

28 October 2016

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

**BY EMAIL:** [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Mr Hatfield

**Submission by the Australian Sugar Milling Council to the Australian Competition and Consumer Commission in relation to the application for authorisation lodged by Queensland Canegrowers (A91558)**

**1. Introduction**

The Australian Sugar Milling Council (**ASMC**) is the peak policy body for Australian sugar milling companies, representing over 95% of Australian raw sugar production.

This letter is provided by the ASMC to the Australian Competition and Consumer Commission (**ACCC**) in response to its request for submissions in relation to the application for authorisation by the Queensland Cane Growers Organisation Ltd (**Canegrowers**) dated 23 September 2016 (**Application**).

For the reasons that follow, the ASMC believes the ACCC should refuse to grant the authorisation requested.

**2. The Australian Sugar Milling Council**

The ASMC is an advocacy-based organisation, operating in the best interests of members and the broader Australian sugar industry.

The ASMC works in the pre-competitive environment on a range of policy and programs that impact the profitability and sustainability of mill businesses and the Australian sugar industry more broadly.

Members of the ASMC are: MSF Sugar Limited; Isis Central Sugar Mill Company Limited; Bundaberg Sugar Ltd; Wilmar Sugar Australia Ltd; Mackay Sugar Limited; and Tully Sugar Limited. Collectively, these companies account for around 95 percent of Australia's raw sugar production, and generally 100 percent of its raw sugar exports.

The ASMC was a key participant in, and major proponent of, deregulation in the Australian sugar industry from the late 1990s to full implementation of voluntary marketing arrangements in 2006. This period saw numerous inquiries, reports, Government and industry negotiation and subsequently



agreement over what would represent the pathway to a sustainable, deregulated future for the Australian sugar industry.<sup>1</sup>

This submission is supported by the ASMC's six member companies:

- MSF Sugar Limited;
- Isis Central Sugar Mill Company;
- Bundaberg Sugar Ltd;
- Wilmar Sugar Australia Ltd;
- Mackay Sugar Limited; and
- Tully Sugar Limited.

### 3. Overview of the Industry

The perishable nature of sugarcane means it must ideally be processed within 16 hours of harvest to avoid deterioration in quality. Consequently harvested sugarcane must be delivered quickly to mills, and growers generally supply their sugarcane to the mill most closely located to their farms. In the same way, mill owners are unable to source sugarcane from distant locations and rely on the growers in geographical proximity to the mill for sugarcane supply. Unlike most other agricultural processors, mills arrange and largely pay for the transportation of sugarcane from regional collection points to the mill, predominantly by cane railway, or in some cases by road transport.

Sugarcane growers have few options, and in some cases only one option, with respect to where they sell their sugarcane. There are some sugarcane growing regions where a grower can supply a choice of mills with different owners. There are sugarcane growing areas where a grower only has the option of supplying one sugar mill company.

Sugar mill businesses are highly capital intensive with purpose built, industry specific sugarcane crushing plant and equipment that does not have alternative uses.

The major capital component of growing sugarcane is usually the cost of land. This land generally has alternative competing uses, including other crops, livestock, and sale for urban development. Sugar milling businesses recognize this ongoing competition to maintain support from sugarcane growers to continue supplying mills.

Sugar mills are high volume low margin businesses. A sustained 5 per cent reduction in sugarcane supply has a major impact on mills' profitability, with most of the proceeds from the annual sugarcane crush covering a mill's fixed costs only. A sustained 10% - 15% drop in sugarcane supply in many instances would exert significant viability pressure on mill businesses.

As such, mills constantly compete for sugarcane supply, and most offer incentives to attract new growers and to attract expansion by existing growers.

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<sup>1</sup> ASMC Submission to the Queensland Parliament Agriculture and Environment Committee, 17 July 2015, page 4.



The nature of this interdependent relationship has been detailed in various public documents including:

- ACIL Allen Consulting Advice on Regulatory Impact of *Sugar Industry (Real Choice in Marketing) Amendment Bill*;<sup>2</sup>

*(p. 10) “While it is true that cane growers must, for all practical purposes, sell their sugar cane to their local mill, it is equally true that the local mill must buy its sugar cane from the local growers. The situation is entirely balanced. It is simply false ..... that sugar mills have monopoly power in a region because there is only one mill and many cane growers (the textbook monopsonist). The statement is false because cane growers have been authorised under the provisions of the Queensland Sugar Industry Act to bargain collectively with mills. Thus the situation is one of a series of bilateral monopolies, with one seller (the cane growers, collectively) and one buyer (the mill).*

