

**Australian
Competition &
Consumer
Commission**

Determination

Application for Authorisation

lodged by

CSR Limited

in respect of the

Invicta Sugar Mill Collective Supply Agreement

Invicta Sugar Mill Expansion Agreement &

Pioneer Sugar Mill Cane Supply Agreement

Date: 11 July 2001

Application: A90733

File: C2000/1213 – 05

Commissioners:

**Fels
Shogren
Bhojani
Cousins
Jones
Martin**

Summary

On 2 May 2000, CSR Limited lodged an application for authorisation under sub section 88(1) of the *Trade Practices Act 1974* (the Act).

Essentially, the applicant sought authorisation of the conduct covered by agreements that govern the terms upon which:

- new cane production areas will be created for the supply of sugar cane to CSR's Invicta Sugar Mill — Expansion Agreement; and
- cane will be supplied by growers to the Invicta Sugar Mill — Collective Supply Agreement.

On 31 October 2000, the applicant advised that it was also seeking authorisation of similar arrangements covered by CSR's Pioneer Sugar Mill Cane Supply Agreement.

The Queensland sugar industry is regulated by the *Sugar Industry Act 1999* (SIA) which provides for the making of collective supply and individual supply agreements for the supply of cane to a mill; regulates granting, variation and cancellation of cane production areas; and vests sugar in Queensland Sugar.

Sugar production, supplying and milling of cane is achieved through mill-related Cane Production Areas (CPA) and Cane Production Boards (CPBs). Cane may only be grown on a registered CPA.

The growing and milling sectors of the sugar industry are characterised by a large number of growers and a smaller number of millers; the major millers tend to be geographically concentrated; raw sugar is vested in a single desk seller; the bulk of raw sugar is exported; and raw sugar sales to the domestic market are set at export parity price.

On 7 September 2000, the Commission granted interim authorisation to that part of the Invicta Collective Supply Agreement which relates to collective negotiation of cane payments.

The Commission issued a draft determination proposing to grant authorisation on 12 December 2000.

Following a pre-decision conference on 23 February 2001, the Commission received further submissions from interested parties.

The Commission considers that the public detriment resulting from the Agreements is minimal. 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, largely exist independent of the Agreements for which authorisation is sought.

While the existing industry legislation exempts much of the conduct covered by the Agreements, there are arguably some elements within the Agreements which go beyond any statutory protection, particularly the differential payment scheme which provides for different payment arrangements for existing growers and new growers linked to the length of the crushing season, and the constraints on the manner in which new cane production areas are granted.

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

The Commission is satisfied that the Agreements deliver public benefits in the form of 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, associated economic gains to the Burdekin region and a better informed market.

Subject to conditions, the Commission is satisfied the Agreements the subject of the application are likely to result in a benefit to the public, which is sufficient to outweigh any likely anti-competitive detriment resulting from their implementation.

The Commission therefore issues this determination authorising the Agreements, (Attachment A – C), subject to conditions, for a period of five years, subject to any application to the Australian Competition Tribunal for its review.

The interim authorisation granted by the Commission on 7 September 2000 is revoked and substituted with an interim authorisation granted in the same terms and subject to the same conditions as this authorisation, until this determination comes into force.

Abbreviations

Agreements	Where this word appears in this document it means the Invicta Mill Collective Supply Agreement, the Invicta Mill Expansion Agreement and the Pioneer Mill Cane Supply Agreement.
CCS	Commercial Cane Sugar
CPA	Cane Production Area
CPB	Cane Production Board
ESA	Extended Season Allowance
QSC	Queensland Sugar Corporation
Queensland Sugar	Queensland Sugar Limited
SIA	<i>Sugar Industry Act 1999</i>
SIA 1991	<i>Sugar Industry Act 1991</i>
SIRWP	Sugar Industry Review Working Party
The Act	<i>Trade Practices Act 1974</i>
WEA	Weekend Harvesting Allowance

Glossary

CCS	A measure of the sugar content of cane and a basis for cane payment through the cane payment formula.
Existing CPA	A Cane Production Area or assignment that is not new CPA.
New CPA	<p>Cane Production Areas granted by the CPB on or after 1 March 1999 for the Invicta Mill area, and on or after 1 March 2000 for the Pioneer Mill area.</p> <p>In relation to the two mill areas, new CPA also includes existing CPA varied by a Local Board or CPB application or order after 1 March 1999 (Invicta), or 1 March 2000 (Pioneer), subject to conditions.</p>
Cane Production Board	A CPB is responsible for running the administration of the CPA system within the local cane production area, that is, Invicta and Pioneer (as provided in sections 148 and 149 of the SIA). A CPB consists of two mill representatives, two grower representatives nominated by the relevant grower committee and an independent Chairperson (currently the Clerk to the Magistrate's Court).
Negotiating Team	According to section 40(2) of the SIA, a Negotiating Team is empowered to make a collective supply agreement for the mill for which it is established. Also, in accordance with section 36(1) of the SIA, it is empowered to decide everything about the size of expansion of cane production areas relating to the mill and the length of the crushing season.
Suppliers Committee	An entity comprised of seven elected representatives for growers supplying cane at each mill.

Attachments

Attachment A	Collective Supply Agreement for the Invicta Mill
Attachment B	Expansion Agreement for the Invicta Mill
Attachment C	Pioneer Cane Supply Agreement

Contents

Summary	ii
Abbreviations	iv
Glossary	v
Attachments	vi
1.Introduction	1
2.Background	3
<i>The Applicant</i>	3
<i>The Sugar Industry</i>	3
<i>Past Regulation</i>	6
<i>The Sugar Industry Act 1999</i>	9
3.The application	11
<i>Invicta Mill Collective Supply Agreement (Invicta Supply Agreement)</i>	11
<i>Invicta Mill Expansion Agreement</i>	17
<i>Pioneer Mill Collective Supply Agreement (Pioneer Supply Agreement)</i>	19
4.Statutory provisions	28
5.Submissions	29
<i>Public benefits argued by the applicant</i>	29
<i>Submissions from interested parties</i>	31
<i>Support application for authorisation — growers</i>	31
Bohle Grazing Pty Ltd:	31
Bugeja Cane Farms:	31
Ms Lyndel Owens:	32
Mr McLaughlin:	33
JJ McDonald & Sons Engineering Pty Ltd:	33
AJ & WM Blaik:	33
<i>Support Agreements — organisations</i>	33
Australian Sugar Milling Council (ASMC):	33
Queensland Canegrowers Organisation Ltd:	34
Invicta Canegrowers Organisation:.....	34
Pioneer Canegrowers Organisation:.....	35
<i>Oppose the application for authorisation</i>	36
Mr and Mrs Garbuio:	36
Mr Robert Rossiter:.....	36
Messrs Ray Hoey & Company:.....	37
AC Ivory:	38

