

23 September 2016

Mr Baethan Mullen
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

By email: *baethan.mullen@acc.gov.au*

Dear Mr Mullen,

Application for Non-Merger Authorisation

CANEGROWERS has prepared the **attached** application for authorisation for the collective bargaining and making of cane supply and related contracts between sugar cane growers, processors and sugar marketers. The application seeks authorisation on various levels, namely:

- i. within each district by each relevant local Canegrowers company so that collective negotiation can occur with the local mill owner and sugar marketer;
- ii. across and between each district that has common mill ownership so that each of the relevant local Canegrowers companies and QCGO can negotiate collectively with the common mill owner and sugar marketer; and,
- iii. across and between each district regardless of mill ownership so that each of the relevant local Canegrower companies and QCGO can negotiate collectively with any and all mill owners and sugar marketers.

In relation to the application lodgement fee, I refer to your letter of 19 September (**attached**) in which you advise that the application fee to be paid by CANEGROWERS “will be waived in whole”. Reflecting the advice contained in CANEGROWERS application to waive the lodgement fee, this application is made for and on behalf of the organisation’s current and future members and its affiliate local Canegrowers companies as detailed below:

1. Queensland Cane Growers Organisation Ltd (QCGO),
GPO Box 1032, Brisbane Qld 4001
2. Herbert River District Cane Growers Organisation Ltd (HRDCGOL)
PO Box 410, Ingham Qld 4850
3. Canegrowers Burdekin Ltd (CBL)
141 Young Street, Ayr Qld 4807
4. Proserpine District Cane Growers Cooperative Ltd (PDCGCL)
PO Box 374, Proserpine Qld 4800
5. Mackay Canegrowers Ltd (MCL)
PO Box 117, Mackay Qld 4740
6. Mossman Canegrowers Ltd (MOSSCL)
PO Box 789, Mossman Qld 4873
7. Tableland Canegrowers Ltd (TCL)
PO Box 1359, Mareeba Qld 4880
8. Canegrowers Cairns Region Ltd (CCRL)
PO Box 514, Gordonvale Qld 4865

9. Innisfail District Cane Growers Organisation Ltd (IDCGOL)
PO Box 67, Mourilyan Qld 4858
10. Bundaberg Canegrowers Ltd (BCL)
PO Box 953, Bundaberg Qld 4670
11. Canegrowers Isis Ltd (CIL)
PO Box 95, Childers Qld 4660
12. Maryborough Canegrowers Ltd (MBHCL)
PO Box 172, Maryborough Qld 4650
13. Canegrowers Rocky Point Ltd (CRP)
1214 Stapylton Jacobs Well Road, Woongoolba Qld 4207

Should you require any further information in support of this application, please do not hesitate to contact Mr Warren Males (Head-Economics) in our Brisbane office.

Yours sincerely



Dan Galligan
Chief Executive Officer

Copy to: *joanne.palisi@accg.gov.au*
and: *cynthia.tupicoff@accg.gov.au*



Contact officer: Hannah Ransom
Contact phone: (02) 6243 1255

16/09/2016

Dan Galligan
Chief Executive Officer
Queensland Cane Growers' Organisation Ltd

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Canberra ACT 2601

GPO Box 3131
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adjudication@acc.gov.au

www.acc.gov.au

By email: Alison_Gooden@canegrowers.com.au

Dear Mr Galligan

Fee waiver request

Thank you for your letter of 9 September 2016 to the Australian Competition and Consumer Commission (ACCC) asking that we waive the fee for your application for authorisation.

In particular, you have requested that the fee to be paid in relation to an application for authorisation to be lodged by the Queensland Cane Growers Organisation Ltd (Canegrowers) be waived in whole.

In support of your request, among other things, you submitted that:

- (a) Canegrowers is a not for profit company
- (b) sugarcane grower members have limited funds.

I have considered the information provided and, as a person authorised to assess fee waiver requests for and on behalf of the ACCC, I have decided that the application fee to be paid by Canegrowers will be waived in whole. No application fee will apply for the application for authorisation to be lodged by Canegrowers.

This decision will remain in force for a period of three months. The three month period will expire on 16 December 2016.

A copy of this letter should accompany the application for authorisation to be lodged by Canegrowers. The cover letter to the application should mention that a letter from the ACCC regarding a fee waiver is enclosed with the application. The application together with this letter will be placed on the public register at that time.

If the application for authorisation is lodged by Canegrowers after 16 December 2016, a full application fee of \$7500 will apply, unless a subsequent request for a fee waiver is made and approved by the ACCC.

If you have any queries in relation to this matter, please contact Hannah Ransom on (02) 6243 1255.

Yours sincerely

Baethan Mullen
A/g General Manager
Adjudication Branch

Form B

Commonwealth of Australia

Competition and Consumer Act 2010 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Competition and Consumer Act 2010* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1) Applicant

a) Name of Applicant:

(Refer to direction 2)

A91558 Queensland Cane Growers Organisation Ltd ACN 089 992 969 (CANEGROWERS)

b) Short description of business carried on by applicant:

(Refer to direction 3)

CANEGROWERS is a not for profit company limited by guarantee representing the interest of sugarcane growers.

c) Address in Australia for service of documents on the applicant:

GPO Box 1032
Brisbane QLD 4001
(Level 6, 100 Edward Street, Brisbane Qld)

2) Contract, arrangement or understanding

- a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

CANEGROWERS is seeking authorisation for the collective bargaining and making of cane supply and related contracts between sugarcane growers, processors and sugar marketers.

