

BURDEKIN DISTRICT CANE GROWERS LIMITED

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3 November 2016

Attention: Mr David Hatfield

Director
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke Street
CANBERRA ACT 3131

By email: adjudication@accc.gov.au

By email: david.hatfield@accc.gov.au

By email: jaime.martin@accc.gov.au

Dear Mr Hatfield

Queensland Canegrowers Organisation Ltd Application for Authorisation (A91558) – interested party consultation

Our organisation appreciates the opportunity to respond to Queensland Canegrowers' application for authorisation to collectively bargain.

Reference is made to the writer's discussion with Ms Jaime Martin last week seeking an extension of time of one week to provide our organisation's response, for which we thank you.

Our organisation, pursuant to section 33(3) of the *Sugar Industry Act 1999* (Qld) (SIA), represents sugar cane growers in the Burdekin who only supply Wilmar Sugar. Our comments are only as it relates to Wilmar Sugar. Further, our organisation is an interested party in relation to Canegrowers' application.

Canegrowers' application for authorisation

We note your advice that Canegrowers have sought authorisation to collectively bargain in relation to cane supply contracts and related contracts between sugar cane growers, processors and sugar marketers.

Reason authorise is sought

We note the provisions of Chapter 6 of the SIA specifically authorises, for the purpose of competition legislation, collecting bargaining of terms pertaining to –

1. The acceptance and crushing of cane by a mill at a time fixed under the collective contract; and
2. The terms on which payments are to be made by a miller for cane supplied to a mill by a grower under the collective contract.

With the passage of the *Sugar Industry (Real Choice in Marketing) Amendment Act 2015* on 2 December 2016, growers now have a statutory interest in the sugar produced from their sugar cane and can choose a marketer to determine the sugar value of their portion of the sugar (GEI Sugar)

utilised to pay the grower for the supply of cane to a miller. Thus growers have an interest in the contract between the miller and the grower's choice of marketer for the sale of GEI Sugar, given the proceeds of sale of GEI Sugar are directly correlated to what growers are paid by the miller for their cane.

Wilmar Sugar has refuted that Chapter 6 authorisation pursuant to the SIA provides umbrella coverage of matters specifically pertaining to the 2015 amendments of the SIA. Wilmar Sugar has refused to discuss marketing arrangements with bargaining representatives on the basis that authorisation pursuant to the SIA is deficient (which we deny), thus necessitating the making of the application.

We are of the opinion given the interaction of the activities of a GEI Sugar Marketer in determining what growers are paid by a miller for their sugar cane (should authorisation be required), the ACCC should exercise its powers to grant Canegrowers' application to enable collective bargaining of those matters set out in its application.

Effect of substantially lessening competition

We concur with the matters raised by Canegrowers in paragraph (b) of the application.

In particular –

1. Wilmar Sugar is a monopoly miller. Growers' collectively bargaining in relation to milling services has no impact on competition as there are no other millers in the Burdekin. Wilmar Sugar has the monopoly power to dictate the terms of a supply contract; growers' collectively bargaining does not negate this monopoly power. Pursuant to section 31 of the SIA growers cannot supply cane to a miller without a supply contract, and as such, if contract terms are in dispute and remain unresolved at the start of the harvesting season (June of any year), growers must ultimately accept Wilmar Sugar's contract to have their cane processed at the mill.
2. Given that sugar is pooled, that is, sold in bulk and priced by reference to the world sugar price (ICE 11), growers' collectively bargaining with a Marketer will have no effect on either lessening competition for marketing services or impacting the price growers receive for their GEI sugar and payment of their cane by a miller.
3. Approximately 85,000 hectares of land in the Burdekin is dedicated to growing sugar cane. Estimated tonnes of sugar cane grown in the Burdekin each year is approximately 8.5 million tonnes. Thus, sugar cane has been, and will be, the predominance of the agricultural commodity grown in the Burdekin for the foreseeable future. Thus, authorisation for a term of 10 years is reasonable in the circumstances.

Public benefit and public detriment claims

The Burdekin region, similar to most regional coastal communities, is dependent on the growing and processing of sugar cane for its economic viability. A profitable sugar industry is vital. Thus, the benefit of collective bargaining to ensure that growers achieve a fair and reasonable contract with a monopoly miller, including determination of terms of payment, is essential for the Burdekin region.

We cannot identify any matter likely to be detrimental to the public's interests should the ACCC grant Canegrowers' authorisation to collectively bargain for those matters raised in its application.

Conclusion

Our organisation supports Canegrowers' application for authorisation and the ACCC should exercise its powers to grant Canegrowers' application to enable collective bargaining of those matters set out in its application.

Please do not hesitate to contact the writer should you have any queries regarding any matter raised in this correspondence or should you require any further information.

Yours faithfully

BURDEKIN DISTRICT CANE GROWERS LTD



Julie Artiach LL.B.

MANAGER AND COMPANY SECRETARY