6.Pre-decision conference and subsequent submissions	39
<i>Pre-decision conference.....</i>	<i>39</i>
<i>Further submissions by the applicant</i>	<i>41</i>
<i>Interested parties' submissions following the pre-decision conference</i>	<i>45</i>
7.The SIA and Authorisation	53
<i>The operation of the SIA</i>	<i>53</i>
<i>Role of the Commission.....</i>	<i>56</i>
<i>Industry features.....</i>	<i>59</i>
8.Commission evaluation.....	61
<i>Commission assessment of public detriments constituted by any lessening of competition arising from the Pioneer Supply Agreement</i>	<i>61</i>
<i>Assessment of the likely benefit to the public arising from the Pioneer Supply Agreement</i>	<i>74</i>
<i>Summary of public detriment and public benefit arising from the Pioneer Supply Agreement</i>	<i>81</i>
<i>Assessment of public detriments constituted by any lessening of competition arising from the Invicta Supply Agreement and the Invicta Expansion Agreement</i>	<i>82</i>
<i>Assessment of likely benefit to the public arising from the Invicta Agreements</i>	<i>86</i>
<i>Summary of public detriment and public benefit arising from the Invicta Agreements.....</i>	<i>89</i>
Conclusion	90
<i>Time limit</i>	<i>90</i>
9.Determination.....	92

1. Introduction

1.1 Organisations who engage, or propose to engage, in certain anti-competitive business arrangements or conduct that could breach the *Trade Practices Act 1974* (the Act), may apply to the Australian Competition and Consumer Commission (the Commission) for authorisation of such arrangements or conduct. When an application for authorisation is made, the Commission is required under the Act to make a determination in writing either granting or dismissing the application. It is also required to take into account any submission made to it in relation to the application. The Commission is first required to issue a draft determination in writing. The applicant or any interested party dissatisfied with the draft may request that the Commission hold a conference with the applicant and interested parties. At the conference parties can discuss the operation and effect of the draft determination. After any such conference the Commission reconsiders the application taking into account the comments made and further submissions received and publishes its final determination.

1.2 The Commission may grant authorisation where the public benefit of the subject arrangements or conduct outweighs the public detriment, including the anti-competitive detriment. If granted, an authorisation provides immunity from legal proceedings under the Act in respect of the arrangements or conduct. This protection extends only from the time the authorisation is granted. Consequently, an organisation would not be protected from legal action under the Act in respect of any business arrangements or conduct engaged in prior to the granting of authorisation of such arrangements or conduct.

1.3 On 2 May 2000, CSR Limited lodged an application for authorisation under subsection 88(1) of the Act.¹

1.4 CSR is seeking authorisation for Agreements that govern the terms upon which:

- new cane production areas will be created for the supply of cane to CSR's Invicta Sugar Mill (Expansion Agreement); and
- cane will be supplied by growers to the Invicta Sugar Mill (Collective Supply Agreement).

1.5 On 31 October 2000, the applicant advised that it was also seeking authorisation of similar arrangements at CSR's Pioneer Sugar Mill. Details of the application are set out in Section 3.

1.6 The Queensland sugar industry is regulated by the *Sugar Industry Act 1999* (the SIA). Briefly, that legislation:

- provides for the making of Collective Supply Agreements for the supply of cane to a sugar mill;

¹ This application has also been considered as an application under the Competition Code.

- provides for the making of Individual Supply Agreements for the supply of cane to a mill;
- regulates granting, variation and cancellation of Cane Production Areas;
- vests sugar in Queensland Sugar Limited (Queensland Sugar); and
- authorises for competition legislation, amongst other matters, individual and collective supply agreements.

1.7 The applicant submits the Agreements for which authorisation is sought are specifically authorised by the SIA under the statutory exemption provisions contained in section 51 of the Act. However, the applicant states:

Whilst some aspects of the agreements for which authorisation is sought clearly fall within the terms of the statutory authorisation created by Chapter 6 of the SIA, and whilst all aspects of the proposed agreements fall within the spirit of the authorisation created by that legislation, CSR wishes to obtain the certainty of authorisation granted by the Australian Competition and Consumer Commission (the Commission).

1.8 In light of the fact that the applicant considers there is sufficient risk of contravening the Act, the Commission has a duty to decide the application on public benefit grounds, and not on the ground that the application may appear to be unnecessary on the basis that the conduct for which authorisation is sought could be considered to be protected under the SIA.²

Interim authorisation

1.9 On 7 September 2000, the Commission granted interim authorisation to that part of the Invicta Collective Supply Agreement which relates to collective negotiation of cane payments. The interim authorisation will cease operation on the date this determination comes into force.

1.10 On 12 December 2000, the Commission issued a draft determination proposing, subject to any request for a predecision conference, to grant authorisation in relation to the application by CSR.

1.11 A predecision conference was requested by Ray Hoey and Co and was held on 23 February 2001 in Townsville. A record of the conference is on the Commission's public register. An outline of the main issues raised at the conference is at Section 6 of this determination.

² *Re Concrete Carters Assn* (1977) 31 FLR 193; *Re QCMA* (1976) 25 FLR 169; *Re Australasian Performing Rights Assn* (1999) ATPR 41-701.

2 Background

The Applicant

2.1 CSR is the largest sugar company in Australia, manufacturing nearly 40% of the nation's raw sugar output. It produces approximately 2.25 million tonnes of raw sugar annually. CSR's earnings before interest and tax from its sugar division for the 1999/2000 financial year totalled \$91 million.³

2.2 The arrangements the subject of the application for authorisation are in respect to the applicant's Invicta Mill and Pioneer Mill both located in the Burdekin growing region, North Queensland (see Figure 1).

2.3 The Burdekin region is one of the lowest cost sugar producing areas in Australia and has reported growth opportunities because of available land suitable for increasing the sugar cane crop.

2.4 CSR operates seven mills in North Queensland, and operates the only four mills in the Burdekin. In the 1999 season, Invicta and Pioneer Mills produced 490 thousand tonnes and 275 thousand tonnes of raw sugar respectively.

The Sugar Industry

2.5 The sugar industry is Australia's second largest crop industry, and Queensland's largest rural commodity. Australian production in the 1997 season was 5.74 million tonnes of raw sugar from 41 million tonnes of sugar cane harvested.⁴ Due to excessively wet harvesting conditions in Queensland, the raw sugar production in 1998/99 was 4.9 million tonnes. However, production is expected to increase to 5.2 million tonnes in 1999/00 and to more than 6 million tonnes by 2003/04 (assuming a return to normal seasonal conditions and conditional on price).⁵

