



30 January 2016

Australian Competition and Consumer Commission
Attention: David Hatfield / Jaime Martin
23 Marcus Clarke Street
Canberra ACT 2601

By email: adjudication@acc.gov.au

A91558 – Queensland Cane Growers Organisation Ltd – submission

We refer to:

- the application for authorisation lodged by Queensland Cane Growers Organisation Ltd for the collective bargaining and making of cane supply and related contracts between sugar cane growers, processors and sugar marketers, dated 23 September 2016;
- the ACCC's draft determination dated 15 December 2016; and
- our previous submission dated 26 October 2016 concerning this matter.

Please find **enclosed** on behalf of Queensland Sugar Limited a further submission in respect of the authorisation application and draft determination.

Queensland Sugar Limited continues to strongly support the authorisation application, and welcomes the proposed decision in the ACCC's draft determination.

In particular Queensland Sugar Limited continues to believe that the proposed collective bargaining arrangements:

- are the most effective way to correct the significant imbalance of bargaining power between sugar cane growers and sugar cane processors (and their vertically integrated marketers); and
- will facilitate the introduction of greater competition in the market for sugar export marketing services to growers as intended by the 'Marketing Choice' amendments to the *Sugar Industry Act 1999* (Qld).

If Queensland Sugar Limited can be of any further assistance in the ACCC's consideration of the proposed authorisation or proposed arrangements, please do not hesitate to contact me.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Greg Beashel'.

Greg Beashel
Managing Director and Chief Executive Officer
Queensland Sugar Limited

1 About Queensland Sugar Limited

As noted in our previous submission, Queensland Sugar Limited (**QSL**) is a not-for-profit company which serves the interests of the Queensland sugar industry. Its members comprise each of the Queensland mill owners, and representatives of each of the Queensland cane growing regions.

QSL is currently the entity responsible for marketing to export customers the majority of raw sugar produced in Queensland and operating the six bulk sugar terminals used for storage and handling of all raw sugar produced in Queensland.

QSL markets raw sugar (being the result of processing sugar cane at a mill) to export markets on behalf of mills and growers. QSL acquires sugar from mill owners and does not own or operate mills or process sugar cane itself.

Consequently, QSL is not party to cane supply agreements. It considers, however, that arrangements that it may enter into with growers in relation to marketing or pricing of 'grower economic interest sugar' (explained later in this submission) would clearly constitute 'related contracts' with respect to marketing for the purposes of the authorisation application.

QSL has negotiated on-supply agreements with MSF Marketing Pty Ltd and Tully Sugar Limited. While it has sought to negotiate reasonable on-supply agreement terms with Wilmar Sugar Australia Limited (whose related bodies corporate own 8 different mills), no resolution has been able to be reached to date. QSL is regularly being contacted by growers who are frustrated with their inability to date to negotiate a cane supply agreement on reasonable terms with Wilmar, which is preventing them from nominating a marketer (other than Wilmar) for the grower economic sugar produced from the cane supplied by a grower.

2 Comments on draft determination

QSL agrees with the ACCC's conclusions that, in circumstances where growers have a right to nominate a marketer of their 'grower economic interest' sugar (**GEI sugar**), there are public benefits in allowing growers to collectively bargain with mill owners and marketers over terms relating to cane supply and the marketing of GEI sugar.

QSL agrees that such collective negotiations are likely to facilitate grower choice, and therefore competition, in the provision of the GEI marketing services to growers. The ACCC's comments about resourcing and information, and how collective bargaining would assist growers in that regard, are correct.

QSL also agrees that, given that the negotiation of on-supply agreements has a significant impact on the rights of growers, those growers should have the right to negotiate terms relating to that on-supply which are considered relevant in their cane supply agreements. It is illogical for growers to be precluded from discussing the terms of the on-supply agreement with other growers or with the mill owners, particularly given:

- (a) growers cannot exercise their right to select a GEI marketer in the absence of an executed on-supply agreement between their chosen marketer and their mill; and
- (b) growers cannot meaningfully exercise a choice of GEI marketer, and GEI marketers cannot meaningfully compete with the mill/GEI marketer that is a related body corporate of the mill owner, unless the terms of the on-supply to the GEI marketer are reasonable.