CANE SUPPLY MATTERS

Growers must have a signed Cane Supply Agreement with a mill owner before they can deliver cane to a sugar mill (see section 31(1) Sugar Industry Act 1999 “the Act”).

Traditionally, a cane supply contract deals with all matters relating to the:-

- a) harvesting of cane;
- b) delivering of cane to the mill or delivery points;
- c) transport and handling of cane by the mill;
- d) acceptance and crushing of cane by the mill;
- e) payment to growers by the mill owner.

PRICING MATTERS

The Australian sugar industry is recognised worldwide as a leader in innovation and technology. Consistent with this forward thinking attitude is that the sugar industry has been to the forefront in developing mechanisms, systems and contracts to allow both growers and mill owners the opportunity to forward price production. Since about 2008 growers and millers have undertaken forward pricing arrangements. The terms and conditions of these forward pricing arrangements are an essential part in forming the price for payment for cane.

SUGAR MARKETING MATTERS

The growers’ payment for cane is associated with the selling price for sugar manufactured from the cane. In this way growers have an economic interest in the way the price of sugar manufactured by the mill owner is determined. Accordingly, growers maintain a clear interest in contracts and arrangements around the selling and marketing of sugar.

As a reflection of this interest in the sugar price, and as a result of the passing of the *Sugar Industry (Real Choice in Marketing) Amendment Act* in December, 2015, the Act now also provides in section 33B as follows:

- (2) The supply contract must include each of the following—
- (a) a term providing for the amount, or the basis for working out the amount, of the payment to the grower for the supply of the cane (the **cane payment**);
 - (b) unless the grower and mill owner otherwise agree—a term (a **related sugar pricing term**) requiring the amount of the cane payment to be worked out in a stated way by linking that amount to the sale price of the on-supply sugar to which the supply contract relates;

- (c) if the supply contract includes a related sugar pricing term, both of the following, unless the grower and mill owner otherwise agree–
 - (i) a term requiring the mill owner to bear the sale price exposure for the sale of a proportion of the on-supply sugar that is worked out in a stated way;
 - (ii) a term (a **GEI sugar price exposure term**) requiring the growers to bear the sale price exposure for the sale of the remaining on-supply sugar (the **grower economic interest sugar**);
- (d) if the supply contract includes a GEI sugar price exposure term–
 - (i) a term (a **GEI sugar marketing term**) requiring the mill owner to have an agreement with a stated entity (the **GEI sugar marketing entity**) to sell the quantity of the on-supply sugar that is at least equal to the quantity of the grower economic interest sugar; and
 - (ii) unless the grower and mill owner otherwise agree, a term providing for an entity nominated by the grower to be the GEI sugar marketing entity;
- (e) if the supply contract provides for an entity nominated by the grower to be the GEI sugar marketing entity—a term requiring the mill owner to deliver for sale the quantity of the on-supply sugar that is at least equal to the quantity of the grower economic interest sugar, as directed by the entity, within a stated reasonable period.

As a result of the growers interest in the sugar, growers have an interest in contracts relating to the sale and marketing of the sugar. These contracts will include contracts between the GEI marketing entity and the growers and the sugar on-supply agreement between the mill owner and the nominated GEI marketing entity.

BY PRODUCTS AND RELATED MATTERS

Although the payment for cane has been largely based on the price of sugar, the value of sugarcane can be measured by much wider parameters. There are many by products derived from sugarcane and the cane crushing process including, for example, molasses, ethanol, bagasse, biomass and fibre.

The authorisation seeks authority for growers to collectively bargain with sugarcane processors, mill owners and sugar marketing entities the full terms and conditions of supply of cane to the sugarcane processors and mill owners and sugar marketing entities. These terms will include terms relating to the following matters:-

- a) harvesting of cane;
- b) delivering of cane to the mill or delivery points;
- c) transport and handling of cane by the mill;
- d) acceptance and crushing of cane by the mill;
- e) payment to growers by the mill owner;
- f) forward pricing terms;

- g) essential terms governing the supply of GEI interest sugar to the GEI sugar marketers;
 - h) capturing the value of the by-products and related products from sugar cane;
 - i) any other contracts or arrangements relating to the supply of or processing of sugar cane.
- b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

Cane growers are required by the Act to have a signed cane supply contract with a sugar mill owner before they can supply cane to the mill.

There are approximately 4000 mostly family-owned cane farm businesses in Queensland supplying a total of 21 sugar mills which are owned by seven milling entities.

Wilmar Sugar (and its related entities) owns eight sugar mills; two in the Herbert River district, four in the Burdekin district, one in the Proserpine district and one in the Plane Creek (Sarina) district. There are approximately 1500 growers who supply Wilmar Sugar.

The growers in the Herbert and Burdekin districts only have the option to supply cane to Wilmar mills. Some growers on the boundary of the Proserpine and Plane Creek districts may have some limited opportunity to deliver to mills owned by Mackay Sugar but essentially the growers of Proserpine and Plane Creek also only have the option to supply a mill owned by Wilmar Sugar.