2.6 The industry is separated into three sectors (see Figure 2):

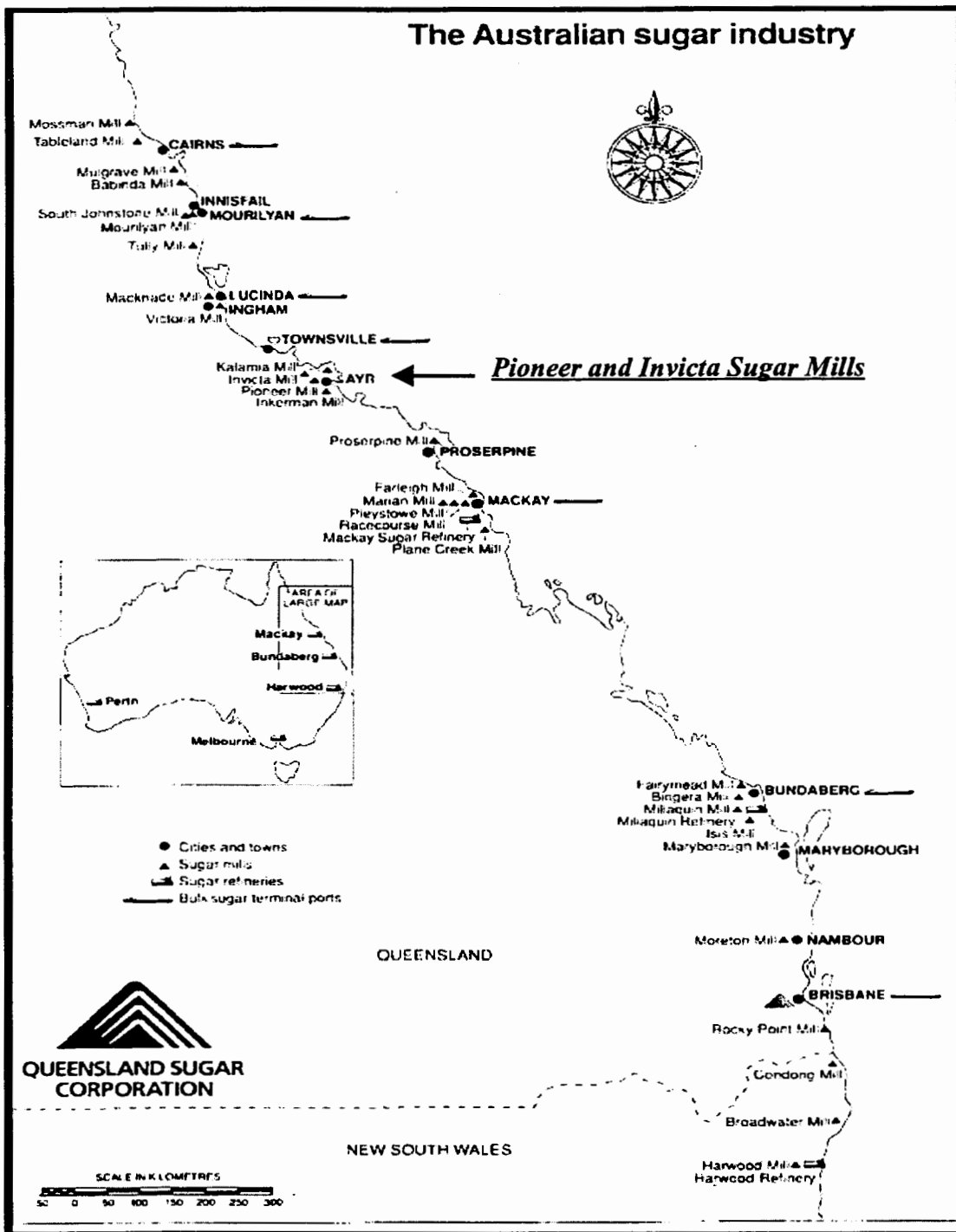
- the growing of sugar cane;
- the milling of cane to produce raw sugar; and
- sugar refining.

³ Source: CSR Annual Report 1999 (EBIT)

⁴ Source: The Sugar Research Institute at <http://www.sri.org.au/sugarindustry2.html>

⁵ Source: The Sugar Research and Development Corporation at <http://www.srdc.gov.au/industry/home.html>

Figure 1⁶



Growing

2.7 Sugar is sourced from sugar cane. Approximately 95% of sugar cane in Australia is grown in Queensland with the balance grown in New South Wales and

⁶ Source: Canegrowers Organisation at <http://www.farmwide.com.au/nff/canegrowers/industry/map.htm>

Western Australia. Most cane farms are owned and managed by family operations (less than 2.5% of cane output is produced by sugar mill owners). The Queensland industry consists of approximately 6500 cane growers.

2.8 Cane is grown on defined parcels of land known as Cane Production Areas (CPA). Under the industry legislation, cane produced on that land must be sold to a particular mill (see paragraphs 2.23, 2.24 and 2.34).

2.9 The growing season is typically ten to eighteen months with most cane growth occurring in late Spring through Summer and into Autumn. Thereafter, the developed cane does not grow significantly but as it matures, its CCS (commercial cane sugar) increases. The CCS is the measure of the sugar content of cane and a basis for cane payment under the Arrangements. Therefore, a higher CCS means a higher return for growers.

2.10 Cane is mechanically harvested in the period June to December when the cane is at its heaviest and matures to provide the best juice for turning into sugar. The exact harvesting period may vary depending on seasonal conditions. However, CCS typically plateaus in September to November and falls if the season extends from late November into December, particularly if there is wet weather at this time.

2.11 After harvesting, the cane is transported to raw sugar mills via cane railway networks or trucks.

Milling

2.12 One of the main features of the sugar industry is the interdependence between the growing and the milling sectors. Sugarcane has to be delivered to the mill and milled within 16 hours of harvesting to prevent deterioration, and without a steady supply of sugarcane, mills have no value. Therefore, there is a high degree of coordination between the growing and the milling sectors.

2.13 There are 26 sugar mills in Queensland and 3 in New South Wales. In March 2000, CSR sold the Ord River Sugar Mill, Western Australia. The major millers in Queensland are CSR (7 mills), Bundaberg Sugar Limited (7 mills) and Mackay Sugar Co-operative Association (4 mills). The major millers tend to be geographically concentrated (eg CSR owns the four mills in the Burdekin region). Together, the three major millers own 18 of Queensland's 26 mills. Most other mills are owned by growers' co-operatives.

2.14 The milling process involves crushing the cane to extract the raw sugar. Raw sugar is typically an intermediate product that requires further refining before it can be sold as a final consumption product or as an ingredient for the manufacture of food and beverage products.

2.15 All raw sugar produced in Queensland is compulsorily acquired by Queensland Sugar Limited (Queensland Sugar), previously known as the Queensland Sugar Corporation (QSC). The QSC was a statutory body with responsibility for all sales of Queensland sugar. However, with the introduction of the SIA, the QSC ceased to be a statutory authority and became an industry owned marketing authority — Queensland Sugar.

2.16 Queensland Sugar remains a single desk seller responsible for all marketing and selling of raw sugar within the domestic and export market. Approximately 85% of raw sugar is exported and the remaining 15% is sold to domestic refineries at a price determined by the relevant Queensland Minister. An export parity formula is used to set the domestic price, the primary component of which is the "New York Coffee Sugar and Cocoa Exchange's No. 11 raw sugar futures contract". The Commission understands that the objective of domestic prices based on export parity is to reflect the price outcome that would be achieved with domestic deregulation.

2.17 After milling, raw sugar is transported to a bulk sugar terminal where it is either exported or sold to refineries.

Refining

2.18 There are currently four sugar refineries in Australia, two in Queensland (Mackay and Bundaberg), one in New South Wales (Harwood) and one in Victoria (Melbourne).

2.19 Sugar Australia Pty Ltd is a joint venture between CSR Limited (50%), Mackay Sugar Co-operative Association Limited (25%) and ED & F Man Australia Limited (25%). It owns the refineries located at Mackay and Melbourne. The refinery located at Bundaberg is owned by Bundaberg Sugar Limited (wholly owned by Finasucre, a Belgium based sugar group). Manildra Harwood Sugars own the refinery located at Harwood.

