



**Australian  
Competition &  
Consumer  
Commission**

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3 November 2016

Warren Males  
Queensland Cane Growers Organisation

**Via email: [warren\\_males@canegrowers.com.au](mailto:warren_males@canegrowers.com.au); [dan\\_galligan@canegrowers.com.au](mailto:dan_galligan@canegrowers.com.au)**

Dear Mr Males

**Re: Canegrowers collective bargaining application for authorisation A91558 –  
submissions from interested parties and information request**

Thank you for meeting with for us for initial discussions about Canegrowers' proposed collective bargaining arrangements and the Queensland sugar industry more generally.

**Submissions from interested parties**

As you are aware, on 7 October 2016 the ACCC wrote to interested parties seeking submissions in relation to the application. The ACCC asked for submissions to be provided by 28 October 2016.

To date, the ACCC has received seven public submissions from the following interested parties:

- Kalamia Cane Growers Organisation Ltd
- Wilmar Sugar
- Australian Cane Farmers Association Limited
- Isis Central Sugar Mill Company Limited
- MSF Sugar Limited
- Australian Sugar Milling Council and
- Queensland Sugar Limited.

A copy of each of these submissions is attached. All publicly available submissions are also available from the ACCC's website at [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister).

The ACCC has also been advised that it can expect to receive a late submission. The ACCC will forward any late public submissions to you as soon as possible after receipt.

The ACCC invites Canegrowers to respond to any of the issues raised in interested party submissions.

### **Information request**

In addition, the ACCC seeks further information to assist its consideration of the proposed collective bargaining arrangements. In particular, we require clarification of the scope of the conduct for which authorisation is sought and further information about how the proposed collective bargaining with mill owners and sugar marketers will work in practice. We also seek Canegrowers' response to some of the issues raised by interested parties.

Please refer to Attachment A for a list of issues. The ACCC would appreciate receiving Canegrowers' written response to these issues, as well as any comments on other issues raised by interested parties, by **18 November 2016**.

Subject to any exclusion requests, the ACCC will place Canegrowers' response on the public register for this matter. Further information about requesting information to be excluded from the public register is available from the ACCC's [Public Register Guidelines](#).

This letter will also be placed on the ACCC's public register. If you would like to discuss any of the issues raised, please contact Jaime Martin on (03) 9290 1477 (or at [jaime.martin@acc.gov.au](mailto:jaime.martin@acc.gov.au)) or myself on (02) 6243 1266 (or at [david.hatfield@acc.gov.au](mailto:david.hatfield@acc.gov.au)).

Yours sincerely



David Hatfield  
Director  
Adjudication Branch

**Attachment A – Queensland Cane Growers Organisation Ltd (Canegrowers)  
application for authorisation (A91558)**

**Request for information – 3 November 2016**

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**Scope of the proposed collective bargaining conduct**

1. At pages 10-11 of the application, Canegrowers states that authorisation for proposed collective bargaining is sought on three levels, including:
    - across and between each district that has common mill ownership so that each of the relevant local Canegrowers companies and Queensland Cane Growers Organisation Ltd can negotiate collectively with the common mill owner and sugar marketer (referred to as 'tier 2') and
    - across and between each district regardless of mill ownership so that each of the relevant local Canegrowers companies and Queensland Cane Growers Organisation Ltd can negotiate collectively with any and all mill owners and sugar marketers (referred to as 'tier 3').
  - a) In respect of both tiers 2 and 3, please outline the rationale of the proposed collective bargaining conduct in further detail. In your response, please include:
    - i. the nature of Queensland Cane Growers Organisation Ltd's involvement in the proposed collective negotiations
    - ii. the nature of the terms and conditions that would be negotiated under each tier and
    - iii. the volume of proposed collective negotiations that Canegrowers would envisage under these tiers.
  - b) We note concerns raised by interested parties that the proposed collective bargaining under tier 2 and tier 3 is broader than what is currently allowed under the *Sugar Industry Act 1999* (SIA). To the extent possible, it would assist if Canegrowers is able to outline any conduct identified in submissions as being of concern to interested parties that is *not* intended to be engaged in under tier 2 and tier 3. To the extent this is the case, it may be useful for Canegrowers to consider amending its application to more accurately reflect the proposed conduct.
2. The ACCC understands from the application that Canegrowers seeks authorisation for the collective negotiation of terms and conditions of Cane Supply Agreements with mill owners. However, Canegrowers also seeks authorisation for, among other things, 'any other contract or arrangements relating to the supply of or processing of sugar cane'.
    - a) Please provide an indicative list of the types of related agreements that Canegrowers expects will be collectively negotiated and entered into by growers under the proposed arrangements. In your response, please identify who is likely to be the parties to any related contracts and the types of terms and conditions expected to be negotiated under any related agreements.