In most instances then, Wilmar Sugar is a monopoly mill owner.

MSF Sugar owns four mills, one each in Maryborough, South Johnstone, Gordonvale and Mareeba. Growers in Maryborough and Gordonvale have no real option other than to deliver to the local MSF mill. Some limited number of growers in South Johnstone and Mareeba have an option to potentially deliver to another mill. For the most part MSF is monopoly mill owner.

Mackay Sugar owns four mills, three in the Mackay region and one in Mossman. Most growers in Mackay have no real economic option other than to deliver to a Mackay Sugar mill. Similarly, most growers in Mossman have not real economic option other than to deliver cane to the Mackay Sugar owned Mossman mill although some limited transfer is possible to the Mareeba mill.

Tully Sugar owns one mill in Tully. Most Tully growers have no real economic option other than to deliver cane to the Tully mill.

Bundaberg Sugar owns two mills in the Bundaberg region. There is some limited competition for cane on the boundaries of the Bundaberg area with the neighbouring mill at Childers owned by Isis Central Mill Co Ltd.

W.H. Heck and Sons owns the Rocky Point mill in the Woongoolba area. Most growers can only supply this mill although in rare and exceptional circumstances some limited tonnes of cane can be transported to mills in northern New South Wales.

Sugarcane is a perishable product and must be delivered promptly after harvest to the sugar mill. The sugar content in the cane is highest around October but not all growers can deliver to the sugar mill at that time due to the limited crushing capacity of the mill.

Usually the mill commences crushing around June and seeks to finish crushing all available cane by middle of November.

To facilitate the economic and equitable harvesting of cane, Cane Supply Agreements traditionally include provisions linking payments on a relative basis so that cane growers are not disadvantaged when they harvest their cane. Growers are usually grouped for harvesting purposes and harvesting occurs in rotation throughout the season so that there is fair and equitable access by growers to the mills' crushing and processing operations.

The sugar industry has enjoyed the authorisations provided by the Act (see Chapter 6), including wide-ranging authority for the making or varying of collective contracts.

The authorisation is, however, specified to apply within a region as defined by regulation made under the Act. Some mill owners, such as Wilmar Sugar and Mackay Sugar, own sugar mills in different regions. Consequently, there may be circumstances where growers who all supply the same mill owner such as Wilmar Sugar, but in a different region, may not be authorised by the provisions of the Act to fully participate in collective bargaining with other growers who also supply Wilmar Sugar.

The Sugar Industry Regulation 2010 defines regions in terms of local government areas and lists them as follows:

- North region – Cairns, Cassowary Coast, Cook, Hinchinbrook and Tablelands
- Herbert River and Burdekin region – Burdekin, Cassowary Coast, Hinchinbrook, Townsville and Whitsunday
- Central region – Burdekin, Isaac, Mackay and Whitsunday
- South region – Banana, Bundaberg, Fraser Coast, Gladstone, Gold Coast, Gympie, Logan, Moreton Bay, North Burnett, Scenic Rim and Sunshine Coast,

Three of the six sugar milling companies in Queensland operate across regions:

- Wilmar Sugar has mills that operate in the in Herbert River and Burdekin regions as well as mills that operate in the Central region
- Mackay Sugar has mills that operate in the Central region and the North region
- MSF Sugar has mills that operate in the South region and the North region

The regional definitions authorise suppliers in different mill areas within a region to collectively bargain with the mill owner. However, they do not enable suppliers to these companies in one region to negotiate collectively with suppliers in other regions when dealing with the same mill owner or the same issue. In contrast, the mill owner has the benefit of full transparency of all negotiations with their growers regardless of the region in which they are located.

The sugar industry regulations were last reviewed in 2010 and have not since been amended to take account the changed mill ownership structures or changes in local government boundaries that have occurred in Queensland since that review.

The need for growers to have the ability to negotiate collectively, should they wish to do so, is well recognised. An ability for growers to bargain across regions would provide balance to the “cross-regional insight” enjoyed by mills.

- c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

Pursuant to the Act, sugarcane growers must have a signed supply contract with the mill owner before sugar cane can be delivered to the mill for crushing and manufacturing into sugar.

Sugarcane is a low value, high volume perishable product that must be economically processed within about 12 hours of harvest. Mills generally enjoy a geographical monopoly in that it is uneconomic for growers to seek to transport cane to any other than the nearest mill. Most growers throughout Queensland only have the option of delivering cane to a single mill owner.

This application relates to the crushing of sugarcane by sugar cane processors and sugar marketers. It seeks the authorisation for collective bargaining to be undertaken by CANEGROWERS local companies to negotiate terms and conditions of their cane supply and related contracts with sugar mill owners and processors and sugar marketers on behalf of their current and future grower members.

- d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The term of the authorisation sought is 10 years. The normal crop cycle for sugar cane is five years with a plant year and then re-harvesting of the ratoons for a further four years, before the stool is ploughed out, the ground left fallow or rejuvenated with a rotation crop and then replanted.

The usual approach to cane supply agreements is that they be continuous or rolling agreements, so an authorisation for an extended period is appropriate.

3) Parties to the proposed arrangement

- a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

This application is made for collective bargaining with all mill owners and marketers, current and future as may change from time-to-time. The current list of mill owners and marketers are detailed below.

