 22.4 weeks or alternatively, by extending the season length in conjunction with a crop expansion by growers. Bugeja Cane Farms suggests that large scale crushing plant expansion is not viable in the current world market.

5.17 In terms of public benefit, Bugeja Cane Farms is of the view that:

- while the industry expands there is a need for new machinery to work the land. This machinery is manufactured Australia-wide;
- land developing to grow sugar cane creates employment opportunities for people with a large cross section of skills;
- infrastructure facilities, like Sugar Terminals, become more efficient through greater use;
- the full use of the Burdekin Falls Dam will be realised; and
- as all Burdekin sugar is exported, any further increase in production is beneficial to Australia.

Ms Lyndel Owens:

5.18 Ms Owens is a new grower seeking to enter the industry and has made an application for a 150 hectare CPA in the Invicta Mill area.

5.19 Ms Owens supports the arrangements and is of the view that they provide the only practical solution for a new grower who wishes to enter the industry. She submits that, as a new grower wanting to enter the industry, she has three options, which are:

- to lodge an application for CPA;
- to purchase CPA or a farm from an existing grower wishing to exit the industry; or
- to lease CPA from an existing grower.

5.20 Ms Owens submits that option two is only possible through a large capital outlay. The third option, to lease CPA, would be dependent upon approval from the Cane Production Board and does not offer certainty to a new grower as such leases only operate on a year-to-year basis. In addition, a lease fee of approximately $2 per tonne is payable to the lessor, which is twice the levy payable under the proposal.

5.21 In terms of the $1 per tonne levy payable under the Agreements, Ms Owens does not consider it represents a disincentive for new growers and is of the view that:

- she can enter the industry on a basis which is economically viable and certain. That is, she will have the right to deliver cane for ten years;
- the levy is paid out of revenue and not out of capital;
- the levy is payable only on the tonnage that is supplied to the mill; and
- the levy is a known cost.

5.22 In terms of public benefit, Ms Owens considers there will be a flow on effect to the district and Australia-wide through increased gross revenue arising from the Agreements.

Mr McLaughlin:

5.23 Mr McLaughlin, a grower in the Invicta area, supports the Agreements.

5.24 In relation to the differential payment scheme under the Supply Agreement he submits:

> ...although I do not believe the compensation to be fully adequate it does provide some assistance for the loss I will sustain in going to an extended season length.

JJ McDonald & Sons Engineering Pty Ltd:

5.25 JJ McDonald & Sons currently has CPA in the Invicta area and also has an application with the CPB for additional grant of assignment. In expressing support for the Agreements it submits that the export value of the extra product under the Agreements is a public benefit.

AJ & WM Blaik:

5.26 AJ & WM Blaik grow sugar cane and supply the Invicta Sugar Mill situated in the town of Giru, Queensland. AJ & WM Blaik submitted that, under difficult circumstances the negotiating committee has reached the best possible agreement possible. However, AJ & WM Blaik also expressed a number of concerns, particularly:

- CSR's reluctance to expand its milling operations without financial assistance from growers; and
- cane is transported to both the Invicta Mill and Pioneer Mill across Highway No 1. An extended crushing season (of 24.5 weeks) as proposed under the Agreements, will lead to traffic flow problems in the region. Mr Blaik calculates that traffic could possibly be held up for two and a half hours per day as cane is transported in bins to the Mills.

Support Agreements — organisations

Australian Sugar Milling Council (ASMC):

5.27 The ASMC is the policy representative body for Queensland raw sugar producers. Its membership consists of all of the eleven companies that own and operate the twenty six mills in Queensland. It supports the application.

5.28 In its submission, the ASMC outlined that until recently, a policy of state wide sugar cane pricing existed. However, the introduction of the SIA leaves matters regarding sugar cane pricing up to the local negotiating teams. It further submits that the pricing arrangements, that is, the differential rate of payment for growers with existing CPA and growers with new CPA, reflect a legislative intention to devolve decision making back to local areas. In this regard, the ASMC argues:

> there is public benefit in permitting participants, in what was a highly regulated industry, to adjust in a more deregulated environment and enter into pricing arrangements which take into account different circumstances.

5.29 In relation to the Expansion Agreement, the ASMC is of the view that it:

> ...takes into account the competing interests of various growers (non expanding, expanding and new growers) and the mill owner and ...enables the industry to progress forward and become more internationally competitive.

5.30 In addition, the ASMC submits that there is public benefit flowing from the Agreements. Specifically, the ASMC claims that the Agreements:

- foster business efficiency through increased season length resulting in improved international competitiveness;
- foster business efficiency resulting in direct employment of mill staff and employees; cane growers and field workers; harvesting and haulout contractors; cane testers; sugar, molasses and other haulage contractors; and sugar port staff and workers;
- foster the expansion of employment or prevention of unemployment in the industry and Burdekin area;
- lead to growth in export markets; and
- facilitate the objects of the SIA.

Queensland Canegrowers Organisation Ltd:

5.31 The Queensland Canegrowers Organisation Ltd (QCO) is comprised of 'every cane grower and cane production area holder in Queensland (approximately 6500).' It is regarded as the principal cane grower representative body and service organisation by the industry, public and Queensland and Federal Governments.

5.32 QCO submits that Chapter 6 of the SIA provides authorisation for exceptions to the application of the competition legislation provisions of the Trade Practices Act for collective supply agreements. However, it submits that it supports the granting of authorisation.

5.33 QCO also refers to the 1996 Report by the Sugar Industry Working Party Report that endorsed the collective supply agreement system as the most appropriate way of governing grower/miller activities. Both the Queensland and Federal Governments accepted the recommendations contained in the Report.

