



FILE NOTE			
Matter name:	A91270 Australian Processing Tomato Growers		
ACCC parties	Marie Dalins, Tanya Dunne, John Rouw		
TRACKIT No	46825	File No.	-
Other parties	Cedenco Australia – see below	Note book Ref.	-
	Meeting	Date / Time:	7/ 11 /2011 at 1230 pm hrs

Meeting held at the Australian Competition and Consumer Commission's Melbourne offices

Cedenco attendees and advisers

- Richard Lawrence, CEO, Cedenco Australia
- Jason Fritsch, General Manager Field Operations, Cedenco Australia
- Ayman Guirguis, Partner, Blake Dawson lawyers
- Chris Evans, Senior Associate, Blake Dawson lawyers

This is a summary and not a verbatim account of the meeting

ACCC staff confirmed that the ACCC would make a note of the meeting for the ACCC's public register and a copy would be provided to Cedenco's lawyers before it was published, in case Cedenco wished to claim exclusion of any material.

Cedenco's representatives and advisers provided submissions, comments and information including the following:

Cedenco had sought the meeting with the ACCC to provide a further submission and explain the current negotiation process.

Cedenco stated that most processors consent to collective bargaining applications. In this case Cedenco considers that authorisation will add costs in an industry that is under severe pressure.

Overall, if collective bargaining is allowed, Cedenco's GM for field operations, Jason Fritsch, will still be doing the job he does now of negotiating individually with growers; but there will be an extra layer of negotiations. That is, authorisation would create additional complexity and increase transaction costs above those that would otherwise be incurred. This is because Cedenco considers that authorisation would lead to two sets of negotiations: collective negotiation in addition to the existing practice of individual negotiation.

Mr Fritsch's job is to procure fruit.

Cedenco advised its operations manager will explain

- price and non-price rewards to growers
- harvesting and freight issues
- international pressure

Cedenco established a pilot model farm to seek to show growers what productivity advances could be made which would help the industry to compete. Because of aggressive droughts and with growers able to sell water instead of growing, Cedenco had no option but to become a big corporate grower to ensure supply of fruit to the factory. However, it is a processor and does not wish to be a farmer, because this ties up capital and presents risks. The mandate from Cedenco's new owner, Kagome, is for Cedenco to get away from growing and focus on processing but Cedenco needs secure supply.

Before arranging supply, Cedenco has to consider what it can sell and at what price to food manufacturers and, then, what can it pay for tomatoes. In late March and April, Cedenco talks to growers about contractual terms for the next season, while it is in many cases still harvesting and processing for the current season. Planting typically occurs in October.

In its negotiations, Cedenco holds individual meetings with growers and discussions which include price. For example, if the benchmark USA price set between Californian growers and processors is, say, \$US68, Cedenco considers what it is able to offer. If Cedenco does not believe it would be able to procure sufficient tonnage at a price similar to this Benchmark price, it then considers what price it is able to pay while still being competitive with Import options. For example, the 2011 season the price offered was, AUS\$105 which was a large premium over the US benchmark price. A grower might respond that he or she wants more or wants something else, such as favourable harvest timing, which lessens risk. Contracted output per hectare is related to averages over the last three years – for example, 100 tonnes per 100 hectares. There is no penalty if the grower does not make estimated volume but Cedenco will buy the contracted output if it is met, so there is an incentive for growers to make strong volume estimates and overestimate rather than underestimate supply.

There is some comparison with international Californian paste price and there is also comparison with international raw material prices. If growers can supply tomatoes in California for \$68 a tonne, why can't we do that in Australia? There are of course differences in key costs, such as labour, diesel and scale (Californian plants can have 600,000-tonne capacities, whereas Cedenco's capacity is 200,000). Knowledge about productivity improvement is shared through the Australian Processing Tomato Research Council (APTTC), with a large proportion of funding coming from Cedenco (75 per cent) and the rest coming from growers (25 per cent).