MILL OWNERS

- Wilmar Sugar Australia Ltd – including its related and subsidiary entities:-
 - Wilmar Sugar Australia Holdings Pty Ltd
 - Wilmar Sugar Pty Ltd
 - Wilmar Sugar (Proserpine) Pty Ltd
 - Wilmar Sugar Plane Creek Pty Ltd
 - Wilmar Sugar (Invicta) Pty Ltd
 - Wilmar Sugar (Kalamia) Pty Ltd
 - Wilmar Sugar Australia Trading Pty Ltd

- Wilmar Sugar (Herbert) Pty Ltd
- The Haughton Sugar Co Pty Ltd
- Pioneer Sugar Mills Pty Ltd, c/- PO Box 642, Townsville Qld 4810
- Tully Sugar Ltd, Mill Reserve, Tully, Qld 4854
- MSF Sugar Ltd, PO Box 130, Gordonvale Qld 4865
- Isis Central Sugar Mill Co Ltd, PM 1, Childers Qld 4660
- W.H. Heck & Sons, Mill Road, Woongoolba Qld 4207
- Mackay Sugar Ltd, PO Box 5720, Mackay Mail Centre, Mackay Qld 4741
- Bundaberg Sugar Ltd, 147 Wharf Street, Spring Hill Qld 4000

MARKETERS

Queensland Sugar Ltd GPO Box 891, Brisbane Qld 4001

Wilmar Sugar Australia Trading Pty Ltd (in a related company transaction Wilmar Sugar Australia Trading will engage the Singapore based Wilmar Sugar Pte Ltd to undertake its marketing activities)

MSF Marketing Pty Ltd

MSF Sugar Limited

Tully Sugar Ltd (in a related company transaction Tully Sugar advises its intention to contract China Food Trading a member of the COFCO group of companies to undertake its marketing activities)

- b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

This application is made for and on behalf of current and future members of the CANEGROWERS organisation. Membership will include members of Queensland Cane Growers Organisation Ltd and members of each local CANEGROWERS company, which may change from time-to-time. The current list of companies is detailed below.

Queensland Cane Growers Organisation Ltd (QCGO)
GPO Box 1032, Brisbane Qld 4001

Herbert River District Cane Growers Organisation Ltd (HRDCGOL)
PO Box 410, Ingham Qld 4850

Canegrowers Burdekin Ltd (CBL)
141 Young Street, Ayr Qld 4807

Proserpine District Cane Growers Cooperative Ltd (PDCGCL)
PO Box 374, Proserpine Qld 4800

Mackay Canegrowers Ltd (MCL)
PO Box 117, Mackay Qld 4740

Mossman Canegrowers Ltd (MOSSCL)
PO Box 789, Mossman Qld 4873

Tableland Canegrowers Ltd (TCL)
PO Box 1359, Mareeba Qld 4880

Canegrowers Cairns Region Ltd (CCRL)
PO Box 514, Gordonvale Qld 4865

Innisfail District Cane Growers Organisation Ltd (IDCGOL)
PO Box 67, Mourilyan Qld 4858

Bundaberg Canegrowers Ltd (BCL)
PO Box 953, Bundaberg Qld 4670

Canegrowers Isis Ltd (CIL)
PO Box 95, Childers Qld 4660

Maryborough Canegrowers Ltd (MBHCL)
PO Box 172, Maryborough Qld 4650

Canegrowers Rocky Point Ltd (CRP)
1214 Stapylton Jacobs Well Road, Woongoolba Qld 4207

QCGO is a not for profit company limited by guarantee. All cane growers throughout Queensland are entitled to be members of QCGO and at present approximately 75% of the State's cane growers are members.

WILMAR SUPPLY AREAS

HRDCGOL is a not for profit company limited by guarantee. All cane growers in the Herbert River district are entitled to be members of HRDCGOL and at present approximately 90% of the Herbert River growers are members of HRDCGOL.

CBL is a not for profit company limited by guarantee. All cane growers in the Burdekin district are entitled to be members of CBL and at present approximately 30% of the Burdekin growers are members of CBL.

PDCGCL is a non-trading cooperative. All cane growers in the Proserpine District are entitled to be members of PDCGCL and at present approximately 96% of Proserpine growers are members of PDCGCL.

MCL is a not for profit company limited by guarantee. All cane growers in the Plane Creek district are entitled to be members of MCL and at present approximately 85% of Plane Creek growers are members of MCL.

