



## McCain Foods (Aust) Pty Ltd

(ABN 96 000 629 587)

P.O. Box 105 Wendouree VIC 3355

Telephone: (03) 5338 0200 Fax: (03) 5338 0471

**SUBMISSION OF MCCAIN FOODS (AUST) PTY LTD AND SAFRIES PTY LTD  
IN RESPONSE TO SUPPLEMENTARY SUBMISSIONS SUPPORTING  
APPLICATION FOR REVOCATION OF AUTHORISATION A91048 AND SUBSTITUTION OF A  
NEW AUTHORISATION BY THE VICTORIAN POTATO GROWERS COUNCIL  
AND  
APPLICATION FOR REVOCATION OF AUTHORISATION A91057 AND SUBSTITUTION OF A  
NEW AUTHORISATION BY THE SOUTH EAST POTATO GROWERS ASSOCIATION**

McCain Foods (Aust) Pty Ltd and Safries Pty Ltd (together "**McCain**") lodged a submission on 10 August 2012 ("**McCain's August Submission**") opposing the applications of the South East Potato Growers Association ("**SEPGA Application**") and the Victorian Potato Growers Council ("**VPGC Application**") (together, "**the Applications**") seeking revocation and reauthorisation under section 91C of the *Competition and Consumer Act 2010* (Cth) ("**CCA**") to continue to engage in a process of collective bargaining between its members, including in the negotiation of contracts with McCain.

The following supplementary submissions have been lodged since McCain's August Submission:

- (a) a submission provided by the McCain Grower Group ("**MGG**") in Ballarat (a subgroup of VPGC) regarding the VPGC authorisation application ("**MGG Submission**");
- (b) a further submission provided by SEPGA ("**SEPGA Submission**");
- (c) a joint submission from VPGC and SEPGA in response to a request by the ACCC for further information; and
- (d) a further submission provided by VPGC ("**VPGC Submission**") (together, the "**Applicants' Supplementary Submissions**").

Set out below is McCain's response to the Applicants' Supplementary Submissions.

### 1. Summary

While the Applicants' Supplementary Submissions present additional arguments and material, McCain submits that SEPGA and VPGC (together, "**the Applicants**") have still not demonstrated that any public benefit will flow from the proposed conduct.

McCain also submits that the Applicants' Supplementary Submissions do not refute the public detriments which are likely to arise should the Applications be granted, and which were described in McCain's August Submission.

Therefore, McCain continues to oppose the Applications.

The remainder of this submission responds to the Applicants' Supplementary Submissions collectively by reference to the main issues addressed in those submissions.

### 2. McCain's response to the Applicants' Supplementary Submissions

#### 2.1 Industry forums and improvement initiatives do not require a collective bargaining authorisation

The Applicants' Supplementary Submissions contain a number of statements asserting that the collective bargaining process creates a public benefit by providing an industry forum that enables the dissemination of knowledge about management techniques, measures to

increase efficiency and productivity and technological developments. The Applicants' Supplementary Submissions also state that no other similar forums exist.

For example, the SEPGA Submission states that:

- *"...The grower group decided that they were best served by a small group to meet with McCain to deal on price and non-price issues as well as pushing efficiency gains in a non adversarial environment. It is important to note that the negotiating committee does not have sole focus on price only negotiations, but the negotiation meetings have been the only forum for discussing other matters, such as:*

Agronomy projects

- *Nitrogen management*
- *Phosphorous and Potassium management*
- *Differing irrigation systems and their management*
- *Disease forecasting projects (DNA project, and early and late blight forecasting)*
- *Variety trialling*
- *Soil moisture monitoring*

Efficiency

- *Freight*
- *Storage*
- *Regulated flow (to keep freight cost down and not over capitalise harvest equipment)*
- *Benchmarking..."<sup>1</sup>; and*
- *"The ability to collectively bargain has given us a forum to work together to better the industry as a whole. There are no other forums for this type of discussion"<sup>2</sup>.*
- *"A Quality Assurance (QA) program gives customers' confidence that they are buying a quality product. The environmental module within our QA system allows for a focus on not just production but also a conservation perspective"<sup>3</sup>.*

Similarly, the MGG Submission states:

- *"The MGG have collectively been participating in regional benchmarking activities to understand the real cost of production in the domestic industry against interstate and international competitors. There is advantage in wide dissemination of productivity enhancements rather than individual businesses working exclusively on production*

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<sup>1</sup> SEPGA Submission, 3.

