

JG.IH

30 January 2017

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

BY EMAIL: adjudication@accg.gov.au

Dear Mr Hatfield

Submission by the Isis Central Sugar Mill Company Limited (ICSM) to the Australian Competition and Consumer Commission in relation to the DRAFT determination relating to the application for authorisation lodged by Queensland Canegrowers (A91558)

1. The ACCC proposes to grant the Queensland Canegrowers application for authorisation on the basis that *'the proposed collective bargaining arrangements for which authorisation is sought is likely to result in a public benefit that would outweigh the detriment to the public constituted by any lessening of competition arising from the conduct.'*¹
2. This decision is grounded in the ACCC's finding that there is limited competition in the market for supply and acquisition of sugar cane:

*'Given the perishability of cane, which needs to be crushed within 16 hours of harvest, and transport costs, the supply of sugar cane and milling services occurs in localised areas around the mill. The majority of growers only have one option to supply cane to their local miller. There is generally only limited competition between growers in neighbouring cane growing districts, as well as between millers in the supply of milling services to growers.'*²
3. ICSM submits that the application for authorisation should not be granted in respect of the ICSM mill. This is because:
 - a) unlike most mill owners, ICSM faces competition to acquire sugarcane; and
 - b) the proposed collective bargaining arrangement will disadvantage ICSM and potentially lessen competition in that market to an extent that would outweigh the public benefit (if any) in the grant of the authorisation.
4. We set out the reasons for our conclusion below.

¹ACCC Draft Determination, Application for authorisation lodged by Queensland Cane Growers Organisation Limited, [217].

² ACCC Draft Determination, Application for authorisation lodged by Queensland Cane Growers Organisation Limited, [118].

5. The determination that the public benefit outweighs any detriment to the public is critically dependant on the assumption that each milling company, including ICSM, is a monopsonist in acquiring cane, effectively facing no competition when dealing with growers.
6. This is not the case for ICSM and the canegrowers serviced by the ICSM mill. The ACCC has acknowledged that in some cases, canegrowers have options for alternative supply.³ In particular, there is a high degree of contestability for growers supplying ICSM, Bundaberg Sugar and MSF. The ICSM mill is less than 40km from Bundaberg Sugar's Bingera mill, less than 50km from Bundaberg Sugar's Millaquin mill and less than 75km from MSF's Maryborough mill. Suggestions that switching is impractical are not consistent with the facts. As explained in ICSM's earlier submission to the ACCC, almost half of the land supplying cane to ICSM in 2015 had previously supplied cane to a different mill. Both ICSM and Bundaberg Sugar consider themselves competitors for the acquisition of cane.⁴
7. The ACCC has determined that the public benefit from granting the authorisation outweighs any detriment to the public. In doing so, the ACCC identifies the following public benefits and detriments:

'The ACCC considers the proposed arrangements are likely to result in public benefits from:

- *transaction cost savings and*
- *facilitating growers having more effective and timely input into negotiations with mill owners and marketers.*

Also, in circumstances where growers have a right to nominate a marketer of their GEI sugar, the ACCC considers that the proposed arrangements are likely to result in public benefit by facilitating grower choice, and therefore competition, in the provision of GEI marketing services to growers.

Conversely, the ACCC does not consider that the proposed arrangements are likely to result in significant public detriment given that:

- *collective negotiations are voluntary for growers, millers and marketers*
- *Canegrowers does not intend to negotiate and enter into a single state-wide Cane Supply Agreement or related agreements and*
- *primary collective negotiation will remain at the local level and cater for regional differences, with Canegrowers proposing to facilitate the exchange of information in relation to common industry issues only.⁵*

8. The public benefits identified by the ACCC arise from the assumption that cane growers are at a bargaining disadvantage. The ACCC states, '*Individual growers generally do not have access to the same resources and information that millers have. [The authorisation] may allow for more effective negotiation, allowing negotiating parties a greater opportunity to identify and achieve efficiencies that better reflect the circumstances of growers and millers. Collective bargaining is also likely to enable growers to become better informed of relevant market*

³ ACCC Draft Determination, Application for authorisation lodged by Queensland Cane Growers Organisation Limited, [41].

⁴ Queensland Productivity Commission, *Sugar Industry (Real Choice in Marketing) Amendment Bill 2015 – Decisions RIS*, p47.

⁵ ACCC Draft Determination, Application for authorisation lodged by Queensland Cane Growers Organisation Limited, [197] – [199].

*conditions and options available to them, which is likely to improve their input into contractual negotiations with millers to achieve more efficient outcomes.*⁶

9. This is not the case for ICSM. ICSM is a locally owned, single mill operation and does not operate across milling regions. In that sense, ICSM does not have access to more information than the growers of the region.
10. Further, ICSM does not offer marketing services. In that context, It is not clear to ICSM how the authorisation for collective bargaining would facilitate grower choice and increase competition for the provision of GEI marketing services to growers. ICSM submits that this factor is not relevant to whether the authorisation should apply to negotiations with ICSM.
11. At best, the public benefits identified by the ACCC are not likely to materialise in a situation where growers have a choice as to whom they supply their cane. If ICSM were to be viewed by growers as being inflexible about any terms, growers have the option of switching supply to a competing mill. In such a case, authorisation should not be granted.
12. At worst, the conduct which the ACCC proposes to authorise would produce poorer outcomes from negotiations for cane supply contracts. For example the Draft Determination, if implemented, has the potential to place ICSM at a negotiating disadvantage. ICSM is a single mill operation in a competitive geographic location. The proposed authorisation would enable canegrowers to access and use commercially sensitive information obtained during negotiations in other mill regions or with other milling companies. ICSM, would not have access to such information placing it at a disadvantage and potentially lessening competition in that region.
13. ICSM submits that the potential for the proposed authorisation to reduce competition in the region service by ICSM is a public detriment that, in the context of the already competitive market in that region, is not outweighed by the public benefit (if any) attained by the proposed collective bargaining arrangement.
14. ICSM notes the ACCC's reasons for proposing to grant authorisation more broadly, and makes no comment on that wider proposal. However, ICSM submits that, in so far as the application relates to negotiations with ICSM, there is no basis upon which the ACCC can properly conclude that there is a net public benefit.
15. The Canegrowers seek authorisation for collective bargaining with all mill owners and marketers, current and future as may change from time-to-time including Isis Central Sugar Mill Co Ltd.⁷ In these circumstances, ICSM submits that the ACCC's final determination should make it clear that the authorisation does not extend to negotiations with ICSM and expressly exclude ICSM from the authorisation.

Yours sincerely



John Gorringe
CHIEF EXECUTIVE OFFICER

⁶ ACCC Draft Determination, Application for authorisation lodged by Queensland Cane Growers Organisation Limited, [148]

⁷ Form B, Agreement affecting competition or incorporating related cartel provisions: Application for authorisation, pages 6-7