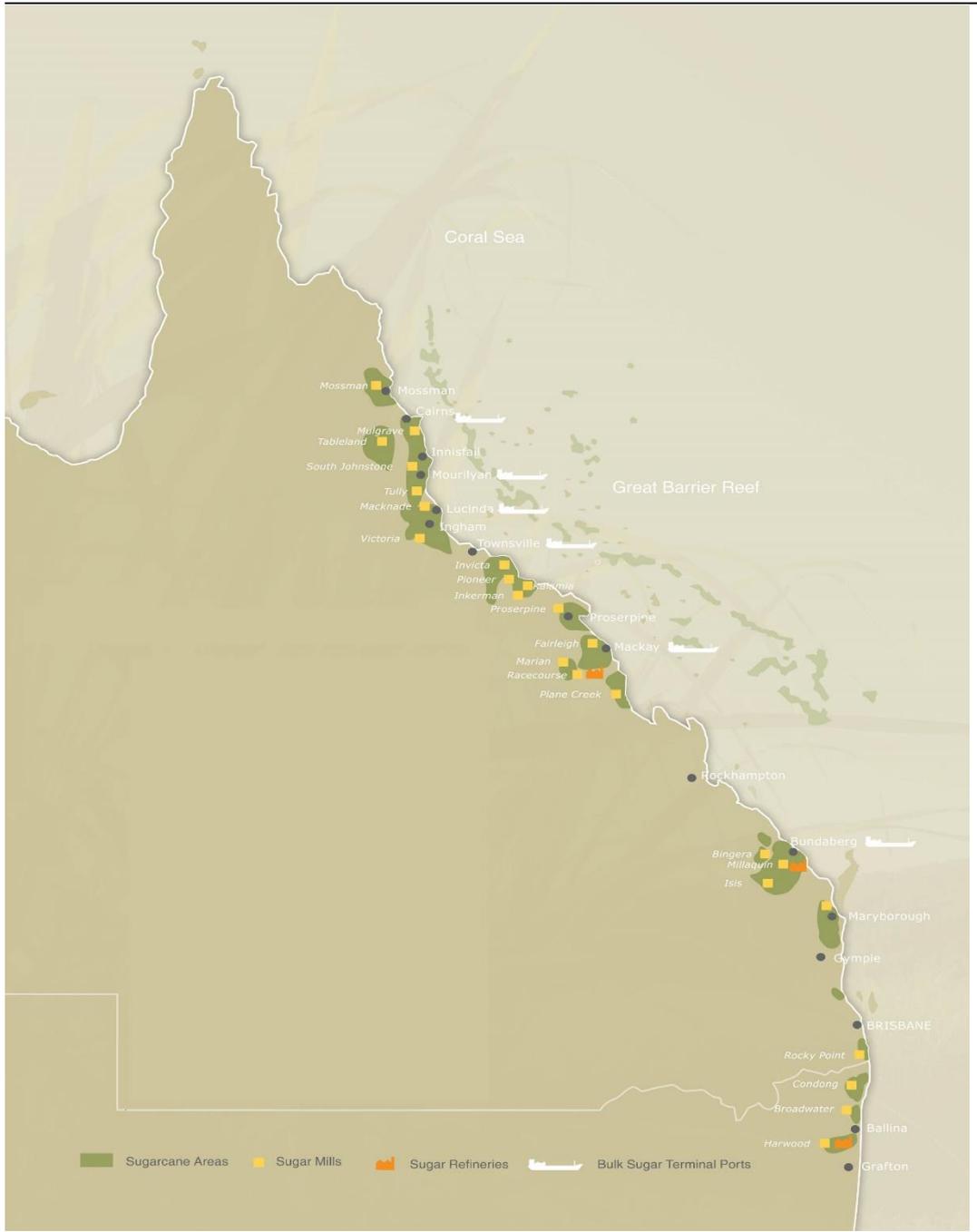
MACKAY SUGAR SUPPLY AREAS

MCL and MOSSCL each a company limited by guarantee. All cane growers in their respective districts are entitled to be members of the respective local CANEGROWERS company, and at present approximately 90% of eligible growers are members of their respective local CANEGROWERS company.

MSF SUPPLY AREAS

TCL, CCRL, IDCGOL and MBHCL are each companies limited by guarantee. All cane growers in their respective districts are entitled to be members of the respective local CANEGROWERS company and at present approximately 80% of eligible growers are members of their respective local CANEGROWERS company.

Queensland Sugar Cane Production and Mill Areas - Map



BUNDABERG SUPPLY AREA

BCL is a company limited by guarantee. All cane growers in the Bundaberg district are entitled to be members of the local BCL CANEGROWERS company and at present approximately 90% of eligible growers are members.

ISIS/CHILDERS SUPPLY AREA

CIL is a company limited by guarantee. All cane growers in the Isis/Childers district are entitled to be members of the local CIL CANEGROWERS company and at present approximately 95% of eligible growers are members.

ROCKY POINT SUPPLY AREA

CRP is a company limited by guarantee. All cane growers in the Rocky Point area are entitled to be members of the local CRP CANEGROWERS company and at present more than 98% of eligible growers are members.

Queensland Cane Growers Organisation – CANEGROWERS

Each of the above local CANEGROWERS companies are approved local companies of QCGO and form part of the organisation known as Queensland Cane Growers Organisation – CANEGROWERS. These local companies act as bargaining representatives for their members. The member growers of each of the local companies are also members of QCGO. Membership of CANEGROWERS either at state or local level is voluntary and growers are free to enter into collective or individual cane supply and related contracts.

Growers are entitled to enter into individual contracts with mill owners and processors or may, on becoming a member of the relevant local CANEGROWERS company, enter into collective supply contracts negotiated on the growers' behalf by the relevant local CANEGROWERS company.