*A market structure of bilateral monopoly is not one in which market power is exercised. Rather, it is one in which each side has a certain amount of bargaining power, which is a different matter altogether and not indicative of market failure at all. In general, the outcome of bargaining between a single buyer and a single seller tends to favour the side that can afford to be patient, to sit and wait while the other side makes a better offer<sup>3</sup>. In the case of the sugar industry, however, neither side has the ability to sit and wait for the other side to make a better offer. This is because the process of buying and selling is governed by contracts between buyers and sellers (in fact under the Queensland Sugar Industry Act, cane cannot be bought and sold in the absence of a contract). Moreover, as mentioned above, the cane must be processed within about 16 hours of harvesting, so the mill cannot play hard ball and refuse to take the cane unless the growers accept lower prices (or it won't have a product to sell).”*

- Report by Graeme Samuel & Joe Dimasi, *An Assessment of Australian Sugar Marketing Commercial Arrangements*;<sup>4</sup>

*“Growers are concerned that as a result mills have market power. This, however, is mitigated by a number of factors:*

- *Mills need a certain supply of cane to be viable. Mills are also constrained to largely source from their local area. Our understanding is that mills have excess capacity so it is in their interest to encourage growers to continue to grow sugarcane.*

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<sup>2</sup> ACIL Allen Consulting, Advice on Regulatory Impact of *Sugar Industry (Real Choice in Marketing) Amendment Bill*, October 2015, available at: <http://www.qpc.qld.gov.au/files/uploads/2015/10/Australian-Sugar-Milling-Council-ACIL-Allen-Report.pdf>, page 10.

<sup>3</sup> David M Kreps, *A Course in Microeconomic Theory*, Harvester Wheatsheaf, New York, 1990, Chapter 15 Bilateral bargaining. The key primary reference is Ariel Rubinstein (1982), ‘Perfect Equilibrium in a Bargaining Model’. *Econometrica*, 50:97-109.

<sup>4</sup> Report by Graeme Samuel & Joe Dimasi, *An Assessment of Australian Sugar Marketing Commercial Arrangements*, April 2015, available at: <http://asmc.com.au/wp-content/uploads/2015/05/Appendix-1-An-Assessment-of-Australian-Sugar-Industry-Commercial-Arrangements.pdf>, page 2.



*Once land is lost to other activities it may be difficult to get it back for sugar cane production.*

- *Growers are statutorily authorised under the Sugar Industry Act to collectively negotiate with the mills. Several grower collectives negotiate on behalf of growers.*

*As a result growers and mills are dependent on each other.”*

- Report by Clive Hildebrand, *Independent Assessment of the Sugar Industry 2002.*<sup>5]</sup>

#### 4. Application for Authorisation

The Application seeks authorisation for the collective bargaining and marketing of cane supply and related contracts between sugarcane growers, processors and sugar marketers and is extremely broad in its scope. Specifically Canegrowers seeks authorisation:

- (a) within each district by each relevant local Canegrowers company so that collective negotiation can occur with the local mill owner and sugar marketer;
- (b) across and between each district that has common mill ownership so that each of the relevant local Canegrowers companies and Canegrowers can negotiate collectively with the common mill owner and sugar marketer; and
- (c) across and between each district regardless of mill ownership so that each of the relevant local Canegrower companies and Canegrowers can negotiate collectively with any and all mill owners and sugar marketers.

This is a significant expansion on growers' current ability to collectively bargain authorised by section 237 of the (Sugar Industry Act (SIA)).

Under the Sugar Industry Act and associated Regulation, growers have had the express right to collectively bargain sugarcane supply agreements with mills on a regional basis since 1999 (Central; Herbert River and Burdekin; North; and South Regions). This arrangement is supported by mills, and delivers a degree of efficiency.

The Application, however, does not demonstrate any level of market failure with the existing arrangements that warrants a significant expansion of the scope and area for collective bargaining. Indeed, as outlined in the Queensland Productivity Commission Decision - Regulatory Impact Statement on the *Sugar Industry (Real Choice in Marking) Amendment Bill 2015*<sup>6</sup>, in their assessment of the case for additional regulation in the Queensland sugar industry:

*“While there is an evident lack of trust between certain parts of the sugar industry we do not consider there is evidence of market failure, or that the*

<sup>5</sup> Report by Clive Hildebrand, *Independent Assessment of the Sugar Industry 2002*, June 2002, available at: [http://www.apec.org.au/docs/06\\_TP\\_Sugar/04\\_report.pdf](http://www.apec.org.au/docs/06_TP_Sugar/04_report.pdf), page 13.

<sup>6</sup> Queensland Productivity Commission Decision - Regulatory Impact Statement on the *Sugar Industry (Real Choice in Marking) Amendment Bill 2015*, November 2015, page 14.



*existing legislative framework means that issues cannot be resolved through commercial negotiations.”*

As identified in section 6 below and comprehensively outlined in the 2002 Hildebrand report, a move away from the mill area profit centre back to a more centralised approach would be detrimental to the Queensland sugar industry.

## **5. Public Benefit Claims**

The Application identifies eight possible public benefits of the conduct sought to be authorised.

