



Simplot Australia Pty Limited ABN 98 070 579 609
 Chifley Business Park
 2 Chifley Drive Mentone Victoria 3194
 Locked Bag 3005 Braeside Victoria 3195 Australia
 Phone (03) 9588 3000 Fax (03) 9588 4423

FILE No:
DOC:
MARS/PRISM:

26 November 2009

Mr David Hatfield
 Director
 Adjudication Branch
 Australian Competition and Consumer Commission
 GPO Box 3131
 Canberra ACT 2601

By email: Erin.Donohue@acc.gov.au

Dear Mr Hatfield

Tasmanian Farmers & Growers Association (TFGA) application for re-authorisation A91197

Thank you for your letter dated 16 November 2009 inviting Simplot Australia Pty Limited (**Simplot**) to comment on the TFGA's application for re-authorisation of the arrangement between present and future vegetable grower members to collectively negotiate the terms and conditions of growing contracts with processors (of which Simplot is one) and to assist vegetable grower members in their negotiations.

Simplot supports the TFGA's application for re-authorisation both on an interim and final basis. In doing so, however, there are a number of aspects of the TFGA's application for re-authorisation on which Simplot wishes to comment as follows:

1 Parties on whose behalf the application is made

In section 4(c) of its application the TFGA states that the application is made on behalf of "*Vegetable growers – current non TFGA members*".

It is not clear to Simplot how the TFGA can bring an application on behalf of vegetable growers who are not members of the TFGA and Simplot would not support an application for authorisation which was so broadly and imprecisely framed. Simplot assumes that this reference is intended to be a reference to such vegetable growers who may in future become members of the TFGA, and that authorisation will not apply to such parties unless and until they become TFGA members. Simplot supports the inclusion of such parties, once they become members of the TFGA, in the authorisation.

2 Public Benefits claims

Simplot agrees that there will be public benefits in permitting collective bargaining as sought in the application. Those benefits are principally:

- (a) greater certainty for growers and processors;
- (b) improved bargaining position for growers, arising from being better informed and represented, which will counter the perception of a power imbalance between growers and processors;
- (c) greater efficiencies in finalisation of contracts;



The Home
 of Australia's
 Favourite Food
 Brands

**AUST. COMPETITION &
 CONSUMER COMMISSION**
 (CANBERRA)
 27 NOV 2009

- (d) an improved ability for growers and processors to respond quickly to changing market conditions, whether they relate to price and contract terms or to issues relating to varieties of vegetables and farming processes; and
- (e) flow on effects to consumers through improved competitiveness in the industry and improved quality of, and research into vegetable varieties.

However, while Simplot acknowledges that there may be an imbalance between the bargaining power between it and individual growers, Simplot does not agree with the TFGA's claim that Simplot has or "*will use the might and power of [its] world wide resources and knowledge to achieve [its] aims*" as stated in section 5(a) of the application.

3 **Market Definition**

Simplot considers that the appropriate markets affected by the conduct which is the subject of the application are those it identified in respect of the TFGA's original application for authorisation, which are:

- (a) the market in Australia for processed frozen potatoes which services each of the frozen packaged retail sector and the food service sector; and
- (b) the market in Australia for processed frozen and canned vegetables which also services the packaged retail and food services sectors.

Simplot notes that each of these markets is highly competitive. The effect of the high Australian dollar means that import competition has significantly increased and that there has been a consequent continued erosion of margins and strong focus on price and production costs.

4 **Public detriments**

Simplot considers that any public detriment flowing from the collective bargaining which is the subject of the application will be minimal and will be outweighed by the public benefits referred to in section 2 above.

Simplot does not offer any comment on the estimated grower share of the retail value of the products the subject of the proposed arrangement, as stated in section 7(b) of the application. However, Simplot notes that potato growers have generally benefited from price increases over the past 10 years, and in particular, the last 3 years, the full extent of which Simplot has not been able to pass on to its customers and, therefore, Simplot believes, have not been passed on to consumers.

5 **Conditions of authorisation**

Simplot notes that the TFGA's current authorisation is for vegetable grower members to collectively bargain, through grower representatives on their various commodity group boards, the terms and conditions of growing contracts with the respective processors. The examples given in paragraph 3.14 of the Commission's Determination dated 17 November 2004 include "*McCain potato growers will negotiate in one group through a McCain potato grower group negotiating committee, Simplot potato growers in another group through the Simplot potato grower group negotiating committee*".

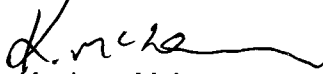
As the Commission has also noted in connection with the original authorisation application, some members may also be members of more than one grower group

and grow the same vegetables for both Simplot and McCain. As the Commission will appreciate, the contractual allegiance of many growers changes from season to season. In light of this, Simplot considers that it would be appropriate for the Commission to formally require, as a condition of authorisation that:

- (a) only growers who are growing the particular vegetable commodity for a particular processor be permitted to be members of the grower group negotiating committee for that processor ie only Simplot potato growers may be members of the Simplot potato grower group negotiating committee; and
- (b) growers who attend meetings at which one processor's prices are discussed be required to keep those prices confidential and not discuss them with growers who are growing for competing processors.

I would be happy to elaborate on any matters raised in this letter, should the Commission require further information.

Yours faithfully



Kaelene McLennan
Legal Counsel