Each local CANEGROWERS company has traditionally acted as grower bargaining representatives and negotiated cane supply and related agreements with the relevant mill owner in their respective regions. For example, HRDCGOL negotiates with Wilmar Sugar as mill owner on cane supply and related contracts on behalf of grower members in the Herbert River district. Wilmar Sugar is effectively the same mill owner in each of the four Wilmar supply districts so each of the four named local CANEGROWERS companies are negotiating cane supply and related agreements with the same mill owner – Wilmar Sugar. There is significant commonality in the provisions of cane supply and related agreements in each of the four Wilmar Sugar areas. Similar considerations apply in the other supply areas with common mill ownership.

QCGO does not generally act itself as a bargaining representative but assists the local CANEGROWERS companies in their contract negotiations as may be requested by each local company. Assistance can be by way of general support and expert advice and legal support and advice.

This application seeks authorisation on various levels namely:-

- a) within each district by each relevant local CANEGROWERS company so that collective negotiation can occur with the local mill owner and sugar marketer;

Example: HRDCGOL should be authorised to collectively bargain for and on behalf of current and future members of HRDCGOL in relation to cane supply and related agreements with the local mill owner (Wilmar) and sugar cane processors and current and potential GEI sugar marketers.

- b) across and between each district that has common mill ownership so that each of the relevant local CANEGROWERS companies and QCGO can negotiate collectively with the common mill owner and sugar marketer;

Example: HRDCGOL should be authorised to collectively bargain for and on behalf of current and future members of HRDCGOL with other local CANEGROWERS companies in collective bargaining for cane supply and related agreements with common mill owners, cane processors and GEI sugar marketers.

- c) across and between each district regardless of mill ownership so that each of the relevant local CANEGROWERS companies and QCGO can negotiate collectively with any and all mill owners and sugar marketers.

Example: HRDCGOL should be authorised to collectively bargain for and on behalf of current and future members of HRDCGOL with other local CANEGROWERS companies throughout Queensland for collective bargaining of cane supply and related agreements with mill owners, sugar cane processors and GEI sugar marketers.

4) Public benefit claims

- a) Arguments in support of authorisation:

(Refer to direction 6)

- (1) The aim of the authorisation application is to seek authority for CANEGROWERS bargaining representatives to make and give effect to cane supply and related contracts. These contracts may either be collective contracts or supply contracts that are negotiated and act as an agreed standard form contract for the supply of sugarcane to a mill owner/processor.

These contracts are voluntary for individual growers and mill owner/processors, who remain free to enter into individual contracts as may be agreed between the individual grower and mill owner.

- (2) As described elsewhere in this application, mill owners largely enjoy a geographical monopoly. Most growers have no option than to deliver to the one mill owner. Sugarcane is a perishable product and must be delivered promptly upon harvest to the mill for processing. Sugarcane is a high volume, low value product. It can't be transported long distances so there is largely no realistic economic alternative than delivering cane to the local mill. Accordingly, there is very limited competition between mills for cane supply.
- (3) Sugarcane farms tend to be family-owned enterprises and the capacity to negotiate on even terms with large monopoly milling companies is very limited.
- (4) The structure of the sugarcane industry is such that growers must share the crushing capacity of the mill they supply. Growers cannot deliver all of their crop to the mill at the same time. Crushing takes place over nearly six months and growers group together and form harvesting groups and harvest their cane proportionally and rotationally throughout the season to ensure equitable and efficient use of transport and milling capacity.

Relative payment schemes exist so that growers are largely indifferent to when they supply their cane which are complimented by the proportional and rostered harvesting and delivery arrangements.

Given these inter-dependent relationships between growers and between growers and the mill owner, collectively negotiated agreement provide to best option for the acceptable and efficient harvesting, delivery, transport and crushing of the crop.

- (5) Authorisation for collective bargaining of cane supply and related agreements will not completely address the monopoly powers of the mill owner. But it will go some way to addressing the imbalance of bargaining power that exists and

provide a more level playing field for those growers that wish to participate in collective bargaining.

(6) The cane supply contract and related agreements can be complex and the full suite of documents relating to a grower's cane supply and payment can lead to a number of contracts and hundreds of pages. Collective negotiation of these contracts makes the task easier, rather than individual growers having to embark on such a process.

(7) Further benefits from collective negotiation include:-

- a) Streamlining the negotiating process saves time for both growers and mills in establishing supply contracts
- b) considerable savings in transaction costs
- c) provides some increased bargaining power for growers and provides some offset to the bargaining power of mills.
- d) increased opportunity to negotiate terms of a supply contract that better reflects the needs of growers than the terms of a standard form contract contained.
- e) increased opportunity to achieve workable implementation arrangements for growers to choose the marketer of grower economic interest sugar
- f) increased capacity to deal with information and commercial confidentiality and secure professional advice where required.
- g) Reduced contract administration costs.

b) acts and evidence relied upon in support of these claims:

There are approximately 3500 cane growers in Queensland, supplying a total of 21 sugar mills owned by seven different sugar milling entities.

Each milling entity has written supply and related agreements with its growers. The vast majority of growers are represented by bargaining representatives who negotiate collectively on behalf of their growers.

There are 12 local CANEGROWERS companies that act as bargaining representatives in their respective districts and QCGO assists each of these companies in their endeavours. There are about three other grower bargaining groups in Queensland that act as bargaining representatives. Although representation is voluntary, growers are able to negotiate individual contracts with mill owners. More than 90% of the total number of all growers are represented by bargaining representatives. There is strong support for collective bargaining arrangements. This is not surprising given the history of the Queensland sugar industry is such that the industry was substantially regulated from about 1915 to around 2005. Statutory marketing arrangements applied and cane supply contracts were negotiated/resolved for and on behalf of all growers.