In the ASMC's view, these public benefits largely relate to the general benefits of collective bargaining of cane supply agreements by growers. The ASMC supports collective bargaining and agrees that it benefits the sugar industry. However collective bargaining should not be unlimited and needs a reasonable scope. The benefits alleged to arise from the application for authorisation already exist under the current regime authorised by the SIA.

While not all growers choose to participate in collective bargaining arrangements, growers have the opportunity in four defined regions to collectively negotiate terms in relation to the supply of and payment for sugarcane, including timing of delivery, price and premiums and discounts relating to quality. Where growers choose to participate in collective arrangements, mills and grower bargaining agents are able to negotiate a standard contract covering a number of growers and reduce time and associated costs for all parties.

The Application does not identify any new public benefit which would arise from the authorisation if granted compared to the circumstances which currently exist.

The Application also does not attempt to identify how the alleged benefits are said to arise from the specific conduct the authorisation seeks authorised. The existing authorisation rectifies any perceived imbalance in bargaining power between growers and mill owners.

Contrary to the claim in the Application, the circumstances of mill ownership has not diminished competitive conditions in the Queensland sugar industry for the supply and purchase of sugarcane compared with when the Sugar Industry Act authorised collective bargaining in 2006.

Further, a number of the alleged benefits as detailed in the Application appear to only further growers' private interests and are not 'public' benefits, and are in many cases simply the same 'benefit' of efficiency repeated.

It is the ASMC's submission that the ACCC should be slow to accept benefits asserted by Canegrowers in the face of the fact that the Queensland Parliament has authorised collective bargaining within a defined scope, and in the absence of any evidence of the public benefits that would accrue from the additional broader authorisation.



## 6. Public detriment

As noted above, the ASMC supports the principle of collective bargaining in relation to cane supply agreements on a region by region basis. However, in our view collective bargaining should be confined to that transaction.

We see potential for a lessening of competition if individual growers seek to collectively bargain the terms on which competitive marketing entities market Grower Economic Interest (GEI) sugar. The ACCC ought not permit collective bargaining by growers in relation to those terms, either with marketing entities directly or indirectly with mill owners.

The Application if granted would provide the means for Canegrowers to shift the sugarcane industry 'back in time' to a more centralised approach, indeed as it used to operate prior to being deregulated.

The 2002 Hildebrand Report identified:

*“The basic profit centre of the industry is the mill area or mill region (collectively referred to as “mill area”). The marketable raw sugar product results from joint efforts of both farmers and miller. There is no market for sugarcane, only for products of its manufacture. Miller and farmers are therefore jointly reliant in each mill area for profitable outcomes, and each must be profitable for economic sustainability of the mill area.*

*There is no economic alternative to constructive cooperation between farmer and miller.*

*Farms and mill must be geographically co-located: sugarcane is a giant sweet grass that once cut must be treated within 16 hours or its sweetness and therefore its commercial value deteriorates. For this reason farmer and nearby mill are wholly co-dependent.”*

In emphasising the importance of the mill area as profit centre, Hildebrand warned of the detrimental nature of centralisation of the sugar industry, and identified the negative impact this had on the industry during the regulated, one-size-fits-all era:

*“This most important need for profit centres to stand alone is compromised if the first loyalty of farmers or miller in a mill area is to State or corporate based farmer or miller sectional-interest organisations, as sometimes occurs. First loyalties of all parties should be to their mill area, not to wider sectional bodies. Mill areas are responsible for their own survival, not for that of all other mill areas. There should be no artificial “battle within” - the real “battle” is with the “competitor without”, especially overseas competitors, as more than 80% of Australia’s raw sugar production is exported.”*



## 7. Conclusion

The Application is predicated on an alleged monopoly power that mills have over growers.

As stated in this submission the interdependence between mill owners and growers who supply sugarcane to the mills is finely balanced and there is no evidence presented that mill owners exercise any power even if it did exist.

Both ACIL Allen and Samuels and Dimasi reach the same conclusion; that growers and mills are dependent on each other, with no evidence of abuse of market power, if in fact it does exist. Hildebrand in his 2002 assessment of the sugar industry for the Federal Government also concluded that there was no economic alternative to constructive cooperation between farmer and miller.

The circumstances of mill ownership has not diminished competitive conditions in the Queensland sugar industry for the supply and purchase of sugarcane compared with when the Sugar Industry Act authorised collective bargaining.

The Application does not identify any new public benefit which would arise from the authorisation if granted compared to the circumstances which currently exist.

The Application also does not attempt to identify how the alleged benefits are said to arise from the specific conduct the Application seeks to authorise.

The ASMC believes the ACCC should refuse to grant the authorisation requested.

Should you have any further questions or wish to discuss the content of this submission, please contact me on 07 3231 5000 or at [asmc@asmc.com.au](mailto:asmc@asmc.com.au).

Yours sincerely

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