5.34 In addition, it submits that in recommending the continuation of collective supply agreements, the Report concluded that on balance the cost to the community of a deregulated supply system outweighed the benefits.

Invicta Canegrowers Organisation:

5.35 Invicta Canegrowers is part of the QCO. Invicta Canegrowers has a total of 268 growers within its area.

5.36 It supports the application for authorisation and is of the view that:

> It has sought to balance the needs of the existing and the new and/or expanding growers fairly and equitably by seeking to contain the season length to what could be practicably implemented and to obtain adequate compensation for existing growers and additional mill capacity from CSR, whilst providing an opportunity for new and/or expanding growers to enter the Sugar Industry.

Pioneer Canegrowers Organisation:

5.37 The submission received from Pioneer Canegrowers Organisation was made on behalf of the Pioneer Mill Suppliers Committee and the grower members of the Pioneer Negotiating Team. The Pioneer Mill Suppliers Committee is elected every three years by all growers with CPA and is the body that represents Pioneer growers in their dealings with the Pioneer Mill.

5.38 In expressing its support for the application Pioneer Canegrowers Organisation outlined several issues as to the nature of a collective supply agreement.

5.39 In particular, Pioneer Canegrowers submits that a collective supply agreement for the supply of sugar cane to a supporting mill is not unique to Australia and provides for the orderly delivery of and payment for, the cane. As sugar cane must be promptly processed after it is harvested, generally within 18 hours or less, sugar cane has little value without an adjacent processing plant, nor a mill any value without a guaranteed supply of quality sugar cane to ensure continuous operations. Start/stop operations are disruptive and costly to both miller and grower. In other words, undersupply will mean start/stop operations, while oversupply will result in deteriorated cane as it awaits processing. It submits therefore, that:

> Orderly and co-operative harvesting and delivery arrangements are a necessity of the industry.

5.40 In regard to cane payments under the collective arrangements, it submits that:

> Competitive arrangements are still enshrined in this principle of the relative payment scheme, each grower is paid relevant to his competing grower on any particular day.

5.41 Pioneer Canegrowers considers farmers have a choice of agronomic practices that they will continue to use to provide for on-farm efficiencies and sustainability. Growers will work out efficiencies, strategies and budgets within the parameters established within the Pioneer Collective Agreement to minimise the negative impacts and maximise returns to their individual farm entity. Less efficient farms will have to take individual measures to modify their approaches and stay viable.

5.42 In relation to broader based benefits, Pioneer Canegrowers submits the Pioneer Agreement provides for:

- employment opportunities at the farm, sugar mill, and sugar shipping agencies at rail, road and port facilities;
- the full use of, and thereby full economic benefits to flow from, the Burdekin Falls Dam;
- increased sugar exports, drawing foreign exchange into Australia; and

- increased support of local and Australia-wide industries through the purchase and support of machinery and crop inputs.

Oppose the application for authorisation

Mr and Mrs Garbuio:

5.43 Mr and Mrs Garbuio are sugar cane farmers in the Burdekin. They do not support the application for authorisation and submit that while the arrangements provide for negotiations as a collective, growers do not have true negotiating power with CSR.

5.44 In this regard, they submit that growers need expansion to remain viable and instead of CSR increasing their crushing capacity to meet the demand, they have chosen the cheapest way out which is to extend the crushing season. The Garbuios suggest that all the risks of an extended crushing season are borne by the growers. Namely, having an early start to the season gives:

- very low CCS;
- high probability of encountering wet weather conditions; and
- the ground not having sufficient time to dry out thus causing major damage to the soil structure and to the stooling of cane, which takes years to rectify.

5.45 Similarly, risks associated with extending the crushing season beyond the usual finishing date include:

- CCS dropping;
- higher probability of encountering wet weather conditions;
- poor ratooning; and
- high possibility of stand over cane.

Mr Robert Rossiter:

5.46 Mr Rossiter is an existing grower in the Burdekin who is opposed to the application.

5.47 Mr Rossiter submits while there is no competition between independent mill owners in the Burdekin the Agreements should not be authorised. He outlines that CSR owns all four mills in the Burdekin as well as the closest neighbouring mill in Ingham. As a result Burdekin growers can only supply their cane to CSR. Due to the lack of mill competition in the area, growers are in the position where they have to take what CSR offers.

5.48 In addition, Mr Rossiter submits that the nature and effects of the Agreements will make it almost impossible for another company or group of growers to build another mill in the area.

5.49 Mr Rossiter also submits the Agreements will have negative impacts on efficiency and returns to the industry. Mr Rossiter outlines a number of factors in support of this argument, including the increased costs of purchasing all weather harvesting machinery due to increased season length, which will be spread out over the same tonnage.

Messrs Ray Hoey & Company:

5.50 Messrs Ray Hoey & Company (Ray Hoey and Co) is a firm of growers who hold six CPA in the Pioneer Mill area. In the first instance, the growers submitted that the Commission does not have the power to deal with the application. Specifically, the growers are of the view that the Commission does not have the power to grant authorisation in respect of the Invicta Mill Agreements and will not have the power to authorise a related Pioneer Agreement. They suggest that, under section 88(12) of the Act, the Commission cannot authorise CSR to make a contract or arrangement, or arrive at an understanding, in circumstances where the contract or arrangement has already been made, or the understanding already arrived at. (This argument is addressed at paragraphs 7.25 – 7.27).

5.51 In opposing the application the growers submit that:

> ...authorisation of the Invicta Collective Supply Agreement and the Invicta Expansion Agreement will not result, or be likely to result, in a benefit to the public which benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the two agreements were not authorised.