<sup>2</sup> SEPGA Submission, 7.

<sup>3</sup> SEPGA Submission, 6.

*systems resulting in multiple trials and technology assessments without an integrated approach<sup>4</sup>." and*

- *"Collective bargaining encourages all farmers to fully price the private and public benefit of healthy soils, landscapes and natural resources. A collective bargaining framework allows sustainability issues to be considered into pricing mechanisms and is applied to the entire community of potato growers. Profitable production systems allow for ongoing reinvestment in new technology and production efficiencies."<sup>5</sup>; and*
- *"The MGG's view is that industry development and technology adoption is achieved through collaborative, open communication and transparent trialing and refinement of new technologies. Following the normal research and development processes, advances in technology and production are ultimately incorporated into contractual arrangements<sup>6</sup>."*

McCain agrees that it is important and valuable to have forums and other initiatives that promote and facilitate measures that will improve industry wide performance. However, in order to have such forums it is not necessary, or even of assistance, for collective bargaining arrangements to be authorised. Further, it is simply incorrect to state that collective bargaining provides the only forum for industry discussion.

There is a range of existing forums and initiatives that assist in facilitating the development and adoption of measures to improve performance across the potato industry. For example:

- The growers groups have developed forums to disseminate knowledge about industry developments to assist in improving performance. These types of forums do not involve collective bargaining with acquirers of potatoes, or require authorisation of such conduct.
- Industry participants (including McCain) pay a levy that is used to assist in funding the activities undertaken by Horticulture Australia Limited (**HAL**) in support of the potato industry. HAL is a not-for-profit industry owned company that works in partnership with Australia's horticulture industries to invest in research and development and marketing programs to assist horticulture industries. The link to the section of the HAL website setting out its research and reports for the potato industry is [www.horticulture.com.au/industries/Potato/default.asp](http://www.horticulture.com.au/industries/Potato/default.asp). Again, the proposed collective bargaining arrangements are unrelated to the activities of HAL.

To the extent that the Applicants' Supplementary Submissions seek to suggest that the collective bargaining process assists in enabling the widespread adoption of new developments in technology and measures to improve farm management in contracts, McCain's response is that these types of matters noted in the Applicants' Supplementary Submissions (extracted above) have not been addressed in the collective bargaining process. Rather, as described in McCain's August Submission, the collective bargaining negotiations have generally focussed on settling the price for the upcoming season. To date, no new technology has been introduced as a result of collective negotiations.

In this regard, McCain notes that the Applicants' Supplementary Submissions provide no actual examples of instances where the types of measures set out in the above extracts have been adopted as part of a collective negotiation process.

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<sup>4</sup> MGG Submission, 5.

<sup>5</sup> MGG Submission, 2.

<sup>6</sup> MGG Submission, 3.

Finally, McCain completely rejects the assertion in the MGG submission that it has sought to impede industry development and technology adoption by preventing communication within the industry. In fact, McCain is a strong supporter of forums and initiatives, such as HAL, that promote industry development and technology adoption.

## **2.2 The collective bargaining process is not necessary for, or conducive to, the adoption of incentive provisions into contracts**

The Applicants' Supplementary Submissions make statements to the effect that the collective bargaining process has enabled the adoption of quality incentive provisions into contracts, or provided a forum for addressing such matters.

The SEPA Submission states that in 2008:

*"A new bruise free incentive (and dis-incentive) program and Quality Assurance program incentives were negotiated<sup>7</sup>."*

The VPGC Submission states that:

*"McCain has approached the committee on numerous occasions regarding restructuring their contracts, adjusting the tolerance level clause for damaged and diseased potatoes and delivery times<sup>8</sup>."*

As described in McCain's August Submission, the collective negotiation process has generally focussed on price, although McCain did present the Victorian growers with a quality incentive proposal that was rejected. The proposal described in the SEPGA Submission was an initiative suggested by McCain.