As noted in its previous submission, QSL does not consider that any public detriment will accrue. This is particularly the case because, as noted by the ACCC, all negotiations remain voluntary for the parties involved, there will be no state-wide agreement and the agreements will continue to be primarily negotiated at a local (rather than state) level.

It is incorrect to assert (as Wilmar appears to) that a collective negotiation of cane supply terms that may extend to some critical terms of GEI sugar on-supply amounts to a collective decision by growers as to which GEI marketer should be nominated. Growers will want reasonable terms to apply to all likely GEI marketers – so they have real choice. It is disingenuous on Wilmar's part to suggest that seeking real choice (rather than just being forced to utilise Wilmar as the default marketer) amounts to a collective decision to use QSL or not use Wilmar.

QSL agrees with the scope of proposed authorised conduct as set out with the draft determination, and agrees that ten years is an appropriate length for the proposed authorisation.

With respect to paragraph 38 of the draft determination, for completeness QSL notes that a term sheet has been signed between QSL and Sugar Terminals Limited (**STL**) under which it is anticipated that the sublease for the bulk sugar terminals will terminate in 2017 and a new operating agreement will commence for the 2017 season. Under this structure, STL will control the sugar terminals, with QSL sub-contracted as the operator of the terminal. QSL will not be the contractual counterparty to any of the storage and handling arrangements, as those will be agreements between users of the terminals and STL. QSL does not consider that this issue will be determinative of any matters relevant to the application, but wishes to ensure that the ACCC has the correct information available to it when making its final determination.

3 Correcting other comments

QSL understands that some interested parties to the draft determination do not support the outcome.

QSL notes that some submissions in response to the draft determination (see submission of Dr John Williams) make unfounded and incorrect assertions about QSL's views on some issues.

While QSL does not consider these comments particularly relevant, nor determinative of any of the issues before the ACCC, it nonetheless wishes to correct some of those statements (given they have been made on the public record). To be clear, QSL is not 'against millers who want to market their own sugar'. Indeed, QSL has several miller members who market their own sugar, including miller members who have nominated industry directors on its board. Rather, QSL supports the entirety of industry and supports the promotion of competition in all markets within the industry, including the market for the provision of GEI sugar marketing services to growers.

QSL is not seeking a single desk or re-regulation. Rather, it is supporting the ACCC authorising growers to engage in collective negotiations which are hoped to increase the prospects of resolving the cane supply agreement negotiations with Wilmar, and potentially assist with resolving on-supply terms and thereby, in conjunction, providing GEI marketers with a right to compete.

Further, it is untrue to describe QSL as 'avoiding' any laws due to its not-for-profit status, or any other part of its corporate structure. QSL has a strict compliance culture with competition laws, as well as all other relevant laws and legislation. QSL holds appropriate tax related registrations due to QSL's conduct and actions that have always been consistent with its not for profit and industry good purposes.

QSL notes that it will be the operator of the bulk sugar terminals in the 2017 season – but will not be the contractual counterparty for any of the storage and handling agreements. QSL rejects any assertion that it supports the Marketing Choice legislation because it allows QSL to avoid competition regulation. Indeed, QSL believes that the Marketing Choice amendment has resulted in QSL competing with other marketing entities for GEI sugar to market. This has increased competition in a market – rather than mute competition as claimed by Dr Williams.

4 Conclusion

QSL strongly supports the authorisation application, and considers that it will result in heightened competition in the Queensland sugar industry and significant public benefits.

QSL is willing to discuss any of the issues raised in the authorisation application or this submission further with the ACCC (including at the pre-determination conference that has been scheduled) if it would assist the ACCC's consideration of the application.