2.20 Most of Australia's refined sugar is sold on the domestic market. The principal buyers of refinery products are confectionary, food and drink manufacturers and the retail industry.

Imports

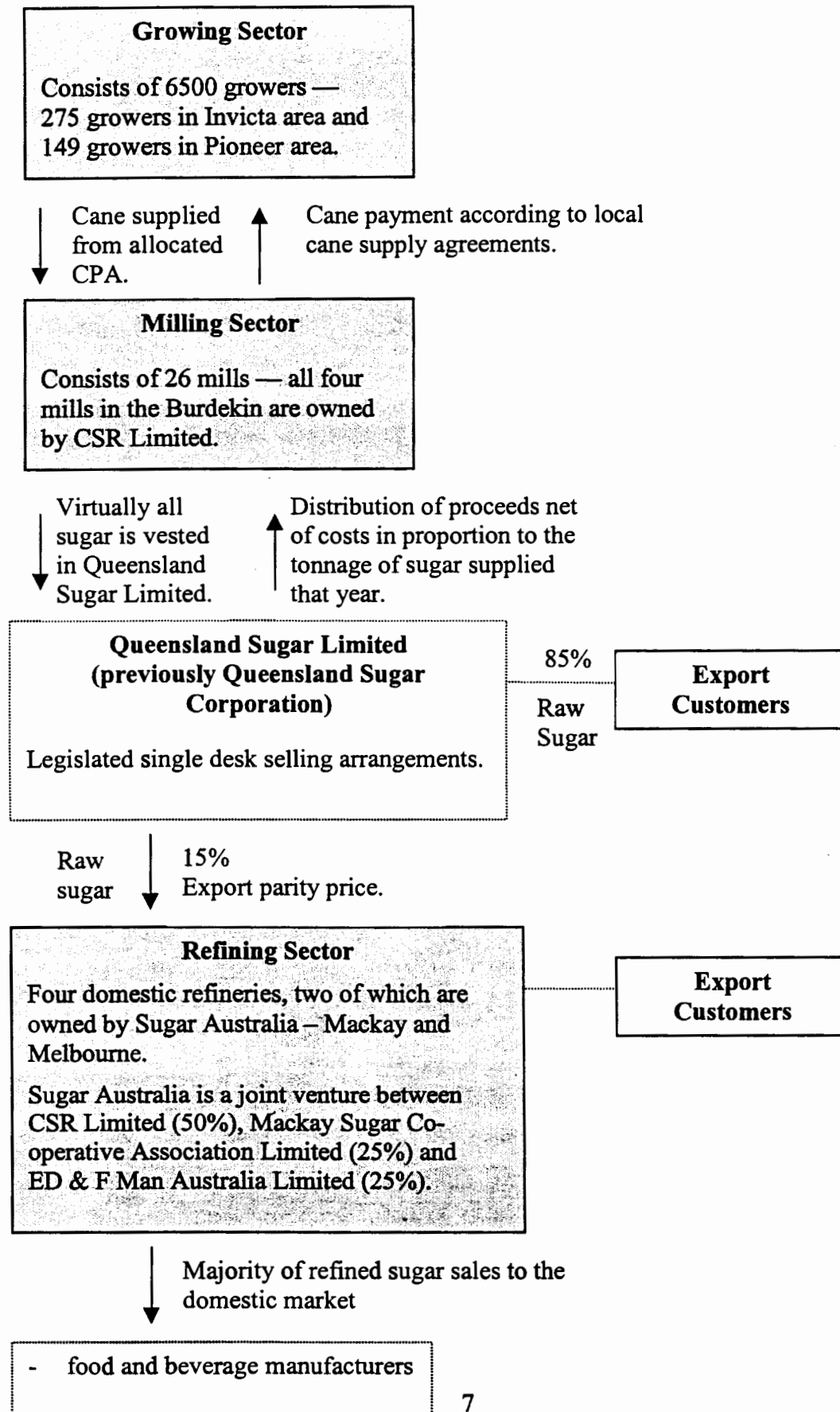
2.21 The Commission is advised that there is currently not a significant quantity of sugar being imported into Australia, apart from some minor specialty products.

Past Regulation

2.22 The Australian sugar industry, particularly sugar marketing and cane growing, has been highly regulated since 1901. Although there have been substantial movements toward deregulation through recent years, the Commission notes the industry remains highly regulated.

2.23 A major step towards the reorganisation of the industry was the introduction of the *Sugar Industry Act 1991* (SIA 1991). The SIA 1991 repealed the old legislation controlling cane growing and sale to mills, and established the Queensland Sugar Corporation (QSC) to develop and implement policy relating to the management of the industry, including decisions in relation to expansion of cane lands or conditions in agreements. A sugar cane assignment system regulated sugar cane areas and grower-miller relationships. All raw sugar was acquired by the QSC for single-desk selling.

Figure 2: Interrelationships of the Queensland Sugar Industry (figures are approximations only)



2.24 Under the assignment system, growers possessed an assignment (in hectares) on which they could grow sugar cane for delivery to a designated mill. The mill was obliged to accept the sugar cane. Although sugar cane could be grown on unassigned land, the sugar produced from this sugar cane received a penalty price of \$1 per tonne compared to average prices in excess of \$300 per tonne.⁷

2.25 The relationship between growers and millers was also specified by the SIA 1991. Local Boards, comprised of grower and miller representatives, were established in each area. The Local Boards negotiated a local award on an annual basis. Local awards covered all matters relating to:

- harvesting and delivery of cane to the mill;
- transport, handling and crushing of cane by the mill; and
- payment for cane.

2.26 All growers were bound by the conditions in the award negotiated on their behalf by their Local Board.

2.27 The SIA 1991 provided that returns from sugar sales, sold by the QSC, were allocated between growers and millers according to a sugar cane payment formula introduced in 1916. Under the formula, the price of cane was expressed as a percentage of the raw sugar price. The formula also contained a constant component, aimed at providing growers a basic return irrespective of the sugar price. In 1994 the constant component was changed for the first time in 45 years.⁸

2.28 Returns were pooled, marketing and logistics costs deducted, and the surplus distributed to mills in proportion to the tonnage of sugar supplied that year. In turn, mills made payments to growers for their cane based on the provisions negotiated in collective or individual supply arrangements.

2.29 Until 1989, Australia imposed an embargo on sugar imports. This embargo was replaced by a tariff set at \$110 per tonne, which was later reduced to \$55 per tonne.

2.30 In 1992 the Industry Commission released a report which, amongst other things, recommended:⁹

- the removal of tariffs on sugar imports;
- the abolition of assignments from 1995 onwards; and
- the abolition of QSC compulsory acquisition powers.

⁷ Source: *Industry Commission Submission to the Sugar Industry Review Working Party (October 1996)* at <http://www.pc.gov.au/research/subs/sugar/sec2.html>.

⁸ (see footnote 5).

⁹ (see footnote 5).