5.52 On the same grounds, the growers oppose authorisation of the Pioneer Collective Supply Agreement.

5.53 A subsequent submission from the growers expands on this argument.

5.54 The growers submit that under the Invicta Supply Agreement, prices will be fixed for the supply of cane to the Invicta Sugar Mill for the next ten years. In addition, while the two cane price formulae contained in the Collective Supply Agreement provide for a range of prices to be paid under the proposal, the terms of the Agreement do not allow demand and supply to have any influence upon the price paid for cane. For example, in a season during the term of the Agreement, when cane may be in short supply, a grower cannot take advantage of the situation by asking a higher price for a commodity when there is strong demand.

5.55 In terms of individual negotiation, the growers submit that although provision is made in section 39 of the SIA for an individual agreement to be entered into between a mill and a grower or group of growers, CSR has chosen not to enter into individual negotiations with them in the Pioneer Mill area. In this regard, the growers provided a copy of a letter sent to CSR on 22 February 2000, which sought to open negotiations with the mill owner in for the purpose of forming an individual agreement. In a letter dated 23 February 2000, CSR informed the growers:

> ...we do not intend entering into discussions with you or other Pioneer growers regarding an individual agreement for the coming season.

AC Ivory:

5.56 Mr Ivory is an existing grower who supplies cane to the Pioneer Mill.

5.57 He submits that the Agreements create a barrier to entry into the industry for new CPA growers. This is due to the differentiation system of cane payment. Under the system, the new CPA grower not only receives lower cane payments but these growers must also pay a levy of $1 per tonne to the mill for a period of ten years. While this levy will cease after ten years, new CPA growers will not, in terms of the Agreements, receive any allowances or incentives after the ten year period.

5.58 In addition, due to the unequal bargaining power between CSR and any individual grower, Mr Ivory submits that any individually negotiated contract would not differ substantially from the terms of the Collective Supply Agreement.

5.59 In addition, Mr Ivory suggests:

> Without a mathematically certain or technical basis, growers are not able to enter into negotiations with CSR on an equal footing. By not supplying to the growers all information in connection with mill efficiency, productivity and recoverable sugar, CSR retains an unfair advantage over growers when negotiating prices, as growers must simply accept assertions made by CSR in connection with the above matters.

5.60 Mr Ivory also attached to his submission a report on the 'Distribution of Proceeds of Vested Sugar' written by the QSC. A purpose of this report was to examine a number of alternative cane payment formulas. The report concluded that the 'co-operative formula' was the preferred option.

5.61 Essentially, the co-operative formula introduces the concept of mutual gain for both millers and growers, and allows flexibility to change the use of CCS and a particular mill's coefficient of work as the measure of efficiency. The report suggests the co-efficient of sugar would provide a more meaningful measure of mill efficiency.

6. Pre-decision conference and subsequent submissions

Pre-decision conference

6.1 On 12 December 2000, the Commission issued a draft determination proposing, subject to any pre-decision conference that may be requested, to grant authorisation in relation to Application A90733. Ray Hoey and Co requested a conference, which was held on 23 February 2001 in Townsville and attended by Ray Hoey and Co, CSR, individual growers, and regional grower representative bodies. A record of the conference has been placed on the Commission's public register. The main issues raised at the conference are noted below.

6.2 **Ray Hoey and Co** restricted their comments at the conference to the effects of the Pioneer Cane Supply Agreement. Ray Hoey and Co considered there is no benefit to Pioneer growers under the Agreement unless there is increased throughput at the Pioneer Mill, particularly in light of the extended crushing season. It is not clear under the Agreements as to what proportion of the additional tonnage of cane will be crushed at the Pioneer Mill. If there is no expansion in the Pioneer Mill area, Ray Hoey and Co contend that there will be no efficiency gains from an increased utilisation of infrastructure in the area.

6.3 Ray Hoey and Co considered that CCS is an empirical measure of the amount of sugar in cane, and is not a measure of efficiency. It argued further that there is an inverse relationship between CCS and yield. Therefore, rewarding high CCS in the cane payment formulae within the Agreement discriminates against sugar cane yield.

6.4 Ray Hoey and Co also contended that negotiations with CSR, in respect of individual negotiations in particular, were not carried out in good faith. At the conference, Commission representatives sought clarification from CSR in relation to the issue of individual negotiations, including the concept of 'differentiating feature'.

6.5 At the conference, **CSR** advised that it would provide a written submission to the Commission following the conference. Generally, CSR considered that the draft determination adequately assessed the public benefits arising from the application.

6.6 In addition, CSR argued that the SIA sets the framework for the negotiation of cane supply agreements. It believed that this framework was followed in the development of the Invicta and Pioneer Agreements.

6.7 CSR further argued that it is not opposed to entering individual negotiations, providing that there is some 'differentiating feature' from the collective. By way of example, CSR suggested that a grower wishing to commence 24 hour harvesting as opposed to 12 hour harvesting would be such a circumstance.

6.8 **Rossiter Farming Co** from the Pioneer Mill area, expressed concern regarding the manner in which the Agreements the subject of the application were developed. Mr Rossiter considered that all of the growers' concerns were not addressed in reaching

the final Pioneer Agreement, and in particular cited a lack of information supplied to Pioneer growers.

6.9 Mr Rossiter also argued that growers have not been provided with a true indication of how much land is available for expansion.

6.10 At the conference, Mr Rossiter submitted three documents in relation to, among other things, the issue of toll crushed cane. These documents form part of the record of the conference and have been placed on the Commission's public register.