McCain does consider that there are benefits in adopting incentive clauses to facilitate improvements in quality and other areas. However, McCain's experience, at least in Victoria, has been that the collective bargaining process is not a forum which encourages or facilitates agreement on these types of provisions.

Further, these types of provisions can be negotiated with growers on an individual basis and furthermore, can be implemented in a manner that can be tailored to the particular characteristics and requirements of the individual grower.

## **2.3 The Applicants' Supplementary Submissions mischaracterises the bargaining power between the growers and McCain and the level of grower input into contracts**

The Applicants' Supplementary Submissions make a number of statements to the effect that growers are in weak bargaining position relative to McCain, and that collective bargaining is necessary for them to have proper input into contracts.

McCain will not extract all of the relevant sections of the Applicants' Supplementary Submissions. However, the principal assertions were that:

- McCain is a multinational company, and growers are in a relatively weak bargaining position;
- growers are, in effect, "locked in" to supply McCain, and it is a monopsony buyer of their output;
- growers lack negotiation skills; and
- growers are at a significant informational disadvantage to McCain, and that the absence of collective bargaining prevents the dissemination of pricing information.

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<sup>7</sup> SEPGA Submission, 13.

<sup>8</sup> VPGC Submission, 2.

McCain addressed the issue of relative bargaining power in McCain's August Submission, and it will not repeat those submissions, apart from reiterating that:

- growers can, and do, grow a variety of potatoes and other output. Therefore, to argue that they are "locked in" to McCain is incorrect; and
- McCain is entirely dependent upon growers to supply it with potatoes.

However, McCain submits that the Applicants' Supplementary Submissions mischaracterise the nature of the relationship between the growers and McCain and the level of grower input into contracts, in ways not specifically addressed in McCain's August Submission.

In McCain's experience, the potato growers which supply McCain are experienced, well informed and sophisticated business people who own quite significant enterprises. For example, McCain pays several of its growers in excess of \$1 million per year, and well in excess of this figure is paid to a number of growers. Further, as explained elsewhere, growers will commonly undertake activities apart from supplying potatoes to McCain.

McCain submits that its potato suppliers are more than capable of competently negotiating supply contracts.

Further, McCain rejects the proposition that growers do not have access to price information, and that, consequently, the collective bargaining process provides a public benefit in disseminating price information between growers.

Growers can obtain price information from a range of sources. For example:

- growers can access the wholesale price of fresh potatoes;
- Simplot publically releases its potato prices. and
- there is detailed publicly available information on international prices for potatoes which is readily available online. For example, the Potato Council in the United Kingdom has a Euro Potato newsletter setting out potato prices across a number regions which can be seen on the following link: <http://potato.org.uk/knowledge-hub/newsletters/euro-potato> and the North American market prices for potatoes are published by the North American Potato Market News, Inc and can be accessed through the following link: <http://www.napmn.com/>.

As described above, McCain's potato suppliers are well informed and sophisticated and, in McCain's experience, utilise these and other sources in negotiating their contracts with McCain.

Finally, it is simply incorrect to assert that McCain is a monopsonist. As reflected in the Applications and the Applicants' Supplementary Submissions, there are multiple acquirers of potatoes in Victoria and South Australia.

## **2.4 Collective bargaining is inefficient as compared to individual negotiation**

The Applicants' Supplementary Submissions submit that the collective bargaining process is more efficient than individual negotiations on the basis that the collective bargaining process involves fewer parties.

McCain rejects this position and refers to the arguments set out in detail in McCain's August Submission, in particular, McCain reiterates the following:

- if McCain participates in the collective bargaining process, it still needs to undertake individual negotiations with each of its growers to settle the non-price terms. That is, the collective bargaining process does not remove the need to also deal with growers individually; and

- the collective negotiation process has been inefficient, and resulted in significant delays in finalising contracts. In contrast, when McCain did not participate in the collective process, it was able to finalise contracts quickly and efficiently.

The SEPGA submission stated:

*To say that individual negotiations were more efficient needs clarification, in terms of time the old system would take approximately 15 to 20 hours of the field directors' time which was also spent discussing other matters. Individual bargaining for the Safries growers took in total more than 30 hours of both the field director and purchasing director's time with very little room for input on other matters.*

McCain is unaware of the basis for this estimation of the time taken to negotiate contracts under the collective system as compared to individual negotiation. However, this estimation is not consistent with McCain's experience.