2.31 However, the Commonwealth Government did not implement those recommendations, instead establishing a Sugar Industry Task Force to identify impediments to sustainable growth and competitiveness of the Australian sugar industry. The task force was also charged with determining the appropriate level of future government support for the industry.

2.32 While the tariff on sugar imports was abolished by the Australian Government, effective from July 1997, the assignment system and the compulsory acquisition of raw sugar by QSC remained as the main avenues of regulation.

The Sugar Industry Act 1999

2.33 The SIA came into effect on 1 January 2000, following a comprehensive review of the industry by the Sugar Industry Review Working Party (SIRWP) in 1995/1996 in conformity with the legislative review requirements of National Competition Policy. The cane assignment system and single desk selling arrangements were retained under the new legislation.

2.34 The most significant amendment introduced under the SIA is the devolution of regulatory powers from the QSC (now Queensland Sugar) to local Cane Production Boards (CPBs), comprised of two miller, and two grower representatives and an independent chairperson. With the introduction of the SIA, the QSC ceased to be a statutory authority and became an industry-owned marketing authority. In addition, cane assignments are now called Cane Production Areas (CPAs).

2.35 The functions of Local Boards are now split between the newly created Negotiating Teams and CPBs. Negotiating Teams are comprised of two miller and two grower representatives.

2.36 Under section 188 of the SIA, the functions of a Negotiating Team are to:

- negotiate a collective sugar cane supply and processing agreement between growers and the mill they supply; and
- decide all matters about expansion of sugar cane lands relating to a mill, including conditions that can be placed upon expansion grants and the mill's crushing season length.

2.37 Under section 149 of the SIA, the functions of CPBs are to:

- administer the granting, transfer, cancellation or variation of cane production areas relating to the mill; and
- implement decisions of the Negotiating Team regarding expansion of CPA.

2.38 In respect of sugar cane payments, the SIA 1991 provided that the basis for paying for sugar cane had to be the same for all growers in a mill area, and a single relative payment scheme applied. The SIRWP concluded:

...each mill area should be free to negotiate its own supply (including payment) arrangements.

2.39 The Queensland Government accepted this view and under the SIA it is up to local Negotiating Team to determine all matters with respect to price.

2.40 The SIA also provides that all cane supply and processing agreements are commercial contracts with either party liable to be sued for non-performance.

2.41 Individual agreements may be made between one or more growers and a mill owner. However, section 48(6) provides that these contracts must not have a significant adverse impact on growers supplying under the collective agreement.

2.42 Unless contracted by an individual agreement, all growers are bound by a collective agreement.

3. The application

3.1 The application is in respect of the conduct covered by the Agreements. The Agreements, namely the Invicta Mill Collective Supply Agreement (Attachment A), the Invicta Mill Expansion Agreement (Attachment B) and the Cane Supply Agreement in respect of the Pioneer Mill (Attachment C), are long term contracts between the sugar cane growers and the particular CSR-owned mill to which they supply.

3.2 Authorisation is sought on behalf of current growers and future growers which may become party to the Agreements from time to time.

3.3 In the case of the Pioneer Mill, cane supply and expansion are dealt with in the one agreement.

3.4 The general thrust of the Agreements is to provide for a gradual extension of the sugar cane crushing season from 23.5 dry weeks for the 2000 season to a maximum of 24.5 dry weeks, in conjunction with expansion of mill crushing capacity. The applicant submits that the capital expenditure required to achieve the increased crushing rates and season expansion are conditional upon granting of new CPAs, as provided under the Agreements.

3.5 An overview of the Agreements is provided below.

Invicta Mill Collective Supply Agreement (Invicta Supply Agreement)

3.6 The Invicta Supply Agreement governs the supply of cane to the Invicta Mill from all growers with CPAs in existence as at 1 March 1999, where the cane grown on that CPA is to be supplied for crushing to the Invicta Mill.

3.7 The Invicta Negotiating Team, which consists of representatives from CSR and the Suppliers Committee (representing the growers), will enter into the Supply Agreement.

3.8 Part I of the Invicta Supply Agreement deals with medium term issues, including the payment arrangements for cane supplied under the Agreement. The term of Part I is ten years.

3.9 Part II of the Invicta Supply Agreement deals with the management of production, delivery and receipt of sugar cane in each particular season. Part II of the Agreement shall remain in force for a period of one year from the commencement date of the Agreement. Part II may be renegotiated in part or in total each year subject to conditions.

3.10 The stated objectives of the Invicta Supply Agreement are:

- 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 condition set out 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.

3.11 Essentially, the Invicta Supply Agreement sets out:

- the price paid for cane supplied by growers to the Invicta Mill;
- a levy payable by growers on cane supplied on new CPA;
- a cane and sugar quality assurance system;
- adjustments to price for cane based on a number of factors including failure by the Mill to achieve net crushing rates; and
- payment terms and cane delivery and acceptance provisions.

Season length (Part I):

3.12 Specifically, Clause 4 of the Supply Agreement specifies the formula to be used to calculate the estimated season length by 1 March each year. This formula takes into account the area under cane available for harvest, the average yield over the last five years, the average gross crushing rate for the last two years, the average mill availability for the previous two years and the total number of hours per week.

3.13 The commencement date of the crushing season is then specified based on the figure calculated above. For example, if 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. Alternatively, if the season length will be 23.5 Dry Weeks or longer, the crushing season will start on 1 June or as otherwise agreed.

3.14 Clause 4 also provides for negotiation between the applicant and grower representatives regarding extension of season length after unavoidable delays. If there are disputes in these circumstances, the dispute shall be referred to the Negotiating Team for resolution.

3.15 The crushing season terminates when all cane from CPA supplying cane to the Invicta mill has been crushed. CSR is required to give at least fourteen days notice of this date in the local press. After such notice, crushing may stop when the quantity of cane supplied for crushing for five successive days falls below an average daily crush limit.

3.16 Under clause 4.8 of the Invicta Agreement, CSR may, at its discretion, arrange for any cane supplied under the Agreement to be crushed at other mills owned by it in the Burdekin area.

Cane supply (Part I):

3.17 Clause 5 establishes that a grower is required to supply a minimum quota of cane to the Invicta Mill or risk forfeiture of that percentage of CPA that has not been supplied. In such a circumstance, a party to the Agreement may apply to the CPB to consider the forfeiture of that percentage.

3.18 Clause 5 also obliges growers who grow cane on CPA relating to the Invicta Mill to supply cane to that Mill. If a grower supplies cane from land that does not have CPA entitlement the grower does not receive payment for that cane.

Cane payments (Part I):

3.19 Essentially, the base average cane price at the Invicta Mill is determined by a formula. The Invicta Supply Agreement provides a different rate of payment for cane grown on an existing CPA and cane grown on new CPA.

3.20 New CPA is defined in the Agreement as CPA granted on or after 1 March 1999, and CPA varied by a CPB application or order after 1 March 1999, except where the variation is:

- i. a transaction dealing with the land and assignment as one entity;
- ii. a technical variation such as resurvey; or
- iii. be agreed as an exception by the CPB.