6.11 **Mr Alan Blaik** supports authorisation of the Agreements and considered that they represent the best possible outcome under difficult circumstances. However, Mr Blaik believes future expansion in the industry will have detrimental effects on local traffic flow arrangements through an increased number of bins being moved across Highway No. 1. Mr Blaik suggested that CSR move to address this issue by constructing an overpass or underpass.

6.12 **Bugeja Cane Farms** submitted that the majority of growers support the authorisation of the Agreements as being the best possible outcome under difficult circumstances. It submitted that millers and growers are dependent on each other, and that there are no alternatives to the negotiated Agreements.

6.13 **Pioneer Canegrowers** advised that it would provide a written submission to the Commission following the conference. Generally, Pioneer Canegrowers noted that there is a strong relationship between Pioneer and Invicta Mills, and product was shifted between them to maximise available crushing times, and minimise season length. It is of the view that the structure of the Agreements is consistent with minimising the season length between the two mills.

6.14 Pioneer Canegrowers also outlined that the SIA provides for the making of individually negotiated contracts. However, in such circumstances, a proposal would be referred to the local Negotiating Team who is responsible for reviewing whether it would be detrimental to the collective.

6.15 It argued further, that under the SIA growers dissatisfied with a negotiated agreement may lodge an application, within a specified time frame, for review of that agreement. No such application was lodged in respect of the Pioneer Agreement.

6.16 **Invicta Canegrowers** noted at the conference that comments by participants centred on the effects of the Pioneer Agreement. It commented that it believes the Agreements are the best possible outcomes after a long process of negotiation.

6.17 **Queensland Canegrowers Organisation** supports the conclusions set out within the draft determination. However, it considers that authorisation is not required. Chapter 6 of the SIA provides sufficient coverage to grant exemption from the Act.

6.18 With regard to public benefits, Canegrowers argues that if there are internal transfers as a result of the Agreements, net public benefits, particularly in terms of efficiency gains and exports, is not changed.

6.19 At the conference, **Ivory Bros** expressed concern with the basis of cane payment under the Agreements. It argued that there is no measure of mill efficiency in the cane payment formulae, and that CCS is not a relevant measure of efficiency.

6.20 **Pirrone Bros** considered that the season length should remain at 22.4 weeks and that the (broader) community was not better off under the Agreements.

Further submissions by the applicant

6.21 Further written submissions (copies of which are on the public register) were provided to the Commission by the applicant in response to issues raised at the pre-decision conference and in the written submissions received from interested parties following the conference. The main points raised are outlined below.

Public benefit:

6.22 CSR submits that the public benefit derived from the Agreements should not be distinguished between Pioneer growers and Invicta growers. Public benefit means the community generally.

6.23 The major public benefit flowing from the Agreements relates to the increase in mill throughput that will occur in the district. The Agreements provide for eventual throughput at the Pioneer and Invicta Mills combined of approximately 6.1 million tonnes of cane (see Figure 3). This represents an increase of approximately 1 million tonnes. At an average sugar content (CCS) of 14.5%, the additional sugar production would be approximately 150 000 tonnes per annum. At a world market sugar price equal to A$350 per tonne (forecast 2001 price), the value of the additional sugar would be A$52.5 million.

6.24 The Commission sought clarification as to what proportion of the increased throughput will be at the Pioneer Mill and the potential for capital expenditure under the Agreement at the Pioneer Mill.

6.25 CSR submits that no decision has been made on whether to increase crushing capacity through capital expenditure at Pioneer. Both Agreements provide for an increase in crushing capacity at one or other of the mills, but as to whether this will take place at Invicta or Pioneer, or a combination of both, has yet to be decided. While not making a commitment at this stage, CSR is of the view that it is likely to make capital expenditure at the Pioneer Mill during the term of the Agreement.

6.26 Regardless of where 'mill expansion' occurs, increased annual throughput at the Pioneer Mill can be achieved by extending the crushing season, which is what the Agreements provide for. Furthermore, the public benefits flowing from an increase in annual throughput are similar whether the increase is as a result of an extension on the crushing season, a mill expansion, or a combination of both.

6.27 Figure 3 below outlines the proposed increase in mill throughput at both mills through a combination of mill expansion and increased season length at both mills.

Figure 3[10]

Current	**Pioneer**	**Invicta**	**Combined**
Season length (dry weeks)	21.4	21.4	
Crushing rate (tonnes per hour net)	500	910	1410
Hours/week	168	168	
Annual Throughput (million tonnes)	**1.80**	**3.28**	**5.08**

Proposed	**Pioneer**	**Invicta**	**Combined**
Season length (dry weeks)	24.5	24.5	
Crushing rate (tonnes per hour net)	515	970	1485
Hours/week	168	168	
Annual Throughput (million tonnes)	**2.12**	**3.99**	**6.11**

6.28 It is proposed that annual throughput at the Pioneer Mill will increase by approximately 300 000 tonnes. Annual throughput at the Invicta Mill will increase by approximately 700 000 tonnes.

6.29 In addition, CSR submits there will be substantial economic activity related to initial construction under the capital works contemplated under the Agreements. CSR estimates the initial capital cost to be approximately $50 million, spread across wages payments, and payments to local suppliers and contractors.

[10] Source: Letter dated 12 April 2001 from Mr Eddie Scuderi, Corrs Chambers Westgarth (a copy which appears on the Public Register).

6.30 Similarly, on the growing side of expansion, CSR submits that there are substantial initial costs involved in land clearing, levelling, and initial planting, which again would be paid to the local employees and contractors.

6.31 Generally, CSR submits that in terms of the growers as a collective, a longer crushing season will mean more cane land will be able to be brought into production.