3. Canegrowers also seeks authorisation for the collective negotiation of 'essential terms governing the supply of GEI interest sugar to the GEI sugar marketers.'
  - a) Please provide further detail about the specific terms and conditions relating to the marketing of GEI sugar that local Canegrowers' organisations propose to collectively negotiate. In your response, please clearly identify:
    - those GEI sugar marketing terms and conditions that local Canegrowers' organisations seek to collectively negotiate with mill owners (and under which agreement/s) and
    - those GEI sugar marketing terms and conditions that local Canegrowers' organisations seek to collectively negotiate with sugar marketers (and under which agreement/s).
  - b) Canegrowers seeks authorisation for, among other things, the collective negotiation of 'forward pricing terms and conditions'. Please provide further detail about the specific 'forward pricing terms and conditions' that local Canegrowers organisations propose to collectively negotiate.
  - c) Please explain any other terms and conditions that local Canegrowers' organisations seek to negotiate on behalf of growers with sugar marketers (and under which agreement).

#### **GEI sugar marketing**

4. When growers have the option of nominating a GEI sugar marketer, are there restrictions on growers or are they free to nominate any sugar marketer?
5. Please outline what information is currently available from sugar marketers to growers to inform their choice of GEI sugar marketer? Are the various components of marketing charges and final sugar prices made transparent to growers, and would any terms and conditions that might disadvantage growers be identifiable to them?
6. Please clarify whether the 2015 amendments to the SIA contemplate growers collectively nominating a GEI sugar marketer within a Cane Supply Agreement.
7. Please explain whether there is a default position if a grower does not nominate a GEI sugar marketer within a Cane Supply Agreement.

#### **Cane payment**

8. At page 9 of its submission, MSF Sugar outlines that a number of cane pricing mechanisms have been developed to allow individual or smaller collective groups of growers to 'directly price their cane' by pricing on the international raw sugar market (that is, ICE11 raw sugar futures market). However, growers also have the choice to remain in a large collective pricing pool. Please explain how growers make this selection in practice.
9. At page 14 of the application for authorisation, Canegrowers submits that 'pricing and managing risk is 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.’ Please explain what options are available to growers to manage their exposure to international sugar prices and any remaining exposure to marketing costs, and to the extent possible, the share of growers currently seeking to manage this risk.

10. Do growers typically adopt ‘rules of thumb’ when forward pricing and choosing pricing pools? Are you informed about the hedging strategies adopted by millers?

### **The timing of proposed collective negotiations**

11. Please outline the stages and timeframes of the proposed collective bargaining process. In your response, please explain when Cane Supply Agreements and related agreements are typically signed by growers, mill owners and sugar marketers for the following crushing season, and key dates for the 2017 crushing season.
12. To what extent have growers already sunk costs in sugar cane production for the upcoming harvest and any future seasons? Has the current uncertainty reduced investment in sugar cane production and, if so, how and to what extent?

### **The likely situation in the future without the proposed conduct**

13. Given the statutory exemption set out under sections 237 and 238 of the SIA, please explain what Canegrowers considers is likely to happen if it were not able to engage in the conduct for which authorisation is sought. In your response, to the extent there are differences between districts, please outline what is likely to occur within each district.

### **Public detriments**

14. At page 25 of its submission, Wilmar Sugar submits that growers collectively reaching agreement about their choice of GEI sugar marketer is likely to lessen competition in the market for GEI sugar marketing rights, including by growers being able to favour a preferred GEI sugar marketer over others or by possibly excluding a GEI sugar marketer from the market. Please provide a response to this issue.
15. At page 5 of its submission, the Australian Sugar Milling Council submits that Canegrowers application for authorisation expands the scope of ‘allowed’ collective bargaining that currently exists under the SIA. It submits that the proposed arrangements would be a move back to a ‘more centralised approach’ and is a step backwards for the Queensland sugar industry. Please provide a response to this issue.

### **Public benefits**

16. Interested parties have submitted that any public benefits from collective bargaining would already be achieved under the statutory exemption provided under the SIA. In addition, some interested parties submit that the supporting submission to the application for authorisation has not identified any additional public benefits that arise from the broader collective bargaining conduct proposed. Please provide a response to this issue. In particular, what terms and conditions might be able to be collectively negotiated under the current application for authorisation and what public benefits would result.