In the above exceptions, the variations must:

- a) not increase the total area of the mill's CPA;
- b) not increase the area of 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,

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

3.21 The price payable to growers for cane supplied from new CPA is less than the price payable to growers supplying from existing CPA. Specifically, the cane price formula for existing CPA, which appears at Clause 6.1 in the Agreement, is comprised of the sugar price in dollars per tonne of International Pol Scale (IPS) sugar; seasonal average of CCS of all cane; Extended Season Allowance (ESA); and Weekend Harvesting Allowance (WEA).

3.22 The price for an individual grower's cane under existing and new CPA shall be calculated by the "Relative A" daily system of relative payment that incorporates the individual grower's relative CCS.

3.23 The ESA for existing CPA is tied to the length of the season. This is a compensatory dollar amount which ranges from \$0.302 to \$0.902, where \$0.302 is

allowance for an actual season length of 151.9 dry days or less and \$0.902 is the allowance for an actual season length of 171.0 dry days or more.

3.24 Clause 6.3 provides for adjustments to the ESA for cane grown on existing CPA if the amount of cane supplied from existing CPA exceeds 3.0 million tonnes. Specifically, a formula is used to reduce the ESA. The amount of 3.0 million tonnes is proportionately adjusted if there are transfers of existing CPA between the Invicta Mill and other sugar mills, including the Pioneer Mill.

3.25 A WEA of 17 cents per tonne is also payable for all cane harvested from existing CPA on a Saturday or Sunday.

3.26 The cane price formula for new CPA, which appears at Clause 6.5 in the Agreement, is comprised of the sugar price in dollars per tonne of IPS sugar; seasonal average of CCS of all cane; a constant dollar amount per tonne; and a \$1 levy per tonne. It does not comprise a WEA or ESA.

3.27 Thus, those growers that supply cane from new CPA will be paid a lower price based on the same formula outlined in paragraph 3.21 but with a base price component of a flat \$0.578 per tonne less a \$1 levy per tonne. The levy is proposed to operate for the first ten years of supply only.

3.28 This differential payment scheme was introduced in order to gain the commitment of growers with existing CPA to the new scheme.

3.29 The price components of the existing payment system were preserved and compensation was introduced in recognition of the fact that an extended crushing season will reduce the average sugar content upon which part of the price formula is based. In contrast, growers with new CPA are not granted the same historical and other price benefits.

3.30 The applicant submits the levy helps to offset the capital expenditure required under the Agreements.

3.31 The Invicta Supply 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 crushing season. The penalty is in the form of additional payments to growers resulting from an extension of season length.

Cane and Sugar Quality Scheme (Part I):

3.32 Under the Invicta Supply Agreement, CSR will introduce canned fibre machines for fibre analysis for cane payment purposes from the 2000 crushing season.

3.33 In addition, the Agreement provides for a cane and sugar quality scheme to be implemented before the commencement of each season. Such schemes will be aimed at improving cane quality and technological and milling practices in place at the mill. The requirement for such a scheme is set in section 89 of the SIA, which states as follows:

- the negotiating team established for a mill must make a cane quality program for the mill; and
- the program is taken to be part of a collective agreement for the mill and of any supply agreement made with the mill owner.

3.34 The Commission understands that the scheme will be documented in a separate agreement, which does not form part of the current application for authorisation.

3.35 The costs of the operation of the Cane and Sugar Quality Scheme will be recovered in full, or in part, from growers in the form of a contribution payable by the grower to the Suppliers Committee. Under the Invicta Supply Agreement, and upon request from the Suppliers Committee, the mill will deduct such an amount from the cane payment of certain growers for remittance to the Committee.

Timing of payment for cane (Part I):

3.36 Clause 9 provides that the interim price during the season shall be 100% of the base price calculated as per above (Clauses 6.1 or 6.5). It also provides that payments are made weekly during the season.

3.37 In addition, Clause 9.3 outlines that if at any time during the season, CSR receives a higher price for sugar, the interim and base price shall be adjusted within one working day.

3.38 At the end of the season, the grower receives an end of season payment which is adjusted to account for the difference between the value of the grower's cane at the base price and the grower's seasonal average relative CCS and the sum already paid for that cane.

3.39 The end of season payment may also include an adjustment in respect of mill non-performance and an amount towards the cost of water charged to growers in the Burdekin Irrigation Area, to a maximum dollar total apportioned between growers.

Refusal of supply (Part I):

3.40 Clause 10 of the Supply Agreement establishes that CSR is not required to accept cane for crushing that:

- is infested with a pest;
- has in, or on it, chemical residue in an amount above the maximum limit prescribed under the *Chemical Usage (Agricultural and Veterinary) Control Act 1988*, or any other regulation;
- contains less than 7% of CCS, provided however that any cane delivered prior to the season commencement date that is analysed under 7 CCS will be paid as 7 CCS in the relative payment system;
- was grown in contravention of the SIA or the Agreement; or
- is not of an approved variety.

Dispute resolution (Part I):

3.41 Clause 12.2 of the Supply Agreement provides that in circumstances where a dispute arises:

- within the Negotiating Team about the variation of the Agreement under Clause 3.5;
- within a future Negotiating Team during the negotiations of the next collective supply agreement for the Invicta Mill area; or
- about the meaning of this Agreement between CSR and grower(s) bound by the Agreement,

it will be referred to an independent arbitrator mutually nominated by the parties to the dispute. If a mutual appointment is not reached, the President of the Queensland Law Society will decide such a person, whose decision or award will be binding on the parties to the dispute.

3.42 Under the Agreement, each party shall bear its own costs, and the costs of the arbitrator will be shared equally between CSR and the Suppliers Committee.

3.43 Clause 3.5 (Part I) of the Invicta Supply Agreement provides that at any time during the term of the Agreement CSR, or the Suppliers Committee, considers that as a result of a significant change in circumstances, one party has been seriously disadvantaged to the benefit of the other party, that party may request to meet within seven days to discuss the changed circumstance. At this time, CSR and the Suppliers Committee may mutually agree to apply to the Negotiating Team to vary the Agreement under section 44 of the SIA. If the terms of variation cannot be agreed, then either party may refer the matter for dispute under Clause 12.2 (Part I) of the Invicta Supply Agreement. Under Clause 12.2, an independent arbitrator will decide whether there has been a significant change in circumstances, whether such change has caused serious disadvantage to one party to the benefit of the other, and if these factors are established, determine the changes that need to be made to the Agreements.

Estimates (Part II):

3.44 Clause 13 establishes that CSR will calculate an estimate of each grower's crop before crushing begins. Further estimates are conducted eight weeks after crushing begins and at six weekly intervals during the remainder of the season.

3.45 Growers receive notice of this estimate. If a grower disputes the estimate he or she may appeal it within seven days of receipt of that notice.

Allotments (Part II):

3.46 Under Clause 14, CSR allots to each grower, or group of growers under the Supply Agreement or in an Individual Agreement, a daily delivery tonnage. The total of such allotments shall be equal to the crushing capacity of the Mill.

3.47 Following an estimate (as described in paragraphs 3.44 and 3.45), an allotment notice is sent to each grower indicating the individual crop estimate and the estimated number of weeks left for crushing.