6.32 CSR submits there are other less quantifiable benefits attached to extending the crushing season, including:

- the ability to produce early season sugar, which is in demand from customers;
- more efficient utilisation of infrastructure by external parties such as Queensland Rail and the Bulk Sugar Terminal organisations;
- increased sales of water and water allocations by the Queensland Government from the Burdekin dam; and
- the effect on Australia's balance of payments through increased and, if necessary, earlier seasonal exports of sugar.

CSR approximates that the value of these benefits could be as high as $150 million per annum.

Infrastructure:

6.34 CSR claims that the proposal to build additional storage capacity at Townsville is being driven by the marketing strategies of Qld Sugar Ltd (the industry owned marketing company), and not by any pressure from increased production levels.

Mill throughput:

6.35 CSR submits there is not a defined geographic region for each mill in the sense that there is a line drawn on a map that defines the limit of Pioneer or Invicta cane. The mill to which the cane is supplied depends on the proximity to tramline sidings. Therefore, any parcel of land that could conceivably supply cane to a mill could be granted CPA for that mill, regardless of where it was situated. As a general rule however, Pioneer CPA is generally closest to the Pioneer Mill and Invicta CPA is closest to the Invicta Mill, but there is considerable overlap at the edges.

6.36 CSR submits that growers should be indifferent as to where their cane is crushed because the mill pays cartage costs from the delivery point to the mill.

6.37 In relation to land available to be assigned new CPA, CSR submits that there is only a limited area of land not currently growing cane in the traditional Pioneer and Invicta regions. Consequently, most of the expansion is coming from completely new areas of land, sold at public auction, in which new growers, or growers from areas within or outside the Burdekin are able to invest in.

6.38 In this regard, CSR advises that new entrants and expanding growers have generally aligned themselves with the Invicta Mill, and have applied for Invicta CPA due to:

- the new areas are serviced by Invicta Mill tramline; and
- the crushing capacity expansion planned for the Invicta Mill.

6.39 CSR concludes that most of the expansion will occur at Invicta, but the benefits will flow to any grower or person who has the means and wishes to participate.

New CPA at the Pioneer Mill:

6.40 CSR submits that new CPA may be allocated to the Pioneer Mill over the term of the Pioneer Supply Agreement. CSR submits that there are currently applications for 1288 hectares of new CPA in the Pioneer Mill area under consideration.

Similarity of the Invicta and Pioneer Agreements:

6.41 CSR submits that the intent and effect of the Agreements the subject of the application for authorisation are very similar. Under the Agreements, cane grown on existing CPA receives payment based on existing payment conditions, while cane grown on new CPA attracts a new set of payment conditions. These different conditions are the same under both the Invicta and Pioneer Agreements.

Payment system:

6.42 CSR submits that the CCS formula is not a measure of efficiency. Rather, it is a widely accepted mechanism to put a value on cane, by measuring the amount of sugar contained in the cane. In turn, the amount of sugar in the cane is priced according to the prices achieved through sugar sales by Queensland Sugar.

6.43 CSR considers that the relative payment system is provided for under section 54(2)(f) of the SIA.

Differential payment:

6.44 A grower cannot profitably grow cane unless they have access to crushing capacity at a particular mill.

6.45 CSR claims that many growers consider that millers should undertake capital expenditure to increase crushing capacity to facilitate expansion. However, it submits that once a mill reaches full crushing capacity, processing more cane imposes great infrastructure demands on millers. CSR advises that it is not prepared to make the necessary capital expenditure under existing payment arrangements.

6.46 From CSR's point of view, the purpose of the Agreements is to set out clearly the conditions under which it is prepared to increase mill throughput. A possible entrant can make its decision whether to enter the industry on this basis, or grow another crop, of which there are other possibilities in the Burdekin (for example, horticulture).

6.47 CSR claims the Agreements bring about economic efficiency by allowing cane land and mill expansion to proceed. Without the Agreements, CSR submits that new cane land would not be brought into production and the consequent benefits would not be realised.

6.48 With regard to CSR's required return on capital, CSR will consider the risk profile of the project and whether a return higher than the Weighted Average Cost of Capital can be achieved.

Exit from the industry:

6.49 CSR outlines that the SIA provides that a grower can exit the industry after a minimum of four years, provided that the grower provides notice before the collective agreement is made that the grower does not wish to be bound by the agreement after four years.

6.50 However, CSR submits that an individual grower can exit the industry, inside the legislated timeframe, by making an individual agreement with it, provided that:

- all growers do not wish to exit at once; and
- reasonable notice (for instance, 2 years) is given to allow their cane to be replaced.

Individual Agreements:

6.51 CSR submits that it is constrained by the requirement under the SIA. Namely, that growers under the collective agreement cannot be adversely affected by individually negotiated agreements.

6.52 CSR submits that the sugar industry relies on effective scheduling and co-operation between growers and the mill. It claims that individual agreements, which disrupt these orderly arrangements, work against the economic efficiency of the whole industry.

6.53 CSR considers it would be difficult to improve on the arrangements within the Agreements, in which complex issues have been examined and debated at length for the purpose of obtaining every possible efficiency from the industry. CSR advises it is prepared to explore individual arrangements where a grower is creating value through doing something different and more efficiently — if there is some 'differentiating feature'.

Interested parties' submissions following the pre-decision conference

6.54 Written submissions (copies of which are on the public register) were provided to the Commission by Ray Hoey and Co, Ivory Bros, Rossiter Farming Co, Canegrowers Organisation and Pioneer Canegrowers.