Cedenco considers that growers are able to switch relatively easily into other forms of production. If tomato growers don't want to grow tomatoes, they will grow cereals, corn or lucerne or let a field go fallow, which must be done every two-three years anyway because of tomato-disease issues.

On top of paying for fruit, from time to time Cedenco provides growers with such things as water assistance and funding for working capital if these terms are negotiated by the grower.

Cedenco itself grows about 40 to 50 per cent of the tomatoes it processes.

Cedenco ultimately assesses growers on their ability to deliver the volumes contracted, which is largely based on their skills. Cedenco might decide to offer certain growers more favourable harvesting windows than others. The lowest crop risk is for fruit harvested in the second half of February and the first half of March.

In response to a query about the ability of growers to negotiate price, Cedenco stated that in 2008 grower interest in supplying at the price Cedenco first offered was poor, so Cedenco offered all growers an additional \$8 per tonne more and then another \$4 more, to secure supply.

Growers can also ask for other non-price benefits such as pre-payment or the ability to, ultimately, supply, say, 10 per cent over contracted volumes.

After the 2008 price increase, the California price fell and the price Cedenco was offering fell, however Cedenco could not attract the volumes it needed at the lower price to meet contracts with manufacturers, so it also negotiated with Growers added non-price incentives.

Cedenco and growers come to verbal agreements in April. Volumes need to be known by April because, for example, 85 per cent of the crop might be based on transplants sourced from nurseries and arrangements must be made for these by April.

It could be argued that there is a legal contract at that point. Cedenco has never reneged on taking supply from a grower at that point.

From 2010/11, Cedenco is providing commitments in writing for requirements for the next season.

The Australian Processing Tomato Growers (APTG) made a submission that Cedenco cut agreed volumes by 10 to 15 per cent last year. Cedenco disputes this and explained the situation as: some growers locked in during October and November of the previous year for the next season (they were 'contracted'), then there were 'early indicators' in May who said they would grow that season and 'late indicators' who said in August-September that they would grow. As these total volumes would be more than Cedenco could process Cedenco advised all of its suppliers that as they were oversubscribed and rather than not take any fruit from late indicators it would modify all of its individual supply volumes. Cedenco's motive for doing this, which was accepted by the Growers, was to try and keep Growers in the industry. Cedenco then had to reduce supply volumes accepted from 'early indicators' (reduced by 15 per cent) to accommodate the late indicators (reduced by 30 per cent). It did not consider there were contractual impediments to doing this.

[Cedenco stated in its 3 October 2011 submission that only 12 of the 22 growers named in the authorisation application had consistently supplied tomatoes to Cedenco in recent years, calling them 'active growers', and listed 10 who would not be supplying Cedenco in the upcoming season. The ACCC asked Cedenco's representatives to go down the list of 22 growers and state whether they knew what they were doing if they weren't growing tomatoes.]

Mr Fritsch provided his recollections of the activities of some of the growers listed in the application. He said some had, for example, verbally committed to grow then pulled out and/or had decreased tomato production and/or had grown other crops.

On planning for the season, Cedenco requires the correct volumes of the correct varieties/ characteristics at the right time – that is, the correct week, not the week either side. Transplants must be organised before July. Growers appear to have enough information and certainty early enough to be able to comply with Cedenco's schedules each year.

With regards to irrigation infrastructure and its alternative uses, the APTRC submitted to the Federal government an application for an Irrigation efficiency grant and obtained an \$11 million commitment which would increase the use of drip irrigation in the tomato industry. Only those

growers who applied for this grant and who met the grants terms and conditions were able to access this funding to install drip irrigation systems. This same irrigation system can be used to grow lucerne. In the latest submission by the APTRC there were farmers investing in this type of system specifically to grow lucerne and who did not grow tomatoes at all. Cedenco is growing some wheat on this kind of system this year. Ultimately, comparing crop returns needs to take into account cost and risk – with tomatoes requiring greater investment and carrying higher risk than, for example, corn or lucerne, including that more investment is lost if a tomato crop is lost.

