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22 May 2007

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
PO Box 1199
Dickson ACT 2602

Dear Sir,

Victorian Potato Growers Council (VPGC) Application for Authorisation A91048

This letter is in response to your invitation, by letter dated 24 April 2007, to comment on the VPGC's application for authorisation.

Comments on the VPGC Submission (the Submission)

1. The Submission, in our view, incorrectly states that "The majority of potato varieties grown in Victoria are private varieties". There are at least 54 varieties not protected under Plant Breeder's Rights (PBR) being produced in the potato seed certification scheme in the current year. PBR varieties represent only 28% of the total certified seed area submitted for certification in the 2006/2007 seed season. The varieties not protected under the PBR Act are still significant varieties being produced for certified seed in Victoria. The non PBR varieties Atlantic (being 23% of the certified seed area planted), Coliban (13%), Russet Burbank (6%), Sebago (5%), and Desiree (4%), make up 51% of the current certified seed area planted. For ware production in Victoria, it is our belief that the non PBR varieties Russet Burbank, Atlantic and Sebago still provide a significant percentage of the potatoes produced for both the fresh and processing industries.
2. The comments made in relation to closed loop marketing systems are biased towards those growers who have not become actively involved in such systems. There are many growers that have embraced these changes for the marketing of potatoes, and have benefited from an orderly system of knowing the volumes of potatoes required and terms offered for the sale of these potatoes. The alternative is that growers produce their potatoes for a market that can fluctuate widely depending on seasonal conditions, and this leads to more volatility in the prices paid due to the forces of supply and demand. Various companies have sought out new innovative methods to differentiate themselves in the market place, and increase their market share. To enable these companies to commit the necessary level of resources to research and promote a new product or variety has lead to the closed loop system of marketing. The larger purchasers of potatoes are generally looking for large

consolidators to manage their supply requirements, and minimise the disruption, and reduce the risk to their ongoing supply needs.

3. The comment that “Large companies currently have a monopoly on the major varieties in Australia” is, in Elders’ opinion, not correct. As stated above, in the current seed season PBR protected varieties only account for 28% of the area planted for seed certification. In the case of processing potatoes, the volume is dominated by the public variety Russet Burbank. There are two major crisping companies with only one company growing PBR protected varieties in any reasonable volume along with other public varieties, so we expect that at least 50% of these potatoes would be public varieties, such as Atlantic and Pike. The fresh market in Victoria is focussed on fresh brushed potatoes. The certified seed statistics suggest there must be high volumes of public varieties such as Sebago supplying that market.
4. The Submission’s contention in regards to seed growers planting their crops and not offering written contracts until the Seed Potatoes Victoria recommended minimum prices for publicly available seed varieties is published in December is worth discussing further. The release of the Seed Potatoes Victoria recommended minimum seed prices in December is a recent change to the way prices were announced. Originally a contract price would be recommended around August and the open market recommended price would be advised in or around late January or February each year. There are likely to be numerous experienced seed growers and buyers of seed potatoes that have never seen the need to enter into formal written agreements. Both parties require each other to remain viable, and prices have been agreed individually for the line of seed required. Numerous individual buyers have commented to the writer over the years, that they do not pay the recommended minimum seed prices, and these recommended minimum prices seem to hold more value when growers are negotiating for an increase in the price of their seed from larger organisations. The industry has moved on from such pricing standards, as each variety has its own unique qualities with many of the newer varieties now providing higher tuber setting and yield abilities, or enhanced pest resistance attributes minimising the rejection levels to those seed growers producing them. Unfortunately a lot of the older public varieties are now being seen as low yielding and susceptible to various pest and diseases, and the recommended minimum prices are probably more realistic for those varieties.

Overview of Elders’ Participation in the Potato Industry

5. Elders manages the contracting and purchasing of PBR protected seed varieties with seed growers in the states of Victoria, NSW, and WA, and then on sells seed potatoes to Elders’ potato seed clients nationally. The planning and production of seed potatoes is a complex business. The initial propagating material - minitubers - are ordered 12 months in advance of being available for planting, and then these minitubers can be grown for up to 5 generations (each generation takes 1 year in the cycle) prior to being purchased by Elders and sold to potato seed clients.
6. Elders has developed a thorough and systematic process to enable the forecasting, production and control of the PBR protected seed varieties it represents. It is difficult to forecast the anticipated adoption rate and sales volumes of new potato varieties in 6 years time, and this contributes to a high degree of risk in the development of new varieties, given that seed may be produced and then not required by industry. Elders currently absorbs all of this risk in the agreements signed with seed growers, and if a variety is not required by industry, Elders will pay the seed grower for the seed produced under the agreement, regardless of whether the seed will be destroyed and not sold to Elders’ seed potato clients. The current restricted water allocations

along the River Murray and prevailing drought conditions, have added additional pressure to the Elders' potato seed clients, who are now faced with no irrigation water and are struggling to take the seed they agreed to purchase from Elders.