3.48 CSR then supplies the number of bins to growers sufficient to allow supply of the daily delivery tonnage.

3.49 The terms under the Supply Agreement do not allow growers to supply an amount exceeding their allotment. In circumstances where a grower exceeds the allotted daily rate of delivery, the allotment may be reduced so as to prevent the grower supplying more than the allotted quantity in any one week. An additional charge of \$2 per tonne (or a lesser amount as determined by CSR) may be imposed on growers who fail to fill their daily allotment of bins and do not make arrangements with CSR for an alternative source of supply. Such monies are held for redistribution among all growers with end of season payments based on the proportion of cane they have delivered.

Group harvesting (Part II):

3.50 Clause 17 of the Agreement governs group harvesting arrangements. Specifically, subject to CSR's approval, growers may group together for harvest on the basis of general proximity to each other within each line or scheduled delivery runs. A grower who owns his or her own harvesting machine for the purpose of harvesting his or her own cane may, after consultation with CSR, harvest that cane provided it is in the same geographic locality and can be delivered in an orderly and efficient manner.

3.51 Unless applications for variation are received by CSR, group harvesting arrangements are taken to be same from season to season. Where a grouping application is refused by CSR, the growers and CSR enter into negotiations for a period of up to 21 days. If a satisfactory outcome is not obtained, it may be subject to review by the Cane Production Board.

3.52 The aim of the group harvesting provisions of the Invicta Agreement are to provide for the orderly and efficient operation of CSR's cane transport system, which includes the delivery of empty and full bins to and from the mill.

Invicta Mill Expansion Agreement

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

3.54 The Negotiating Team, which consists of representatives from CSR and the Suppliers Committee (representing the growers), will enter into the Agreement.

3.55 The stated objectives of the Expansion Agreement are to:

- i. provide confidence in and security of cane supply and processing;
- ii. create a stable working environment to enable CSR and growers to plan their future business activities and expansion plans;
- iii. facilitate the extension of a crushing season to 23.5 dry weeks for the 2000 crushing season, and 24.5 dry weeks thereafter upon installation of additional crushing capacity;
- iv. 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;

- v. provide terms and conditions under which CSR will extend net crushing capacity to match the requirements of an extended crushing season of 24.5 dry weeks; and
- vi. facilitate and regulate the granting of new and increased cane production areas out of unallocated hectares based on actual crop yields, actual rotation and actual mill crushing rate and availability.

Allocation of new or increased CPA:

3.56 The procedure to be used by the Negotiating Team for the allocation of new or increased CPA is described in Clause 6 of the Expansion Agreement.

3.57 In particular, the Negotiating Team will meet before 15 February each year, and at other times as it considers necessary, to consider whether there should be an allocation of new or increased CPA to the Invicta Mill for that year. This decision is based on the Nominal Annual Capacity of the Invicta Mill and the CPA necessary to fully utilise that capacity. The Nominal Annual Capacity and CPA are calculated by formulae set out in the clause.

3.58 The amount of new or increased CPA is provided to the CPB, which is responsible for the administration of all matters relating to CPAs.

3.59 Clause 7 of the Expansion Agreement outlines that the Negotiating Team will instruct the CPB not to approve an allocation of new or increased CPA unless:

- the grower has confirmed in writing that he is prepared to accept the terms and conditions contained in the Collective Supply Agreement as it applies to new CPA; or
- the grower and CSR have signed an individual Supply Agreement in relation to that allocation, conditional only on the grant of CPA.

Additional crushing capacity:

3.60 The Expansion Agreement provides that the target season length will not be increased above 23.5 dry weeks until the net crushing rate at both the Invicta Mill and Pioneer Mill combined is 1425 tonnes per hour. As previously outlined, the maximum target season length will be 24.5 dry weeks, subject to the following conditions:

- a commitment and plan by CSR to provide capacity of 1485 tonnes/hour Net Crushing Capacity;
- the Growers' Committee being satisfied with the CSR commitment plan and timeframe to fully expand capacity to 1485 tonnes/hour net throughput;
- Pioneer and Invicta cane may be freely transferred between mills at the option of the mill owner so as to achieve, as far as practicable, equal season lengths;
- sufficient new CPA will be allocated in accordance with the SIA to facilitate a 24.5 dry week season length concurrently with expansion of net combined Net Crushing Rate of Pioneer and Invicta Mills; and
- any increased CPA will be made productive in time to fully utilise the increased net crushing rate capacity and season length.

Allocation between Invicta and Pioneer:

3.61 Clause 9.3 of the Expansion Agreement provides that the ultimate total crop (of 6.11 million tonnes), based on a maximum target season length of 24.5 dry weeks, is to be allocated between Invicta and Pioneer suppliers in set proportions. That is, approximately 4.0 million tonnes and 2.0 million tonnes respectively, or as otherwise agreed in accordance with each mill's actual proven crushing capacity.

Dispute resolution:

3.62 Clause 10 of the Invicta Expansion Agreement provides that in the event of a dispute arising under the Agreement, an independent arbitrator will be appointed. Failing the mutual appointment of an arbitrator, the President of the Queensland Law Society will decide on the appointment. CSR and the Invicta Suppliers Committee share the costs of the arbitrator equally.

3.63 In addition, the Commission understands that the Invicta CPB is bound by the terms of the SIA in a dispute situation involving allocation of CPA. Specifically, section 204 of the SIA provides that a grower or potential grower has right of appeal to the Magistrate's Court where an application for CPA has been refused by the CPB or if a grower is unsatisfied with the condition upon which they have been refused allocation of CPA.

Pioneer Mill Collective Supply Agreement (Pioneer Supply Agreement)

3.64 The Pioneer Supply Agreement governs the supply of cane to the Pioneer Mill from all growers with CPA allocated to the Pioneer Mill. It also establishes the mechanism by which the Negotiating Team determines when, and to what extent, applications for new CPA are to be lodged for approval with the CPB established under the SIA.

3.65 Briefly, Part I of the Agreement is the Introduction, which includes recitals, definitions, and the method of dispute resolution, and provisions in regard to the annual review of the Agreement. Part II of the Agreement deals with expansion, while Part III and IV deal with cane payment arrangements for cane supplied to the Pioneer Mill and seasonal supply issues respectively.

3.66 Parts I, II and III are to operate for a term of 5 years, but may be extended for one year by the Negotiating Team. Part IV of the Agreement, subject to conditions, is to remain in force for one year.

3.67 CSR claims that the Pioneer Supply Agreement and the two Invicta Agreements are very similar in effect and intent. The intent of the Agreements being that the payment conditions for land with existing CPA is "quarantined" and a new set of conditions has been developed to apply to new land, irrespective of whether it is land attached to the Invicta Mill or the Pioneer Mill. All cane from existing land gets the old payment conditions, but for new land coming into production, a new set of payment conditions applies. CSR submits these different conditions are the same under both the Invicta and Pioneer Agreements.

3.68 Essentially, the Pioneer Supply Agreement sets out:

- a framework for determining the extent of allocation of new CPA out of unallocated hectares of land;
- the price paid for cane supplied by growers to the Pioneer Mill;
- a levy payable by growers on cane supplied from new CPA;
- a cane and sugar quality assurance scheme;
- adjustments to price for cane based on a number factors including failure by the Mill to achieve net crushing rates; and
- payment terms and cane delivery and acceptance provisions.