Cedenco considers there are limitations around growers collectively talking about price with the processor.

Price is ultimately not uniform, particularly from Cedenco's point of view. Cedenco deducts an amount for transport, based on distance zones, but does not always recoup full transport costs. There is effectively some cross subsidy – distant growers do not pay full costs. The cost per tonne to Cedenco for tomatoes delivered at its gate is not uniform.

In response to a query about the number of terms on a standard contract that Cedenco considered were in dispute, Cedenco responds that there might be some standard terms that are not in dispute.

There has been at least one example where growers as a group asked for a contractual change and Cedenco agreed. Growers asked to be contracted and paid on 'payable tonnes' – that is, the tomato load with, for example, 'culls' (for instance, green unwanted tomatoes) not counted. Cedenco is worried that the growers will hold out together for a better price. Cedenco is concerned that should this occur then Cedenco would potentially be unable to obtain the necessary volume to supply its factory and in-turn its Australian customers and therefore would not be able to meet its supply commitments. This would send a strong signal to its customers that Cedenco was an unreliable supplier. As there is no other Australian processor of tomatoes of any volume the customer would contract significant volumes of imported tomatoes from overseas to lessen their risk of annual supply availability from Cedenco

[The ACCC asked whether Cedenco was in a different position to operators such as the vegetable processors McCains and/or Simplot in Tasmania, who have been subject to an authorisation and a re-authorisation of collective bargaining.]

Cedenco advised they are in a different position to McCain in Tasmania. Tomatoes are a high value, specialised crop, requiring flat and fertile land for growing which is limited in supply, and processors in Tasmania have the option to contract with a very large number of available growers as against only 12 growers for Cedenco Vegetable growing and the options facing vegetable growers and processors differ. However, the Simplots and the McCains are also under similar pressures to Cedenco, from such things as private label competition.

[The ACCC asked Cedenco to comment on APTG's suggested specific terms of contracts that could be improved with an authorisation.]

Cedenco's response to the applicant's suggestions of contract terms that could be improved with an authorisation included the following:

- Longer-term contracts: This is not possible. Unless Cedenco's buyers go 'back to back', awarding multi-year contracts for Cedenco's output, Cedenco cannot go back to back with growers. However, Cedenco last year accepted all tonnages growers offered.

- Better training of harvest workers to reduce wastage and increase yields: Cedenco's harvesting is better than that done before by the growers. For example, there are less 'culls' (non-usable matter) now.
- Research and development co-ordination between growers and processors: this already goes on through the APTRC, which Cedenco funds significantly

When growers were harvesting they often weren't delivering – stating that they had, for example, equipment breakdown or weather problems. The Cedenco plant is run 24 hours a day for 70 days in the processing season and for it to be competitive, it must run at 90 per cent efficiency. That means tomatoes must be available at 6am, not an hour late. Cedenco has introduced, for example, electronic and all-night harvesting.

Where growers had harvesters less than or five to eight years old, Cedenco offered to buy and bought some from them. Cedenco has allowed some growers to harvest. It has picked up two growers from Heinz (with three sitting out till next year) and at least one of them has harvested his own crop.

Overall, if authorisation extends to collective bargaining beyond some terms and conditions to price, there will be duplication of negotiation. Costs will outweigh benefits. There might be some things that could be discussed collectively and if price is forced up, it would not be so prohibitive that Cedenco would go out of business. However, the conversation with growers at the moment is about base price and allowing collective negotiation over that would just duplicate negotiations. Cedenco might not have a problem with some 'template terms' being agreed, such as paying on payable versus gross tones. The ACCC can also impose conditions to, for example, limit the size of bargaining groups.

Cedenco is under economic pressure. The ACCC is welcome to speak to some of its customers to understand more of the pressures facing those in the supply chain.

The meeting ended about 2.15pm

Signature: John Rouw		Date:	9/ 11 /2011
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