Ray Hoey and Company

6.55 Ray Hoey and Co outlines that the Mills the subject of the application for authorisation are quite separate, and that their interest is only with what happens in the Pioneer Mill area. Ray Hoey and Co goes further to say that the Commission may accept the claims in respect of the Invicta Agreements, but should not accept them in the case of the Pioneer Agreement.

6.56 The main points raised in the written submission are outlined below.

Public benefit

6.57 Ray Hoey and Co submits that the public benefits in the Commission's draft determination could be achieved by alternative methods that do not necessitate a reduction in competition. Namely, by increasing competition in the milling sector and allowing new mills the opportunity to compete for increased production from existing and new growers.

6.58 Ray Hoey and Co considers that the definitions contained within the Agreements are so ambiguous that the effects of the Agreements cannot be determined by the Commission 'in any circumstance'. Accordingly, Ray Hoey and Co consider that in its draft determination the Commission did not meet its statutory obligation under section 90(7) of the Act. That is, to 'prove' that 'there is a net benefit in all the circumstances due solely to the arrangements'.

6.59 Ray Hoey and Co claims that unless all terms defined in the Pioneer Agreement are discernible and are able to be determined with certainty, or in an unambiguous manner, then the effects of the Agreement cannot be determined. Further, Ray Hoey and Co claims that many of the components of the equations requiring, or predicting, the various season lengths that are needed to interpret the effects of the Agreement are indiscernible. Consequently, it claims the Commission is unable to determine the effects of the Agreement in all circumstances, thereby satisfying its statutory requirements.

Quantification of claimed benefits in the draft determination

6.60 Ray Hoey and Co considers the magnitude of many of the public benefits claimed by the applicant, and several of those accepted by the Commission, have not been quantified, particularly in relation to efficiencies arising from increasing mill throughput. In addition, Ray Hoey and Co questions the standard of proof the Commission requires in accepting the various claims of interested parties and CSR.

6.61 In relation to industry expansion, Ray Hoey and Co makes a number of points. They consider the level of participation in expansion of each mill must be determined in order to apportion the public benefits between the two growing regions. Ray Hoey and Co outlines that there will be an expansion of 700 000 tonnes (or 7000 hectares) of cane under the Agreements. However, Ray Hoey and Co advises that CSR has informed it in writing that there are no new applications for new CPAs at this stage, by growers supplying the Pioneer Mill. Under the SIA, without new CPA for the Pioneer Mill, there can be no expansion at the Pioneer Mill, and therefore no benefit to Pioneer Growers. Yet the season length in Pioneer will be extended resulting in significant uncompensated losses to growers. In addition, Ray Hoey and Co claims that there can be no improved efficiencies for harvesting and transport plant if there is no increased production at the Pioneer Mill. Similarly, any increase in exports will require a new bulk sugar terminal in Townsville, the financial and social costs of which need to be considered.

Losses to growers due to season length

6.62 Ray Hoey and Co referred to the submission of Mr and Mrs Garbuio. Stating that the critical plant physiological, economic and environmental factors that go hand in hand with an extended season are real and significant with respect to their detrimental impacts on the efficiencies of sugar production.

6.63 Ray Hoey and Co claims that CCS, the basis of relative payment under the Agreements, is not a measure of grower efficiency. It is an empirical approximation of the amount of commercial cane sugar in a standard unit of sugar cane.

6.64 Ray Hoey and Co claims that the same variety of cane grown in the very same manner on the same land in two consecutive years and harvested at the same time in each year will give very different CCS levels depending on the weather. As a result, CCS is not a measure of efficiency.

6.65 Further, Ray Hoey and Co claims that a number of studies show that there is an inverse relationship between yield and CCS. Consequently, systems which reward higher relative CCS on any particular day, as the relative payment system does, discriminate against yield and therefore affect the total yield of sugar.

Inefficiency through lost sugar production

6.66 Ray Hoey and Co refers to the Chapman Report (some aspects of which are used in the Invicta Canegrowers submission) which concludes that as a result of lost sugar production, the losses resulting from an extended season length are in excess of $1.00 per tonne for Pioneer growers. However, Ray Hoey and Co considers that the Report underestimates the effect of an extended season length because of the number of dry years in the data subset that was used. Given this, Ray Hoey and Co questions whether the Commission has determined the effect a series of wet years would have on the analysis of the losses incurred by an extended season length.

Differential payment scheme

6.67 Ray Hoey and Co claims that the Agreement seeks to introduce differential cane prices for different cane farmers. Previously, the industry operated under a No 1 and No 2 pool price arrangement. This arrangement was criticised by the SIRWP in its Report as restricting entry of farmers, and recommended against continuing the arrangement. There is now a single price arrangement operating in Queensland.

6.68 Ray Hoey and Co considers that the Agreement seeks to re-establish this arrangement and is designed for the private benefit of those participating only.

6.69 It further submits that the delivery of cane in the sugar industry, as it has always applied, occurs at the mill siding. A farmer's responsibility stops there. Given this, Ray Hoey and Co contends that growers should not have to pay a levy for infrastructure development that has always been the responsibility of the miller.

The public detriment of the SIA versus the Agreements

6.70 Ray Hoey and Co submits that an analysis of the SIA and the Agreement does not support the statement made by the Commission that:

> ...the public detriment resulting from the arrangements is limited when one considers the extent to which aspects of the arrangements are clearly prescribed under the relevant legislation, which continues to regulate the industry.

6.71 Ray Hoey and Co considers that the constraints on competition are as a result of the Agreements only, not the SIA. By way of example, Ray Hoey and Co outlines that section 2 of the SIA states:

> A cane production area entitles the person (a 'grower') to enter a supply agreement with the owner of a particular mill for the supply to the mill of cane grown on a particular number of hectares situated within land of a particular description.