Part I— Introduction

3.69 The stated objectives of the Pioneer Supply Agreement are:

- (i) To provide confidence and security of cane supply and processing;
- (ii) To create a stable working environment to enable growers and CSR to plan their future business activities and expansion program;
- (iii) To reach agreement as to the extension of the season length of the crushing season to 23.5 dry crushing weeks in the year 2000 and to 24.5 dry crushing weeks as additional crushing capacity is installed. It is the expectation that the harvest of sugar cane should be concluded by the end of November in a “normal” year;
- (iv) To retain benefits provided to growers harvesting cane from existing CPA, which benefits were originally introduced at the time of the change to continuous crushing and are now contained as part of Cane Payments;
- (v) To provide a level of compensation for such growers harvesting cane from CPAs granted before 1 March 2000 in respect of any extension of the crushing season length to 24.5 dry crushing weeks;
- (vi) To enable growers to plan their future operations having regard to the targeted maximum crushing season length of 24.5 dry crushing weeks;
- (vii) To facilitate grower expansion in the Burdekin area by the granting of increase in CPA based on actual crop yields, actual rotation and actual Mill crushing rate and availability; and
- (viii) To provide the terms and conditions under which CSR will extend net mill crushing capacity in conjunction with an extension of the season length to 24.5 dry crushing weeks, and to make provision for an increase in the total CPA for Pioneer to fully utilise the increased mill capacity and extended season length.

Annual Review (Part I)

3.70 Clause 3 provides that the term and effect of the Pioneer Agreement shall be subject to review and possible variation upon agreement by the Pioneer Negotiating Team. At this time, the Negotiating Team may also agree to extend Parts I, II and III of the Agreement by one year.

Dispute resolution (Part I):

3.71 The dispute resolution procedures are set out within Clause 4 (Part I) of the Pioneer Supply Agreement. Clause 4.1 states that if a dispute arises:

- within the Negotiating Team about the variation of the Agreement under Clause 3.5; or
- about the meaning of the Agreement between CSR and a grower or a group of growers,

the dispute shall be resolved in the manner required by the dispute resolution process determined by the SIA and its relevant regulations.

3.72 Clause 3.5 (Part I) of the Pioneer Supply Agreement provides that if, at any time during the term of the Agreement, CSR or the Suppliers Committee, considers that as a result of a significant change in circumstances, one party has been seriously disadvantaged to the benefit of the other party, that party may request for both parties to meet. At this time the parties may agree to apply to the Negotiating Team for variation of the Agreement under the SIA. If the terms of variation cannot be agreed, then either party can refer the matter for dispute resolution under Clause 4 (part I) of the Pioneer Agreement, which specifically refers to the SIA and the relevant regulations, for the purpose of determining the following:

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

3.73 The dispute resolution process set out by Schedule 3 of the Regulations of the SIA provides for a dispute to be referred to mediation, or the parties may bypass mediation and proceed directly to arbitration. The steps in mediation include:

- The negotiating team appoints a mediator and decides whether that person is also to be the arbitrator.
- Before accepting an appointment as mediator, the person must also agree to be the arbitrator if there are unresolved issues at the end of mediation.
- Each party provides a written list to the mediator of issues the party believes are unresolved.
- The mediator meets with the parties, together or separately, to discuss the issues to be resolved, to prepare a final list of issues, and to fix a schedule for steps in the mediation.

- A mediation is held in the way decided by the mediator after consulting with the negotiating team.
- Mediation ends on the earlier of the following:
 - If the negotiation team has not reached agreement on all issues – on the date stated in the timetable; or
 - If the negotiating team reaches a negotiated agreement about all the issues – on the date of the agreement.

3.74 If the parties have not agreed on all issues they may be referred to arbitration, subject to certain requirements. The arbitration process is as follows:

- The arbitrator holds a preliminary meeting with the negotiation team before arbitration starts to among other things, fix a timetable for the procedural issues in the arbitration, including delivery of submissions and replies to the arbitrator and the other party.
- In conducting the arbitration, procedures must be as informal as is consistent with an appropriate hearing of the issues.
- The arbitrator may exclude observers from the arbitration; is not bound by the rules of evidence; and must act in accordance with natural justice.
- The arbitrator, as considered necessary, may call for oral submissions or written documents, material or information.
- The arbitrator may seek independent expert advice if the negotiating team agrees.
- Arbitration ends:
 - when the arbitrator makes a decision; or
 - if, before the arbitrator makes a decision –
 - a party accepts an offer made by the other party; or
 - the parties reach a negotiated agreement about all the issues to be resolved.

3.75 In addition, the following circumstances under the SIA are also covered by the operation of dispute resolution procedures under Schedule 3:

- If the negotiating team does not agree on expansion in CPA (section 23);
- The establishment of productivity increase process (section 26);
- A dispute within the negotiating team about expansion (section 37);

- A dispute within the negotiating team about the variation of the agreement, or a dispute within a future negotiating team during negotiations for the next collective agreement made for a mill (section 53);
- If the negotiating team cannot agree on the making of a cane analysis program for a mill, or a change to a mill's program (section 88);
- If the negotiating team cannot agree on the making of a quality program for a mill, or a change to a mill's program (section 93); and
- If a dispute arises within a negotiating team about a matter mentioned in section 188(1) of the SIA, namely, the functions of a negotiating team. These include to make a collective agreement; to decide all matters about expansion; to develop a cane analysis program; to make a cane quality program; and to perform other functions given to it under the SIA.

3.76 In addition, section 204 of the SIA contains the appeal process for persons dissatisfied with decisions by the CPB or other bodies.

Part II — Expansion

3.77 Procedure for grant of CPA (Part II): The procedure to be used by the Pioneer Negotiating Team for the allocation of new, or increased CPA is described in Clause 3 (Part II) of the Pioneer Supply Agreement.

3.78 In particular, the Pioneer Negotiating Team will follow the same procedure as outlined in relation to the Invicta Mill at paragraphs 3.56 –3.58.

Allocation between Invicta and Pioneer Mill (Part II):

3.79 Clause 5.3 provides that increased CPA resulting from increased season length and/or increased rate shall be allocated proportionately as agreed between Invicta and Pioneer growers in accordance with each mill's actual proven crushing capacity.

Part III — Payment Arrangements

Season length (Part III):

3.80 Specifically, Clause 1 details the formula to be used to calculate the estimated season length by 1 March each year. This formula is the same as that described in paragraph 3.12 in relation to the Invicta Supply Agreement.

3.81 The commencement date of the crushing season is then specified based on the estimated season length. For example, if the estimated season length will be 21.1 Dry Weeks or less, the crushing season will start on the Tuesday after the date gazetted as the "Queens Birthday" public holiday in Queensland. Alternatively, if the estimated season length is 23.5 Dry Weeks or longer, the crushing season will commence on the Monday before 1 June or as otherwise agreed. If 1 June is a Monday, then the crushing will start on that day.

3.82 Clause 1 also provides for arrangements at the Pioneer Mill in relation to season length; termination of the crushing season; and crushing cane at other mills identical to those described in paragraphs 3.13, 3.15, and 3.16 under the Invicta Supply Agreement.