Since deregulation the industry has acted on the specific authorisations in the Act as being broad enough to allow for full collective bargaining on all cane supply and related contract issues. In recent times some mill owners have brought into question the coverage of the authorisation under the Act, partly in relation to the application of regions. This application seeks to ensure complete coverage so that there is no

question about the extent of the collective bargaining authorisation to cover all cane supply and related agreements.

Other facts, circumstances and evidence as detailed in this application support the claim that it is in the public benefit for the authorisation to be granted.

5) Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

CANE GROWING IN AUSTRALIA

The Australian sugarcane industry one of the world's most efficient and innovative producers and exporters of sugar, recognised world-wide for cutting edge technology and sustainable cane growing.

Australia's sugarcane is grown in high-rainfall and irrigated districts areas along coastal plains and river valleys along 2100 km of Australia's eastern coastline - between Mossman in far north Queensland and Grafton in New South Wales. Queensland accounts for about 95% of Australia's raw sugar production and New South Wales around 5%.

More than 4000 sugarcane growing farms in operation. While the average size of a cane farm is 100 hectares, some are in excess of 1000 hectares. While there are still a number of smaller farms, average farm size is increasing each year, as the number of growers declines and the area farmed by individual businesses expands. This consolidation is made possible by advances in technology, and while some corporate companies have established large cane farming operations, there are still some 6000 cane growers in Australia. The Australian cane industry produces 30-35 million tonnes of cane per year, which when processed, equates to around 4-4.5 million tonnes of sugar.

Quick facts

\$2 billion value of production	30-35 Mt cane	4-4.5 Mt raw sugar
4000 cane farm businesses	24 sugar mills	6 bulk storage ports
3rd largest raw sugar supplier in world	7th largest agricultural exporter in Australia	80% exported

Innovation

The industry's focus is squarely on its international competitiveness because most sugar is exported and there is no domestic support price or subsidies.

Australian growers have adopted innovative practices - particularly through mechanisation, soil management techniques and diversification.

Cane growing and sugar production underpins the economic stability of many coastal communities. World sugar production has undergone massive changes since 1970, particularly with the emergence of Brazil as a dominant force, the growth of the European Union as a subsidised producer, the growth of Thailand and the decline of Cuba. Although the Australian industry developed under a regulated system which sought to match production with assured markets, it is now one of the least protected sugar producers in the world.

Where is Australian sugar sold?

- Export (80%)

Australia is one of the world's largest exporters of raw sugar. Depending on seasonal production variability, Australia normally ranks as the second or third largest exporter of raw sugar, after Brazil. Australia sells mainly to East Asia, China, Indonesia, Japan, Korea, Malaysia, Taiwan, the USA and New Zealand. Australia's capacity to store over two million tonnes of sugar in a network of bulk port terminals, allows it to supply customers throughout the year. Success has been built on world's best practice in growing, production, handling and marketing. Many of the world's major raw sugar importers prefer the Australian product because of its reputation for quality, innovation and service. The industry's high market share and long-standing customer relationships reflect its efficiency, reliability and cost competitiveness. Virtually all of Australia's exports come from Queensland as raw sugar sold directly to refineries (not through trade houses) on a cost, insurance and freight (CIF) basis. Pricing and managing risk is now increasingly being taken on by growers and millers with specialist advice so they can take on a level of risk and manage that risk at a level which suits them.

- Domestic use (20%)

The 20% of the raw sugar produced in Australia for domestic consumption is refined locally and processed into white sugar, liquid sugar products and other speciality products such as golden syrup, treacle, coffee sugar, cubed sugar and rum. NSW production is sold mainly on the domestic market.

Australian sugarcane growers have realised that a better, more productive, more sustainable future is in their hands. They have adopted a proactive approach, addressing issues before community and conservationist concern generates restrictive and overbearing government intervention.

More than 60% of the Queensland sugarcane area has been benchmarked against industry best practice in an industry-managed accreditation program called Smartcane BMP. This program has accredited 136 growers with many more actively pursuing its aims of productivity, profitability and sustainability. Smartcane BMP will be the mechanism through which the industry maintains its high reputation on the world market as customers increasingly seek assurances of environmentally-friendly farming practices.

CANEGROWERS

Around 80% of Queensland sugarcane growers are members of the highly successful lobby, representation and services group, CANEGROWERS. There are 14 offices based in major cane growing regions up and down the coast of Queensland and northern New South Wales, with the State and National office located in Brisbane.

Australian sugar milling

Australia has 24 sugar mills which crush an average 10,000 tonnes of cane daily and employ around 150 people during the season. Cane is transported to the mills by cane railway and road. Millers, growers and harvesters determine harvesting and transport schedules that ensure cane is crushed as fresh as possible. Average cut to crush time is less than 12 hours. Most sugar mills have been established for more than 100 years. The juice mill that began operating near Mareeba in 1998 was Queensland's first new mill in 73 years.