## **2.5 Collective bargaining has resulted in significant public detriment**

Apart from its inefficiency, McCain's August Submissions set out in detail a number of significant public detriments which have resulted from collective bargaining.

The Applicants' Supplementary Submissions sought to refute the material set in McCain's August Submissions, and argue that collective bargaining had not resulted in public detriments. In summary, the Applicant's Supplementary Submissions contend that:

- while there were delays in settling contracts, McCain was always assured of supply, and consequently the delays did not actually result in any material harm;
- potatoes make up a small proportion of the cost of potato products supplied to consumers; and
- the price of potato products is constrained by import competition, meaning that consumers are unaffected by domestic potato prices.

McCain's August Submission addressed these matters in detail, and McCain continues to rely on those submissions and does not propose to simply repeat them. However, McCain reiterates the following in response to the issues raised in the Applicants' Supplementary Submissions:

- McCain submits that it is simply incorrect to contend that, despite the significant delays in finalising supply contracts, McCain had certainty of supply. If there are delays and uncertainties created in finalising supply contracts this does create real costs and consequences. For example:
  - as explained in McCain's August Submission, delays in finalising grower contracts create problems for McCain in its arrangements with its customers. For example, when the finalisation of grower contracts was delayed, causing McCain to underestimate the price it would have to pay for potatoes, McCain was forced to re-negotiate customer contracts; and
  - McCain (and potentially other domestic processors) are placed at a disadvantage as compared to imported products when uncertainty exists regarding its supply arrangements, affecting its contracts with customers in the manner described above.
- More specifically, as described in McCain's August Submission, the final collective negotiation process that McCain was involved in culminated in its plant being blockaded (an issue that was not addressed in the Applicants' Supplementary Submissions). Clearly, being unable to receive or deliver product adversely affects McCain's ability to compete effectively, and creates difficulties for a range of other affected parties.

- McCain agrees that imports are a constraint on the price of potato products in Australia. However, as explained in McCain's August Submission, it strongly disagrees with the proposition that it follows that increasing potato prices do not result in a public detriment as these costs will not be passed through to consumers (or that they will not be passed through in their entirety). Specifically:
  - increases in the cost of potatoes do increase the cost of processed potato products, and producers will seek to pass these costs through;
  - if import competition is constraining the price of processed potato products in these circumstances, domestic producers will either:
    - lose market share if they seek to pass their costs through (which in turn, will negatively affect growers); or
    - become unprofitable if they are unable to pass their costs through; and
  - if imports are subject to less vigorous competition from domestic producers in such a scenario, then this may adversely affect consumers.

As set out in McCain's August Submission, there is a range of factors impacting on the cost of Australian potatoes apart from the mechanics of negotiation processes, and McCain is not seeking to submit otherwise. However, McCain's experience was that collective negotiations were not conducive to achieving the types of productivity improvements that are necessary to ensure the ongoing viability of the domestic industry.

McCain disagrees with the statements in the Applicants' Supplementary Submissions that collective bargaining arrangements have promoted and assisted productivity and efficiency improvements in the industry. The Applicants' Supplementary Submissions provided no specific information or examples to support this contention, and, as explained in detail elsewhere in McCain's submissions, McCain's experience has been that collective bargaining has been an impediment to productivity and efficiency improvements.

## **2.6 McCain's concerns about pressure to resume collective negotiations**

The Applicants' Supplementary Submissions note that the proposed collective bargaining process is voluntary.


However, McCain reiterates the concerns it set out in McCain's August Submission about the pressure within some segments of the industry to return to collective bargaining.

## **2.7 Recommended price for seed potatoes**

Having reviewed the additional information provided in the Applicants' Supplementary Submissions, McCain reiterates its concerns that, given that seed potatoes are an important input into the cost of potatoes, the price recommendation proposal for seed potatoes has the potential to increase costs through the supply chain.

Therefore, McCain also opposes this part of the Application.

Yours faithfully



**Damien Varnis**  
Company Secretary