7. Elders offers a wide range of benefits to the seed growers that it contracts with. These benefits include competitively priced minitubers, secure agreements that state the volumes of seed Elders will purchase for all 5 generations of seed being produced, access to varieties with improved pest and disease resistance and higher yield potential, and in Elders opinion payment terms that are better than industry standard.

Authorization Sought

8. Elders does not wish to see the VPGC applying pressure to its members to negotiate only under a collective bargaining arrangement. All potato growers have different costs of production given their size, scale and efficiency of operation, and should have the right to make a decision as an individual, without any undue outside pressure. Elders is concerned that the granting of open collective bargaining rights would by default, apply more pressure to individual growers into joining collective bargaining action in the future. Agreement to terms with a buyer by an individual grower could potentially place that grower in a precarious situation with its peers. The individual grower may be ostracised from his local rural community for not siding with the growers that determined that collective bargaining should be undertaken.

Anti Competitive Detriment

9. Elders can only comment in relation to the sale of certified seed. If the seed growers are permitted to collectively bargain with Elders or another party contracting seed then this would effectively place Elders and the seed potato clients of Elders who purchase seed from Elders at a distinct disadvantage, compared to other individuals purchasing potato seed. Elders has outlined in sections 5, 6 and 7 the high level of commitment provided to the seed growers it signs agreements with, and the high levels of risk absorbed by Elders in these agreements. An individual purchasing potato seed has a greater range of flexibility and opportunity to minimise their risk when purchasing seed compared with Elders or other parties that contract potato seed. The advantages individuals can achieve are as follows;
 - Many would not sign agreements with seed growers or their seed agents, and simply provide a verbal order over the phone.
 - Can shop around and pick and choose who they deal with, as there are a wider range of seed growers producing and selling non PBR protected varieties.
 - Can cancel their order with one seed grower and negotiate a cheaper rate with a second seed grower, if they have not signed an agreement.
 - Can generally extract better payment terms through offering to purchase on longer payment terms, or simply not paying the seed grower when agreed.
 - When seed potatoes are in surplus due to good seasonal conditions or a change in the prevailing potato market conditions, individuals can negotiate lower prices with seed growers, who fear being caught with surplus seed.
 - Individual growers are less inclined to forecast future requirements, and generally operate from season to season reducing their risk and exposure to future industry changes or conditions.

Conclusion

10. Elders disagrees with the statements detailing that the majority of potato varieties grown in Victoria are private varieties, and that large companies hold a monopoly on these.
11. The Submission's arguments as to the public benefit relate solely to VPGC members being afforded an organised and cost effective means to cover the arranging of contract prices and conditions. These benefits are not made out. Rather, as discussed above, the proposal carries many actual and potential disadvantages. Further, the Produce and Grocery Industry Ombudsman (PGIO) is available to the VPGC members if what they are seeking is a cost effective manner in mediating with purchasers of seed. There is no need for an authorisation to improve the position of the VPGC members in this regard.
12. The Submission's contention that the proposed authorisation will not have any anti competitive detriment or significant effect on consumers is based on the proviso that increasing the price of potatoes or seed potatoes by the VPGC members will not have any significant effect on consumers. This claim is highly dubious and unless all purchasers of potatoes are placed under the condition of collective bargaining arrangements then the playing field becomes less competitive for some, and not for others. It is difficult to see how the VPGC members are going to influence the buying arrangements for large retail outlets, but potentially they will have more influential negotiating powers with perhaps the direct suppliers of such retail outlets.
13. Elders is not in favour of allowing the VPGC request for collective bargaining to be granted under the current broad terms requested. Further, there are alternative measures set up by the Australian government for the mediation of disputes between individual parties, being the Produce and Grocery Industry Ombudsman (PGIO) and Elders believes that these mediation services should be utilised in the first instance. The VPGC has requested a broad authorisation for all of its members to collectively negotiate terms and conditions with current large companies or businesses or future companies or businesses. Elders believe that the request is very broad in its terms and that the granting of such authorisation would not be in the public interest.

Should you require further clarification on any part of our response, please do not hesitate in contacting me.

Yours sincerely,

Gary O'Neill
Manager of Potatoes and Genetics
Elders Limited