6.72 Consequently, CPA only confers a right to enter into a contract with a mill. As it does not set any restrictions on what the agreement can contain, it cannot be considered to limit competition. Any constraints to competition must therefore be a consequence of the Agreement.

6.73 Similarly, Ray Hoey and Co considers that the SIA clearly states that the Negotiating Team, not the SIA, decides all matters regarding the supply agreement and expansion.

Opting Out

6.74 Ray Hoey and Co notes that the Commission views the ability of growers to negotiate individual agreements as lessening the anti-competitive effect of the Agreements. In this regard, Ray Hoey and Co submit that CSR has repeatedly refused to enter into an individual agreement in Pioneer. Furthermore, Ray Hoey and Co submits that negotiations to date have not been held in good faith.

6.75 Section 46(4) of the SIA states 'subject to this Act, a grower may, under subsection (2), enter into an individual agreement with a mill owner at any time.

The development of the Agreements

6.76 Ray Hoey and Co advises that Pioneer growers originally rejected the Pioneer Agreement in a majority vote. Growers were not given a second opportunity to vote on the Pioneer Agreement, but were 'conscripted' to the Agreement by the Pioneer Negotiating Team.

Features do not limit anti-competitive effects:

6.77 Ray Hoey and Co contends that the following features, as outlined in the draft determination, do not limit the extent of the anti-competitive effect arising from the Pioneer Agreement:

Price adjustment factors

- Ray Hoey and Co considers that the relative payment system increases the public detriment of the Pioneer Agreement. Furthermore, the CCS component of the payment formula an inverse relationship to cane yield.

Ability to 'opt-out' of the collective agreement

- Ray Hoey and Co submits that opting out of the collective agreement is not a realistic option for growers given CSR's restrictive interpretation of the SIA.

Accordingly, it does not operate to reduce the anti-competitive effect of the Pioneer Agreement.

6.78 In particular, Ray Hoey and Co claims that CSR believes the option of individual supply agreements was placed in the SIA to allow for situations where a particular grower's circumstance is different from other growers. Furthermore, CSR has previously informed Ray Hoey and Co that it is prepared to enter into individual agreements with growers provided that there is some 'differentiating feature' of their cane supply. Ray Hoey and Co submits that there is no provision in the SIA to support this interpretation, and the SIA does not prescribe a particular format for individual agreements.

The localisation of the arrangements

- Ray Hoey and Co submits that the argument that the local nature of the Pioneer Agreement reduces the anti-competitive detriment of the agreement cannot be substantiated.

Appeal mechanisms

6.79 Ray Hoey and Co submits that the Pioneer Agreement does not contain adequate mechanisms for appeal in certain circumstances. In this regard, Ray Hoey and Co also argues that the dispute resolution procedure contained at Clause 4.1 (Part I) (as outlined previously at paragraph 3.72) does not operate generally for all instances where a dispute may arise or an appeal may be required.

6.80 By way of example, Ray Hoey and Co argues that there is no appeal mechanism with respect to the CPB's determination of whether a CPA is defined as existing CPA or new CPA. Namely, Clause 1.3.2 of the Pioneer Agreement states:

> The determination by the CPB as to whether CPA is Existing CPA or New CPA is final and binding.

6.81 Given the differential payment system under the Agreement, Ray Hoey and Co argues that there is potential for an individual grower's viability to be adversely affected by the CPB's determination in accordance with the cane payment clauses in the Agreement.

6.82 In addition, Ray Hoey and Co considers there are no appeal mechanisms in respect to the annual review process under the Agreement. As previously outlined, the terms and effect of the Pioneer Agreement will be subject to annual review by the Negotiating Team. At which time, Clause 3.4 also provides that the Negotiating Team may agree in writing to roll over Parts I, II and III of the Agreement for one year.

6.83 Ray Hoey and Co refers to Clause 3.4 (Part I) of the Pioneer Agreement, the final paragraph of which states:

> ...It is not the intention of either party that in this annual review process, any of the matters be referred to a dispute resolution process.

Ivory Bros

6.84 Ivory Bros submits that in order for growers to be paid relative to the sugar made from their cane, technical measures are required. This is not the case under the Agreements.

6.85 In relation to the current calculation of CCS, Ivory Bros submits that it is not measured on a technical basis and is not readily definable by an algebraic formula. Specifically, the coefficient of work for a mill is not a technical basis, and this measure is used when calculating CCS. Accordingly, it lacks mathematical certainty as a measure of sugar content. As the payments to a grower by a miller for the supply of sugar content in cane to a mill is determined, in part, by CCS, the actual payment to a grower as determined by the formula is also uncertain, and should be declared void for uncertainty.

6.86 In addition, Ivory Bros submits the constants used in the cane payment formula are not relative to grower performance or efficiency.

6.87 Without a mathematically certain or technical basis, the growers are not able to enter into negotiations with CSR on an equal footing.

6.88 Ivory Bros submits that the Co-operative Formula, as preferred by the QSC in Volume 2 of its report on the Distribution of Proceeds of Vested Sugar, should instead be used by the sugar industry. The major feature of the Co-operative Formula being the introduction of a factor providing for a share of mutual gain to both miller and grower.

Rossiter Farming Co

6.89 The submission received from Rossiter Farming Co concentrated on the growers' concerns specifically related to the development of the Pioneer Collective Supply Agreement the subject of the application. These issues are summarised below.