Sugar marketing

Sugar marketer, Queensland Sugar Limited (QSL) coordinates a group marketing service taken up by most of the Australian industry, which uses the bulk marketing power to leverage better deals for Australian sugar on the international market. Up until 2006, Australia enjoyed a 'single desk' arrangement where all sugar was compulsorily acquired by QSL. This was deregulated on 1 January 2006. However, the majority of growers currently retain group marketing arrangements with QSL, which is a not-for-profit company that pays all the proceeds of sale net of its costs of operating to its suppliers. QSL administers pool price arrangements, manages the industry's seven bulk sugar terminals, and manages sugar price and foreign exchange exposure to optimise returns to growers and millers.

Some mill owners have given notice of termination of these arrangements with QSL. In December 2015 amendments were made to the Act which facilitates growers having choice in marketing of GEI sugar.

Sugar logistics

The conversion from transporting raw sugar in bags to receipt, storage and shipping in bulk, commenced in Australia in the late 1950s.

There are now six bulk sugar terminals in Queensland located at the ports of Cairns, Mourilyan, Lucinda, Townsville, Mackay, and Bundaberg. These terminals are able to store two and a half million tonnes of bulk raw sugar.

As mentioned elsewhere in this application there are 21 sugar mills in Queensland owned by seven different milling entities. Mills largely enjoy geographical monopolies and there is little competition between mill owners for supply of cane by growers. In most cases growers are economically compelled to deliver their cane to the local mill. In most situations, even if there is more than one local mill, they are owned by the same mill owner. In the few circumstances where there is potentially another mill owner that could be supplied to, it is only the growers on the boundary of the mill area who could economically transport and deliver the high volume low value, perishable sugar cane, to that other mill. In any event mills in Queensland currently operate at full capacity and

the opportunity to transfer in such circumstances is not realistic, certainly for any significant number of growers.

In recent years there has been a reduction in the overall number of mills and a concentration of mill ownership.

6) Public detriments

- a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

CANEGROWERS does not believe there is any detriment to the public arising from this proposed authorisation.

- b) Facts and evidence relevant to these detriments:

The sugar industry has been built on a system of statutory authorised collective bargaining of cane supply contracts. Even with deregulation from 2005, collective bargaining has continued under the authorisations in place in the Act. The vast majority of growers' supply cane to mills under terms and conditions and contracts negotiated collectively by grower bargaining representatives. With deregulation there has been a range of related agreements that are essential parts of the cane supply and payment chain for growers. These include cane supply agreements, and by forward pricing contracts. In recent times on-supply agreements dealing with the sale of GEI sugar to GEI marketers have become important for growers. Opportunities for value adding from sugarcane are emerging and growers will benefit by authorisations allowing for negotiations of all things relating to the supply of cane.

Notwithstanding the collective bargaining arrangements and this application, growers and mill owners are free to enter individual agreements should they choose to do so. This freedom minimises, if not eliminates, any detriment to the public arising from this proposed authorisation.

The authorisation currently in place under the Act may not be sufficiently wide enough, as it appears in the eyes of some mill owners, for growers to properly and freely collectively bargain for all matters relating to cane supply and related agreements is required.

More than 80% of Queensland sugar cane production, and consequently sugar, is exported. Cane payments are closely linked to the international price of sugar and accordingly there would be little effect on those sugar prices arising from this authorisation.

7) Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

a) Is this application to be so expressed?

No

b) If so, the following information is to be furnished:

(i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

.....
.....
.....
.....

(ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Not Applicable

(iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Not Applicable

8) Joint Ventures

a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No

b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not Applicable

c) If so, by whom or on whose behalf are those other applications being made?

Not Applicable

9) Further information

a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Warren Males
Head – Economics
CANEGROWERS
GPO Box 1032, Brisbane Qld 4001

Dated...23 September 2016

Signed by/on behalf of the applicant


.....
(Signature)

Dan Galligan.....
(Full Name)

Chief Executive Officer.....
(Position in Organisation)

DIRECTIONS

1. Use Form A if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision and which is also, or might also be, an exclusionary provision. Use Form B if the contract, arrangement or understanding includes a provision which is, or might be, a cartel provision or a provision which would have the purpose, or would or might have the effect, of substantially lessening competition. It may be necessary to use both forms for the same contract, arrangement or understanding.

In lodging this form, applicants must include all information, including supporting evidence, that they wish the Commission to take into account in assessing the application for authorisation.

Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.

2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. Describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding in respect of which the application is made.
4. Provide details of the contract, arrangement or understanding (whether proposed or actual) in respect of which the authorisation is sought. Provide details of those provisions of the contract, arrangement or understanding that are, or would or might be, cartel provisions. Provide details of those provisions of the contract, arrangement or understanding that do, or would or might, substantially lessen competition.

In providing these details:

- (a) to the extent that any of the details have been reduced to writing, provide a true copy of the writing; and
 - (b) to the extent that any of the details have not been reduced to writing, provide a full and correct description of the particulars that have not been reduced to writing.
5. Where authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
 6. Provide details of those public benefits claimed to result or to be likely to result from the proposed contract, arrangement or understanding including quantification of those benefits where possible.
 7. Provide details of the market(s) likely to be effected by the contract, arrangement or understanding, in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the authorisation.
 8. Provide details of the detriments to the public which may result from the proposed contract, arrangement or understanding including quantification of those detriments where possible.
 9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.