6.90 During negotiations, Pioneer growers were told that 200 000 tonnes of cane had been re-assigned to the Pioneer Mill. This meant that the Pioneer Mill was 200 000 tonnes of cane over capacity. Therefore, the crushing season had to be extended to crush the cane (from a 22.8 week season to a 24.5 dry week crushing season). In relation to this issue, Mr Rossiter claims that:

- the Kalamia Mill rezoned Pioneer Assignment back to the Kalamia Mill, which would reduce the alleged 200 000 tonnes of extra cane;
- evidence of the additional cane to support an extension of the crushing season was not provided to the Development Committee (representing growers in negotiations) and other growers;
- information regarding how long growers would be required to extend the crushing season to accommodate the additional cane was not provided;
- the QSC "Expansion Assignment Administrative Procedures" guidelines were breached because the 200 000 tones of cane were assigned to the Pioneer Mill area

when the Pioneer Mill did not have the capacity to crush the cane in the designated season length; and

- the 200 000 tonnes of cane was used to pressure growers into accepting an extension in season length.

6.91 The original Pioneer Agreement was put to a grower vote in early 1999. The growers rejected this Agreement. Pioneer growers, however, were not provided with the opportunity to vote upon the current Pioneer Agreement the subject of the application for authorisation, which is very similar to the rejected Agreement.

6.92 In a survey following the 1999 vote, growers expressed the major concerns in relation to the original Agreement, namely:

- the effects of wet weather;
- low CCS and yield and poor returns;
- risk of standover cane and late ratoons;
- extended season; and
- lack of assurance from CSR for increased mill capacity.

6.93 Mr Rossiter also submits:

- A full Cost Benefit Analysis and Social Impact Statement was not completed in response to the concerns raised in the grower survey.
- A thorough and accurate record of development meetings were not kept, and information was not freely available to growers.
- The 7000 hectare expansion claimed by CSR applies to the Invicta area only. Mr Rossiter referred to the comments made at the pre-determination conference by Mr Ian Haigh, Pioneer Canegrowers Organisation, that the Pioneer Cane Production Board did not have any applications for increase in CPA and had not issued CPA for a number of years.
- Given that CSR is not prepared to increase crushing capacity at the Pioneer Mill, an alternate option for further expansion, without affecting current growers, would be to allow new and expanding growers to deliver cane at the beginning and/or the end of the current 22.8 week season length under an individual agreement.

Pioneer Canegrowers

6.94 Pioneer Canegrowers is of the view that the Pioneer Negotiating Team has operated in accordance with the provisions of the SIA, which was accepted by both State and Federal Governments as meeting the requirements of the competition policy.

6.95 With regard to the development of the Pioneer Supply Agreement, it submits that under the provisions of the SIA, the Pioneer Negotiating Team has the power to

negotiate and make commercial decisions without any legal requirement to refer matters back to growers for their consideration.

6.96 Essentially, the Pioneer Supply Agreement is a commercial agreement designed to provide stability to the parties to the agreement. In particular, provision is made for a maximum season length, which allows for some expansion; a formula determines the extent of expansion each year, which depends on various factors including mill crushing rate, mill efficiency, crop rotation, crop production levels and a maximum season length; and it outlines the ground rules in regard to delivery of cane, analysis and payment to growers. Pioneer Canegrowers submits that potential and existing growers are aware of the conditions and it has not deterred them.

6.97 With regard to CCS, Pioneer Canegrowers argues its formula has always been recognised as an empirical exercise, but since its adoption, there has not been support for replacement formulae proposed.

6.98 Pioneer Canegrowers considers there are benefits to the public from increased production under the Agreements in the form of efficient utilisation of mill equipment and infrastructure.

6.99 In addition, increased export income generated by increased production will benefit Queensland and Australia generally.

Queensland Canegrowers Organisation

6.100 Canegrowers reiterated its comments at the pre-decision conference. Namely, the majority of opposition to the authorisation of the Agreements relates to perceived transfers between the millers and growers, and between groups of growers. There is no effect on net public benefit from potential transfers.

6.101 In this regard, Canegrowers submits these transfers were made as part of a negotiated outcome. The consultation process engaged went beyond what was required under the SIA.

7. The SIA and Authorisation

The operation of the SIA

7.1 As previously outlined the Queensland sugar industry has historically been regulated. Following the SIRWPs' Report, published in November 1996, it was determined that it was in the public's benefit for substantial regulation to remain. However, there has been some reform, the main change being the devolution of regulatory powers from Queensland Sugar (previously QSC) to the CPB's. The SIRWPs' Report had recommended that Queensland Sugar should be restructured to provide it with an increased focus on commercial export and domestic marketing arrangements and reduced regulatory functions.

7.2 Key aspects of sugar industry practice and the regulatory framework adopted under the present legislation (the SIA) are summarised below:

- Queensland Sugar retained compulsory acquisition and single desk selling powers.
- All matters pertaining to the administration of CPA now resides with CPBs. CPBs are responsible for recording all applications, grants, variations and cancellations of CPA.
- Processes have been established through which cane growers are able to expand in their mill area or possibly move cane supply from one mill to another mill.
- Existing environmental and land use requirements in the process of approving new cane land have been changed to help ensure the industry's long term sustainable development.
- Grower-miller relations are now on a contractual basis and either party can be sued for non-performance. (The previous legislation only allowed for cancellation of cane assignment on breach).
-
- Individual agreements between growers and mills are now permitted, subject to the relevant provisions under the SIA.
- Collective agreements can last for longer than one year.

7.3 Many practices sanctioned by the legislation are anti-competitive in nature. Without specific exemption from the Trade Practices Act some of these practices are likely to be in breach of the Act.

7.4 Chapter 6 of the SIA sets out the specific conduct which is authorised for the Trade Practices Act and the Competition Code, including:

Cane production areas: